

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 407

10 November 1947

UNITED STATES)

v.)

Case No. 12-1292

Werner HESS, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 4-5 August 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Werner HESS and Hubert von SVOBODA, German nationals, did, at or near DORSTEN, Germany, on or about 15 October 1944, wrongfully encourage, aid, abet and participate in committing assaults upon a member of the United States Army, Major James B. CHENEY, who was then and there an unarmed, surrendered prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: During the morning of Sunday, 15 October 1944 an American bomber attacked a passenger train approaching Dorsten, Germany, and strafed the occupants of the train and the farmers that gathered there, killing several. The pilot, Major James B. Cheney, AC, was captured later that day and conducted to a flak unit headquarters on the third floor of a monastery in Dorsten. There he was interrogated in the presence of the commanding officer, Lieutenant Colonel Hubert von SVOBODA, by the adjutant, First Lieutenant Reichelt. In the meantime German soldiers had assembled in the hall and were greatly incensed at the bombing and strafing of the train and passengers, and several shouted remarks that the flyer should be killed because of his deed. An angry, hostile crowd had assembled in the street in front of the monastery and just outside the gate. They were armed with spades and shovels and demanded

the delivery to them of the "murderer." Accused HESS, a second lieutenant and signal officer in SVOBODA's regiment, was in his office in headquarters when the officer of the day came in and told him about the train bombing and strafing. At this time Adjutant Reichelt came out of the commanding officer's office and told the accused that the commanding officer was "against killing the flyer" but wanted him beaten. Reichelt thereupon ordered the accused to line up the people in the hall "with something in their hands" and added that in about five minutes he would push the flyer into the hall. The accused transmitted the order to the people in two offices adjoining his own and then rushed to the ground floor where he ordered the crowd of civilians and soldiers to leave the caserno and that the gate and small door entrances be closed. In the meantime the flyer had been pushed out of the door of the commanding officer's office into the hall. The flyer ran rapidly along the hall and down the stairs, being beaten on the way. The accused had heard the commotion in the hall and stairway and started back upstairs, but the flyer passed him on his way down. The accused then turned around, followed the flyer, and arrived at the bottom of the stairs just as the flyer slipped and fell to the floor. Some of the crowd of soldiers and civilians commenced beating the flyer, and the accused then jumped into the crowd and stopped the beating. The flyer was then placed in a jeep standing in the courtyard. The accused ordered the gate to be quickly opened and the crowd held back by soldiers, while the jeep pursuant to his orders, was hurriedly driven away to save the flyer from the angry mob.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Arner HESS

Nationality:	German
Age:	32
Civilian Status:	Evangelical priest-paster

Party Status:	None
Military Status:	Second Lieutenant in the Army
Floor:	AG
Findings:	G
Sentence:	6 months, commencing 15 May 1947

Evidence for Prosecution: The prosecution's case was tried entirely by documentary evidence on stipulation of counsel (R 7). On 15 October 1944 an American flyer was captured near Dorsten after he had strafed a train. He was conducted to the headquarters of a flak regiment of which the accused, a second lieutenant, was the signal officer, Lieutenant Colonel Hubert von SVOBODA the commanding officer, and 1st Lieutenant Lother Reichelt the adjutant (R 6; P-Ex 2). In SVOBODA's office on the third floor of the monastery the flyer, Major James B. Chaney, AG, was interrogated by Reichelt (R 6, 8; P-Exs 2, 6). When Chaney refused to give him information of a military nature, SVOBODA and Reichelt had a conversation in German, which Chaney did not understand. SVOBODA then left the room, and Reichelt told Chaney "I see you need other treatment" (R 8; P-Ex 6). At the time the accused was in his office on the same floor. He heard a commotion in the hall and on going out found a group of about 20 soldiers discussing the train strafing. At this moment Reichelt came out of the commanding officer's office and gave the accused an order to have the flyer beaten, but he added that the flyer should be taken to the division "intact" as he might have "important information". The accused thereupon transmitted the order to the personnel in the two offices on either side of his own, telling them to "come out, get something in your hands, the flyer is to be beaten" (R 6; P-Ex 2). When the personnel came out into the hall, they were armed with leather belts (R 6, 8; P-Exs 2, 6), clubs and "a leather covered blackjack about 14 inches long". The flyer was then pushed into the hall from the commanding officer's office

(R 5; P-Ex 6). When the persons in the hall started beating the flyer, yelling, "Murder," he ran quickly along the hall and down the stairs, being beaten by air force soldiers lined up in the hall and on the stairway (R 6, 8; P-Exs 2,6). When the flyer reached the bottom he fell to the ground. Two civilians and a civilian policeman began beating him with their fists and kicking him (R 6; P-Ex 2). The flyer was then placed in a jeep in the courtyard where he was again beaten (R 6, 7, 8; P-Exs 2, 4, 6). He was later taken to a hospital in Essen (R 8; P-Ex 6).

Evidence for Defense: The accused, a Protestant minister, after twice attempting voluntarily to enter service as a pastor, was drafted 6 October 1939 (R 10) and on 30 November 1942 was assigned as a signal officer with the 46th Regiment, which was quartered in the Franciscan Monastery at Dorsten (R 11). The regimental commanding officer was Lieutenant Colonel Hubert von SVOBODA (R 11). During the period that the accused was on duty there, 30 November 1942 to 6 May 1945, about 100 captured allied flyers had been brought to that headquarters, and, with the exception of the incident here involved, all had been well treated. These captured flyers had been furnished food, cigarettes, medical attention and beer (R 12, 42, 53). Many had signed the guest book kept by the commanding officer, some adding humorous remarks (R 63-66).

Sometime in the morning of 15 October 1944 a low flying airplane bombed a civilian passenger train as it was approaching Dorsten and had strafed the injured passengers and the crowd composed of passengers and farmers who had assembled, killing between 15 and 23 people (R 13, 39, 40, 44, 54). The pilot was captured and taken to the 46th Regimental Headquarters (R 53).

The accused testified that he was working in his office in the headquarters on the third floor, when he was told of the train bombing, strafing and killing (R 12, 13). Shortly thereafter, hearing a commotion in the hall, he went out and found a

group of soldiers excitedly discussing the train incident (R 13). At this moment Adjutant Reichelt came out of the commanding officer's office and told the accused that the commanding officer was against killing the flyer but that the flyer should get a good beating (R 13). Reichelt then ordered the accused to line up the personnel in the hall "with something in their hands," and said that after five minutes he would push the flyer into the hall (R 13, 14). The accused testified that knowing the flyer had been interrogated for about an hour and considering the fact that therefore captured flyers had always been well treated, he concluded that the administration had reached its decision to have the flyer beaten "after a well thought out process" (R 14, 17). He therefore passed on the beating order to six or seven persons and ordered all the female assistants to remain in their offices (R 14).

The accused then rushed downstairs, ordered the crowd of angry civilians and soldiers out of the caserne and the large gate and small door closed to keep out the crowd, who were armed with spades and shovels (R 14, 40). He also ordered the soldiers on the ground floor to put away their wooden sticks (R 14). Hearing the noise in the upper hall, the accused started back up the stairs, but a few seconds later the flyer passed him descending with "big leaps". The accused turned and followed the flyer, who upon reaching the bottom slipped and fell to the ground. There two civilians and a policeman threatened the flyer (R 15). The accused prevented the beating and ordered further beating stopped (R 15, 55, 59). Just then a female assistant appeared in an upper hall, screaming hysterically and yelled, "You murderer of our women and children." The accused immediately ordered her back into her office (R 15).

Meanwhile, the flyer had climbed into the jeep which was standing in the courtyard and was being beaten by some soldiers,

including one named Warschaede (R 15, 17; P-Ex 4). The accused ordered Warschaede to stop, which he did (R 15). The angry, excited mob outside/^{had} renewed their threats (R 41, 54). One man climbed to the top of the gate and shouted, "Give us the flyer. He killed my son" (R 15, 41, 57). Others demanded, "We want to get the murderer" (R 57).

To protect the flyer, the accused ordered the gate to be suddenly opened, some soldiers to hold back the mob and the jeep to be driven swiftly away (R 15, 40, 41, 57).

Bluemert, an eye witness, testified that, "It is a very good thing that he (HESS) followed him because when he skidded and fell, if Lieutenant HESS would not have been there, one would not know what would have happened to the flyer" (R 59). This confirmed the accused's testimony that he was glad he participated because, if he had not been in the headquarters that morning, "the incident would have occurred exactly as I have explained it here only other comrades of mine would now be sitting here accused of murder" (R 16). Fricke, the head of the Evangelical churches in Frankfurt, testified that he had known the accused since 1935 and that after the war the accused had worked under him in social and welfare work and German youth activities. He was acquainted with the accused's family and testified to the high moral character of the accused and his good reputation for truth and veracity (R 31-38).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. Hubert von SVOBODA

This accused was served but not tried (R 2).

V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the accused and of the subject matter.

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused. It is noted that the absence of two members of the Court is not explained in the record, but a quorum was present.

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentence be approved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

FRANK L. WALTERS
Attorney
Post Trial Branch

Having examined the record of trial, I concur, this _____ day
of _____ 1948.

G. B. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes