

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

27 February 1948

UNITED STATES)

v.)

Richard HAMMER, et al.)

Case No. 12-1307

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 28 March - 4 April 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws of War.

Particulars: In that Karl JENTZ, Richard HAMMER, Hans OHRT, Hans WAHLS, Gotthard PARZYK, Willi VOIGT, Paul DOOSE, Ernst BACHMEIER, Otto GIESE, Christian SCHUTT, Friedrich LEHMENSICK, Karl NEEB, Herthe STAPELFELT, HOHN (FNU), August (DOSE) DOOSE and Paul SACK, German nationals, did, at or near LUBECK-SIEMS, Germany, on or about 8 August 1944, wilfully, deliberately, and wrongfully encourage, aid, abet and participate in the killing of an unknown member of the United States Army, who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On or about 13 August 1944, during an air raid over the northern part of Germany, an American bomber was disabled and crew members parachuted therefrom, one of them landing in a field not far from the autobahn near Lubeck-Siems, Germany. He was captured by German military personnel. A large crowd of civilians gathered and assaults were made upon the flyer by members of the crowd. Thereafter, the flyer was taken a short distance and shot and killed. Each of the convicted accused, excepting for accused Paul DOOSE, and Karl NEEB, either shot at the airman or aided and abetted in the beating and in the killing.

Unless otherwise indicated, an item referred to herein as a "Statement" is in the form of extrajudicial sworn testimony.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Karl JENTZ

This accused was neither served nor tried (R 1), authority of JAG in

CLASSIFICATION CANCELLED
did 4 Aug 1950

2. Richard HAMMER

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| Nationality: | German |
| Age: | 38 |
| Civilian Status: | Machinist |
| Party Status: | Nazi Party since 1929 |
| Military Status: | SA 1929 - 1933 |
| Plea: | NG |
| Findings: | G |
| Sentence: | Life imprisonment |

Evidence for Prosecution: Fahrenkrug testified that in August 1944 he saw the flyer land near Lubeck, Germany, and watched him led across the railroad tracks to the autobahn (R 56, 57). Trauelsen testified that Fahrenkrug questioned the flyer about his nationality and name, and was told he was an American (R 282). After being interrogated by an SS officer (R 57), the flyer was beaten by the accused and others, the accused using a steel helmet, until he was bleeding profusely from the head. The victim then collapsed (R 59). Loerke testified that the accused was one of those who beat the flyer with a steel helmet, striking repeated blows resulting in the flyer's face being unrecognizable (R 25). This testimony was corroborated by Bernit insofar as the use of the steel helmet is concerned (R 33, 34), and by Trauelsen and Detliffsen as to the accused's participation in the beating (R 70, 74, 75, 78, 280). Trauelsen, however, later expressed some doubt about the accused's participation (R 281). After he had collapsed, the flyer was dragged back to the corn field, where he was shot (R 35). Trauelsen testified that the accused stood by while accused BAREYK shot at the flyer (R 78) and that the accused was in the circle immediately surrounding the flyer at the time of the shooting (R 280). The flyer was an American from St. Louis (R 282, 287), and was unarmed (R 72). He was examined by Dr. Ade, a German physician, and pronounced dead. While he had seven or more bullet wounds, the fatal shot was probably one in the neck, (R 18; P-Ex 13, pp. 3, 4).

Evidence for Defense: The accused testified that he was in front of his house when he saw the flyers bail out (R 114). Thereupon, he rode

his bicycle to the embankment at the railroad tracks, where he saw the flyer coming across a pasture escorted by two Wehrmacht soldiers and an SS officer (R 115). The flyer was brought to the autobahn, where he was deprived of his combination suit and other articles (R 116, 117). The accused further testified that he observed from a distance of five meters how the flyer was beaten on the head with a steel helmet by one Plankowsky (R 118); that he, the accused, was wearing striped cocoa-brown trousers and a sport jacket; that his helmet was on the handle bars of his bicycle; that he was never closer to the flyer than two or three meters; and that he left the scene when told to do so by the police (R 119, 120). A Statement previously made by the accused is fairly consistent with his testimony in Court (R 12; P-Ex 1). In her Statement, Erna Boehm stated that she was present at the incident; that she did not see the accused beat or shoot the flyer; and that if he had done so, she would have seen him (R 131; D-Ex 3).

Sufficiency of Evidence: The testimony of eyewitnesses clearly established that the accused participated in the beating, and at least encouraged and abetted in the killing alleged.

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

Petitions: A Petition for Review was filed by Frank L. Walters, defense counsel, 18 April 1947. A Petition for Clemency was filed by Frank L. Walters, 17 October 1947.

Recommendation: That the findings and sentence be approved.

3. Hans OHRF

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|------------------|-------------|
| Nationality: | German |
| Age: | 42 |
| Civilian Status: | Shipbuilder |
| Party Status: | None |
| Military Status: | Unknown |
| Plea: | NG |
| Findings: | G |

Sentence:

1 year, commencing 1 May 1946

Evidence for Prosecution: Trauelsen testified that the accused was present during the beating (R 76) of the flyer who landed near the autobahn in the vicinity of Lubeck-Siems, Germany, in August 1944 (R 72). However, he was not positive whether the accused did anything (R 281). Moeller testified that in the factory where he worked the accused bragged about his participation in the beating (R 189, 191). In his Statement, accused SCHUTT confirmed this assertion on the part of the accused (R 16; P-Ex 9). The accused admitted making the remark (R 208). In rebuttal, Trauelsen testified that the accused was in the circle immediately surrounding the flyer when BARZYK fired the fatal shot (R 280).

Evidence for Defense: The accused testified that at the time of the incident he was fishing in the Trave river; that he saw the flyers descending; that he remained at the river from shortly before 1200 hours until shortly before 1700 hours (R 207). He admitted having stated that he participated in beating the flyer, but testified that this was only show-off bragging (R 208). WAHLS, VOIGHT and DOOSE stated in their Statements that they did not see the accused at the scene (R 14, P-Exs 3, 5; R 15, P-Ex 6). Moeller testified that she did not see the accused at the scene, and heard that he had gone fishing (R 189). Limau testified that the accused was not in the crowd which beat the flyer or in the crowd which dragged him into the corn field (R 218).

Sufficiency of Evidence: This accused was, according to an eye-witness, present at the scene of the incident and in a position to participate in it. His later confession of participation merits credibility because of this fact. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Frank L. Walters, defense counsel, 18 April 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

4. Hans WAHLS

This accused was acquitted (R 302).

3. WETTHARD PARZIA

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| Nationality: | German |
| Age: | 45 |
| Civilian Status: | Locksmith and Machinist |
| Party Status: | Member of Nazi Party following 1931 |
| Military Status: | SA, 1932 - 1934 |
| Plea: | NG |
| Findings: | G |
| Sentence: | Death by hanging |

Evidence for Prosecution: The accused went by bicycle to the scene of the incident (R 252). The flyer, who had landed near Lubeck-Siems, Germany, August 1944, had been brought from the corn field where he had landed across the railroad tracks to the autobahn and halted near a parked car or truck (R 21, 22). After the flyer had been searched and interrogated, the crowd began beating him (R 23). Loerke and Ammen testified that the accused, referring to the flyer, said in effect: "Leave him to us so that we can have some sport with him" (R 26, 64). Ammen, Berndt and Trauelsen testified they saw the accused beat the flyer with his hand (R 34, 54, 74). The flyer was bleeding profusely, fell to the ground, and was then dragged back to the corn field by members of the crowd (R 34, 35, 71). Trauelsen testified that the accused was armed with a pistol; that a circle was formed around the flyer; that a pistol was passed from hand to hand, and that he saw the accused fire a shot into the flyer (R 77); that the flyer got up after being shot, and then collapsed; and that the body was then put into a truck (R 78).

Subsequent to the trial, Chief Defense Counsel, Mr. Frank L. Walters, filed a Petition for Review and numerous motions with attached affidavits attempting to impeach the testimony of prosecution witness Trauelsen. As a result of such petitions, the witness was re-interrogated by an attorney from Post Trial Branch, 7708 War Crimes Group, with the result that said witness positively reaffirmed that he saw the accused shoot the flyer and explained his reason for making contrary statements after

the trial as being fear of reprisal from friends of the accused (affidavit of Trauelsen attached to Petitions for Review and Petitions for Clemency).

Evidence for Defense: The accused testified that, after he arrived at the scene of the incident, he stood on a rise of ground to see what was going on and that from a distance of 10 meters he saw the flyer taken across the field as far as the railroad tracks (R 252). He further testified that he then separated from Limau, who had accompanied him there, and went home the same way he had come, because he had no time to watch the proceedings (R 253). The accused also testified that he heard no shots during his one kilometer ride home; that he went straight to his house for lunch; and that he had no pistol, and did not own one. He did not beat anybody and was not in the crowd which engaged in the shooting (R 254). He testified that Trauelsen, Ammen and Loerke were not telling the truth (R 254); that he did not see any of his co-accused on that day (R 255); that he went to the scene to give the flyer protection, but did not do so because the flyer was already protected (R 256); and that he only learned about the killing from Limau much later that day (R 257).

In a Statement previously made by him, the accused stated that Limau was present at the scene, but made no mention of going there in his company (R 14; P-Ex 4). Limau testified that he went to the scene with the accused (R 211); that he saw one Plankowsky beat the flyer (R 212, 213), but that he did not see the accused do any beating; that he got home just as the eighth shot was being fired and saw the accused standing in front of his (witness') door (R 216). On cross-examination, this witness testified that when the eighth shot was fired he was on the autobahn, the flyer being then in the corn field, 100 - 150 meters away (R 222). He further testified that he had lived in the town since 1912, but recognized only the accused (R 228). Defense counsel characterized this witness as having a defective memory (R 225-227). His contradictory answers to questions by the Court (R 228) must be considered in the evaluation of his testimony.

Boettcher testified that when he got to the scene, the accused was 10 meters in front of the car near which the flyer was at the time; that he did not see him get any closer to the flyer (R 258); that, if the accused had been in the group which was dragging the flyer, he would have seen him; and that he did not see the accused engage in the beating (R 258, 259). However, this witness left the scene when the flyer was dragged to the corn field (R 259).

Sufficiency of Evidence: Two witnesses heard the accused speak of the treatment given the flyer as "sport". Three witnesses saw him taking part in the beating, and one witness positively identified him as having fired a shot into the flyer. Regarding his defense of alibi, his testimony conflicts with his prior Statement, and materially conflicts with the testimony of his supporting witness, Limau. The testimony of Limau was so contradictory in itself that the Court would have been justified to give it little credence.

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

Petitions: A Petition for Review was filed by Frank L. Walters, defense counsel, 18 April 1947. A Petition for Clemency was filed by Frank L. Walters, 17 October 1947.

Recommendation: That the findings and sentence be approved.

6. Willi VOIGHT

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| Nationality: | German |
| Age: | 38 |
| Civilian Status: | Machinist |
| Party Status: | Unknown |
| Military Status: | Unknown |
| Plea: | NG |
| Findings: | G |
| Sentence: | 10 years, commencing 1 July 1945 |

Evidence for Prosecution: The accused, an air raid warden then on duty, saw seven parachutists coming down near Lubeck-Siems, Germany.

August 1944, and proceeded to the place where one had landed near the autobahn. In his Statement, the accused admitted that he had said that the dropping of bombs on them was a bad affair and that he wanted to see the flyers punished (R 14; P-Ex 5). On the witness stand, the accused admitted his attitude toward the flyer was unfriendly, and that he felt flyers deserved punishment (R 202). Accused GIESE testified that he saw the accused at the scene in close proximity to the flyer and that he heard him state that he struck the flyer (R 181). GIESE had previously made the same allegation in his Statement (R 16; P-Ex 8). Accused STAPELFELDT, in her Statement, stated that the attitude of the accused was hostile (R 17; P-Ex 12). Accused OERT testified that the accused told him he had helped beat the flyer (R 208, 286). The accused admitted in Court that he had told people that he had beaten the flyer (R 204). He also admitted that he had been reprimanded by the mother of accused OERT for his participation in the incident (R 205).

Evidence for Defense: The accused testified that, while he was on duty as an air raid warden in Danischburg, he saw the flyers bailing out and went by bicycle to the corn field where one of the flyers had landed. He saw this flyer standing near a car parked on the autobahn (R 194). A crowd of from 250 to 300 people was at the scene. A small group stood next to the auto. He joined the crowd and saw people whom he cannot identify beating the flyer. He testified that he and his bicycle were pushed around and surrounded by the mob; that he went up to the car, stood there awhile, and saw the tall dark flyer coming toward him with his nose bleeding; that thereupon he turned around and got out of the crowd (R 195, 196); that he went 20 meters on the way toward Danischburg, stopped, and saw the flyer shoved around and pushed onto the field again (R 197); and that he then continued on his way and heard seven or eight shots from the direction where the flyer was (R 198). The accused further testified that he was only bragging when he told people of having participated in the beating (R 204).

Sufficiency of Evidence: The accused was present at the scene of the incident, was heard expressing a hostile intent toward the victim,

and later confessed of participating in the beating of the flyer under circumstances which give weight to his confession.

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

Petitions: A Petition for Review was filed by Frank L. Walters, defense counsel, 18 April 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

7. Paul DOOSE

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|------------------|---------------------------------|
| Nationality: | German |
| Age: | 41 |
| Civilian Status: | Factory Policeman |
| Party Status: | Member of Nazi Party |
| Military Status: | SS First Lieutenant since 1930 |
| Plea: | NG |
| Findings: | G |
| Sentence: | 3 years, commencing 1 July 1945 |

Evidence for Prosecution: Trauelsen testified that the accused and another SS man escorted the flyer to the autobahn (R 72, 73); that the accused was armed with a pistol (R 77); that the last place he saw the accused was near the car where the flyer was put after he was dead (R 280). accused WARLS testified he saw the accused running toward the corn field where the flyer was, but could not, from his position, see any more (R 249, 250).

Evidence for Defense: The accused testified that he saw six or seven flyers bail out, and went by car with one Kortun to the spot where one flyer had landed (R 141, 142); and that when he saw the flyer in the custody of an SS Major he turned around and went home. One of his duties was to see that parachutists were turned over to Army units. However, upon finding the flyer in the custody of the major, he considered his mission accomplished (R 144, 145, 148, 149). He further testified he never got any closer to the flyer than 30 meters (R 153); that he did not recognize anyone at the scene (R 154); and that he only heard of the kill-

ing later in the day (R 158). In a Statement, Kortun corroborated the testimony of the accused (R 169; D-Ex 8).

Sufficiency of Evidence: The weight of evidence supports no inference other than that he was a mere spectator.

The findings of guilty are not warranted by the evidence.

Petitions: A Petition for Review was filed by Frank L. Walters, defense counsel, 18 April 1947. A Petition for Clemency was filed by Frank L. Walters, 17 October 1947.

Recommendation: That the findings and sentence be disapproved.

8. Ernst HACHMEIER

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| Nationality: | German |
| Age: | 43 |
| Civilian Status: | River (Work) Supervisor |
| Party Status: | Member of Nazi Party since 1937 |
| Military Status: | Member of SS since 1934 |
| Plea: | NG |
| Findings: | G |
| Sentence: | Life imprisonment |

Evidence for Prosecution: Loerke testified that in August 1944, near Lubeck-Siems, Germany, he saw the flyer land in a cow pasture; that after the flyer was captured, he was led to the autobahn, deprived of his jacket and interrogated (R 21-23); and that he saw the accused, among others, beat the flyer repeatedly over the head with a steel helmet until the victim's face was covered with blood and was actually unrecognizable (R 25, 26). Berndt testified that he saw the accused beating the flyer with a steel helmet and that the victim bled profusely from the head and face (R 35). Fahrenkrug and Traulsen corroborated the testimony that the accused used a steel helmet for beating and that the victim was bloody from the beating (R 59, 81, 281).

Loerke further testified that in the course of the beating, the flyer collapsed. He was helped up, collapsed again while being led back to the field, and was then kicked causing him to fall again face down. The witness was pushed back and was unable to identify the victim (R 26, 27).

Trauselsen, likewise, testified that the flyer, while being led back to the field, was thrown down and kicked; and that he arose and was again knocked down (R 77). Loerke testified that he heard 12 shots fired (R 27) and Fahrenkrug testified that he heard about 10 shots fired when he was 200 meters away (R 60). Berndt testified that after he saw the flyer taken back to the field, a circle formed around him and a pistol was passed from hand to hand, and that he heard 11 shots fired (R 36, 37). Trauselsen testified that the accused stood by and watched while accused PARZYK fired a shot at the victim (R 78). Berndt testified that the accused wore an air raid warden's uniform (R 48). The accused admitted in Court that when he first saw the flyer, the latter stood with his hands clasped above his head (R 94). Accused HAMMER testified that he saw the accused pushing people back (R 120).

Evidence for Defense: The accused testified that, together with accused HAMMER, he went by bicycle toward the place where the flyers were parachuting (R 90, 91), but he took a detour and came to the autobahn alone (R 93). The accused further testified that several men near the flyer then started to beat him, including one who wore a blue uniform and beat with a steel helmet (R 94, 95). He identified this beater as the late Piankowsky, but testified that he could not identify any of the others (R 95). He did not recognize any of the other accused at the scene (R 102, 106), except for HAMMER, whom he met while on his way home (R 99-101). The accused further testified that he left the scene after protesting against the mistreatment of the flyer to an SS Major then present (R 98). He maintained that Loerke's testimony was untrue (R 109).

Sufficiency of Evidence: The participation of the accused in beating the flyer and his presence at the shooting were clearly established. His actions encouraged the fatal shooting.

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

Petitions: A Petition for Review was filed by Frank L. Walters,

defense counsel, 18 April 1947. A Petition for Clemency was filed by Frank L. Walters, 17 October 1947.

Recommendation: That the findings and sentence be approved.

9. Otto GIESE

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|------------------|---------------------------------|
| Nationality: | German |
| Age: | 43 |
| Civilian Status: | Machinist |
| Party Status: | Nazi Party Candidate since 1937 |
| Military Status: | Unknown |
| Plea: | NG |
| Findings: | G |
| Sentence: | Life imprisonment |

Evidence for Prosecution: The accused testified that he saw the flyers bail out of a damaged plane in August 1944, near Lubeck-Siems, Germany; that he then mounted his bicycle to go to Danischburg to see his mother-in-law; that while he was en route to the autobahn he saw a crowd gather; and that he left his bicycle and climbed upon the embankment to view the proceedings (R 172, 173). Accused STAPELFELDT testified that she saw the accused come out of the crowd and slap the flyer (R 262, 263). Koehn testified that he was standing in his back yard at the time of the bailing out; that the accused who was in his own yard on the other side of a wall shouted to inquire whether the others had seen the flyers bail out; that the accused then said that the flyers were the enemies who were killing women and children; that the accused asked the others to come along with him; and that when they refused, he became excited and said the flyers would have to be "bumped off" (R 52, 284).

Krezwim, Fahrenkrug and Dettelsen testified that a man named GIESE, who was wearing a white shirt and blue trousers, participated in the beating, although they were not able to identify the accused in Court (R 54, 55, 57, 70). Loerke testified that a man whom he heard was GIESE was in the immediate circle of beaters, and that one of his sleeves

was bloody (R 30).

In her Statement, STAPELFELDT stated that she saw the accused push the flyer into the corn field where he was shot (R 18; P-Ex 12).

Evidence for Defense: The accused testified that, after getting to the top of the embankment where he could watch the proceedings (R 173), he saw the crowd start to mill about and beat the flyer; that as he turned to leave he observed someone, whose face he did not see, beating the flyer with a steel helmet (R 174); that the flyer, bleeding from the nose, ran around the car, pursued by three or four young people; that the flyer was pushed and fell, and came in contact with the accused (R 175); and that the flyer's bloody nose touched his shirt. He thus explained how his right sleeve became bloody (R 176). The accused further testified that he wanted to help the flyer, but was prevented from doing so by three men; that he left the scene, walking with a Mrs. Moeller for about 20 minutes; and that during this walk, at a distance of from 400 to 500 meters, he heard six or seven shots (R 178, 179). Moeller testified she saw the accused arrive at the scene (R 186); that she stayed a moment and then left the accused; that while they were together she did not see him near the flyer (R 187); and that she did not see where the accused picked up his bicycle, but that he did go home on one (R 190). In her testimony, accused STAPELFELDT repudiated her statement that she saw the accused push the flyer into the corn field (R 18, 264; P-Ex 12).

Sufficiency of Evidence: The stories told by the accused and by his alibi witness, Moeller, are inconsistent. He either was not near the flyer, as she testified, or he was near enough to get his sleeve bloody, as he affirmed in Court. The accused either walked home for 20 minutes, as he testified, or he got his bicycle and rode home, as Moeller testified. The admission by the accused that his sleeve became bloody squares with the testimony given by Loerke that a man known as GIESE got his sleeve bloody while beating the flyer. The Court may well have concluded that the story told by the accused was unbelievable, and that his alibi was false.

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

Petitions: A Petition for Review was filed by Frank L. Walters, defense counsel, 18 April 1947. A Petition for Clemency was filed by Frank L. Walters, 17 October 1947.

Recommendation: That the findings and sentence be approved.

10. Christian SCHUTT

This accused was acquitted (R 88).

11. Friedrich LEHMENSICK

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| Nationality: | German |
| Age: | 46 |
| Civilian Status: | Blacksmith and Mechanic |
| Party Status: | Member of Nazi Party 1936-1938 |
| Military Status: | Unknown |
| Plea: | NG |
| Findings: | G |
| Sentence: | 3 years, commencing 7 May 1945 |

Evidence for Prosecution: In his Statement and testimony, the accused admitted his presence at the scene near Lubeck-Siems, ^{Germany} August 1944, and also admitted his participation in the assault. He admitted that he struck the flyer twice upon the head, which the victim was trying to protect with his arms. The accused stated that he had become excited, because of the damaging air raids he had witnessed, and struck the flyer for that reason. He admitted being in the circle which surrounded the victim during the shooting, but stated that although a pistol was pressed into his hand, he neither aimed nor fired, because he suddenly realized it was wrong (R 270-278, 16; P-Ex 10).

Evidence for Defense: The accused testified to substantially the same facts as previously given in his Statement (R 270-278).

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

Petitions: A Petition for Review was filed by Frank L. Walters, defense counsel, 18 April 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

12. Karl NEEB

Nationality: German
Age: 45
Civilian Status: Machinist
Party Status: Member of Nazi Party following 1932;
Ortsgruppenleiter 1932-1934
Military Status: Unknown
Plea: NG
Findings: c
Sentence: 2 years, commencing 14 May 1945

Evidence for Prosecution: Trauelsen identified the accused as one of those who participated in the beating (R 75, 76). However, he later testified in effect that the accused did not participate in the beating. It may be he intended to say he did not participate in the shooting (R 282). He also identified the accused as one of those present at the shooting (R 280, 282). The record is not clear whether the accused actually beat the flyer nor is it clear how he beat him if he did (R 76). In his statement, the accused admitted his presence at the scene of the beating (R 17; P-Ex 11).

Evidence for Defense: The accused testified that he went to the scene of the incident on his bicycle and saw the beating, but got no nearer the flyer than seven or eight meters, and that he left when ordered to do so by the police (R 133-135). His testimony is consistent with his previous statement (R 17; P-Ex 11).

Sufficiency of Evidence: The participation of the accused is not established beyond a reasonable doubt. The findings of guilty are not warranted by the evidence.

Petitions: A Petition for Review was filed by Frank L. Walters, defense counsel, 18 April 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be disapproved.

13. Herthe STAPELFELDT

Nationality: German
Age: 39
Civilian Status: Housewife
Party Status: Unknown
Military Status: Unknown
Plea: NG
Findings: G
Sentence: 21 months, commencing 20 August 1945

Evidence for Prosecution: Loerke testified that in August 1944 a flyer landed in a cow pasture near Lubeck-Siems, Germany; that the accused was among those who beat the flyer at the very beginning; that she grabbed a steel helmet from accused HACHMEIER, and hit the flyer with it once; and that after HACHMEIER recaptures his helmet, she continued to beat the flyer with her fist (R 26). Bermit and Fahrenkrug testified that the accused beat the flyer with her key ring (R 35, 59). Dettelsen testified that the accused participated in the beating (R 70). Trauelsen testified that the accused beat the flyer with her hand (R 73, 76, 77, 81, 263). The accused in her Statement admitted her presence at the scene (R 17; P-Ex 12).

Evidence for Defense: The accused testified that at the time of the incident she had two small children with her. She did not grab HACHMEIER's helmet nor beat with it. She further testified that she did not beat the flyer with a key ring. She remained at the scene five minutes and then left (R 262, 263). Kieser testified that she saw the accused coming out of the corn field, and noticed she had a key, but did not see her strike the flyer, and that they walked away together (R 265, 266).

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

Petitions: A Petition for Review was filed by Frank L. Walters, defense counsel, 18 April 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

14. (Fnu) HOHN

This accused was neither served nor tried (R 1).

15. August (DOSE) DOOSE

This accused was neither served nor tried (R 1).

16. Paul SACK

A nolle prosequi was entered in favor of this accused (R 1).

V. QUESTIONS OF LAW:

Jurisdiction: The Court was legally constituted and had jurisdiction of the persons of the accused and of the subject matter.

Petition for New Trial: The defense counsel filed a paper entitled "Petition for New Trial", 17 October 1947, on behalf of accused HAMMER, HACHMEIER, PARZYK, GIESE and DOOSE alleging that perjury was committed at the trial by prosecution witnesses and asserting that newly discovered evidence existed which could not, with reasonable diligence, have been discovered prior to or produced at the trial. No authority exists for the filing of such petition in War Crimes procedure, but such petition may be considered as a Petition for Clemency. Much of the matter presented in the Petition for Review, 18 April 1947, is contained in the Petition for New Trial and the affidavits attached thereto. The allegations of perjury charged to prosecution witness Trauelsen, whose testimony appears in the record of trial at pages 71-85, 280-283, inclusive, have been thoroughly investigated by a lawyer assigned to 7708 War Crimes Group and found to be without merit. It is also urged that certain inconsistencies appearing in the testimony of the witness amount to circumstantial proof of his perjury. From an examination of the statements claimed to be inconsistent, it is not believed that they are irreconcilable with the material facts testified to by him. A further accusation of perjury is made against prosecution witness Loerke, whose testimony is found in the record of trial at pages 21-32, inclusive. The sworn testimony of two other prosecution witnesses, whose credibility is not attacked, corroborates the evidence given by this witness and supports the findings

of guilty against the specific accused who are charged with mistreatment of the flyer by witness Loerke.

Other affidavits attached to the Petition for New Trial, claimed to contain newly discovered evidence, tend to prove the innocence of certain accused. They are cumulative of evidence to a similar effect, by way of testimony and Statements received in evidence during the trial.

Objections to Evidence: Prosecution Exhibits 1-12 inclusive, are Statements of each of the accused on trial. When they were offered into evidence a defense objection was interposed to the effect that, prior to their being received into evidence by the Court, a foundation should be laid by the prosecution showing that the Statements were voluntarily made and also that the person who took them should testify as to their validity (R 12, 13). This objection was properly overruled. War crimes tribunals will not require foundation evidence to establish that sworn statements offered in evidence were voluntarily procured or the qualifications of war crimes investigative personnel participating in such procurement. The applicable procedure requires that war crimes tribunals presume, subject to being rebutted by competent evidence, that sworn statements procured by war crimes investigative personnel from accused and witnesses were voluntarily made and that all interpreters and other personnel assisting in the procurement of such statements were qualified by training and otherwise to perform the tasks assigned. Evidence, if any, to overcome this presumption is not admitted prior to the admission of such statements, but may be offered in the regular course of the introduction of defense evidence (Section 270, c, (4), "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended).

Absence of Accused: The record of the proceedings for 1 April 1947 shows that accused STAPELFELDT was not present during the time that certain Statements were read to the other accused during a recess (R 86). However, the Chief Defense Counsel reported that notes of said Statements had been made by the interpreter for the defense; that the same were read to this accused; and that she was satisfied with the reading. It is

also noted that said accused was, on several occasions, brought into Court on a stretcher, including the time she testified in her own behalf. Both her direct examination and cross-examination were brief and not vigorous. Accused was duly warned of her rights and indicated her understanding of the proceedings. Her answers were clear and showed complete comprehension. It appears that she was able to aid in her defense. It is not believed injustice resulted to the accused in this connection. A like opinion was expressed in the case of United States v. Greil, et al., opinion DJAWC, 21 October 1947 (Case No. 000-50-2-84) in which similar circumstances were present.

Confessions: Two accused, OHRT and VOIGHT, were heard to say following the crime that they each had beaten the flyer. Each admits having made such statements, but both now contend that in making such statements they were merely bragging to gain importance and that they did not in fact beat the flyer. Wharton's "Criminal Evidence", Section 579, defines a confession as a " * * statement by a person, made at any time afterwards, that he committed or participated in the commission of a crime." An element necessary to the credibility of a confession is the intention of the confessor to speak the truth. From the evidence adduced it would appear that both statements were unsolicited. The benefits of being associated with a crime as despicable and contemptible as the instant one are not so evident as to lend immediate support to the accused's present contentions, nor is it to be presumed from the evidence adduced, considering the nature of the crime, that neither accused was telling the truth in confessing to his participation. The burden of proving otherwise rested upon the accused. It was for the Court to determine what weight should be given to the accused's confessions and to their subsequent denials.

Examination of the entire record fails to disclose any error or omission in the conduct of the trial which resulted in injustice to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and sentences as to accused Paul DOOSE and Karl NEES be disapproved, and that the findings and sentences as to each of the other accused be approved.

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

HERMAN FLATT
Attorney
Post Trial Branch

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

C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes