

23 August 1945

REVIEW OF THE STAFF JUDGE ADVOCATE

UNITED STATES

V.

Joseph Hartgen,
Friedrich Wust,
Margerete Witzler,
Kathe Reinhardt,
August Wolf,
Johannes Geipel,
Heinrich Barthel,
Georg Daum,
Johann Oppper,
Karl Fugmann,
Philipp Gutlich

all of whom are German civilians residing in Russelsheim, Germany.

1. The above named accused were tried at a joint trial by a military commission appointed by the Commanding General, Seventh United States Army, at Darmstadt, Germany, on 25 July 1945.

a. They were all tried on the following charge and specification:

CHARGE: Violation of the Laws of War

SPECIFICATION: In that JOSEF HARTGEN, FRIEDRICH WUST, MARGARETE WITZLER, KATHE REINHARDT, AUGUST WOLF, JOHANNES SEIPEL, HEINRICH BARTHEL, GEORG DAUM, JOHANN OPPER, KARL FUGMANN, and PHILIPP GUTLICH, German civilians, acting jointly, did, together with other persons whose names are unknown, at Russelsheim, Germany, on or about 26 August 1944 wilfully, deliberately and wrongfully encourage, aid, abet, and participate in the killing of JOHN W. SEKUL, WILLIAM A. DUMONT, THOMAS D. WILLIAMS, and ELMORE L. AUSTIN, members of the United States Army, and two other members of the United States Army whose names are unknown, each of whom was then unarmed and a prisoner of war in the custody of the then German Reich.

b. Each of the accused pleaded not guilty to the Charge and not guilty to the Specification.

2. Comments Upon Jurisdiction

a. Authority to appoint the military commission was delegated by the Commanding General, 12th Army Group, by a letter dated 21 May 1945. The power thus delegated included power to appoint a military commission of not less than three officers of the United States Army, for the trial of persons subject to the jurisdiction of such a commission and who are charged with espionage or with such violation of the laws of war as threaten or impair the security of their forces, or the effectiveness of such forces or members thereof. The propriety of trials by military commissions for violations of the laws of war has been long established, the most recent confirmation thereof being Ex Parte Quirin, 85 L. Ed. 1; 63 Sup Ct. R.2, wherein it was said: authority of JAG 1-
dtd 4 Aug 1950

"From the very beginning of its history this court has recognized and applied the law of war as including that part of the law of nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations as well as enemy individuals. By the Articles of War, and especially Article 15, Congress has explicitly provided, so far as it may constitutionally do so, that military tribunals shall have jurisdiction to try offenders or offenses against the laws of war in appropriate cases. Congress, in addition to make rules for the government of our Armed Forces, has thus exercised its authority to define and punish offenses against the law of nations by sanctioning, within constitutional limitations, the jurisdiction of military commissions to try persons and offenses which, according to the rules and precepts of the law of nations, and more particularly the law of war, are cognizable by such tribunals".

b. That the act charged against these accused constitutes an offense against the laws of war is plain. It is provided in Chapter 6, Article 2, of the Geneva Conventions of 1929, that "Prisoners of War are in the power of the enemy power, but not of the individuals or bodies of troops who capture them. They must at all times be treated with humanity and protected particularly against acts of violence...." Also, in Article 23 of the Annex to the Hague Convention of 18 October 1907, it is provided that "In addition to the prohibitions provided by special conventions, it is expressly forbidden.....(c) To kill or wound an enemy who, having laid down his arms, or having no longer any means of defense, has surrendered at discretion." To both of these Conventions, Germany is a signatory.

c. The specification clearly and in appropriate terms defines the killing of named and unnamed prisoners of war, by the several accused persons, in violation of "the Laws of War". "The Laws of War are binding upon belligerents under all circumstances and conditions" (Oppenheim's International Law, Vol II, p. 183), and as in the concept of modern warfare, all inhabitants of each belligerent state are mutually in combat, German civilians are bound to observe the laws of war. To quote again from Oppenheim, "all the members of both nations are authorized to commit hostilities against all the members of the other, in every case and under every circumstance permitted by the general laws of war". Being thus bound by the laws of war, it follows that a civilian can violate them, and in particular, that the present crimes were properly charged as violations of the laws of war.

d. The commission was properly constituted of the correct number of competent members. Military counsel was provided for the accused, who were also represented by vigorous and capable civilian counsel.

3. Summary of Evidence

a. For the Prosecution

On the night of 25 August 1944, the town of Russelsheim, Germany, was subjected to a fifty-nine minute air raid by Allied planes. Bombs struck the Opel works near the town, and much of the town, destroying many civilian homes. The citizens of the town spent most of the night either in the air raid shelter or fighting fires in their homes. This raid was the longest and most destructive raid the people of Russelsheim had experienced. They were still in an excited condition the following morning, 26 August 1944, when, between 0900 and 1000 hours, six unarmed American fliers, prisoners of war, walked through the town with two German soldier guards. These fliers had been shot down and were being taken from Osabruck to Ober Ursel. As the group proceeded west down Frankfurterstrasse a crowd of German civilians began to gather around them.

Mrs. Margarete Witzler and her sister, Mrs. Anne Reinhardt, saw the fliers and began shouting "beat them to pieces. Beat them to death. They are the ones, they are the ones who were here last night. They are the terrorizers of last night. Kill the dogs. We cannot have pity on them." (12, 24, 31, 78, 83). They continued these shouts as the group passed along Frankfurterstrasse. Mrs. Reinhardt threw a brick from the debris, hitting one of the fliers on the head (12, 16) and also struck one of them with her fist (25). Mrs. Witzler also threw a brick at the fliers (33).

Joseph Hartgen, a party official and the Propoganda Chief of Russelsheim, was present in the crowd. At this point he fired a revolver one time (13, 20). Both women continued shouting, and picked up stones and threw them at the fliers (35, 38). Later other people threw stones (36). A crowd of between twenty and two hundred people had gathered and were following the fliers down Frankfurterstrasse. Philipp Gutlich, who was in the crowd, beat the fliers with a stick three feet long and two inches in diameter. He held the stick in both hands and beat several times (31, 43, 44).

Several of the fliers were bleeding, and one was being carried on the back of another. The crowd was angry and the fliers moved swiftly down Frankfurterstrasse, turning right into Taunusstrasse and proceeding toward Grabenstrasse. As the fliers passed down Taunusstrasse past Wilhelminenstrasse they were bleeding and some were limping. Philipp Gutlich was shouting, "Beat them to pieces," (41, 42). George Deum, who was shoveling debris in the rear of his home on Taunusstrasse, ran out into the street and after the fliers, and beat them with his shovel (47, 48, 89, 90, 91). Seeing the crowd approaching, Johannes Oppen went toward it with a broom held high above his head. He struck twice (55, 58, 64, 69, 71). Joseph Hartgen, with a stick similar to a hoe handle, wildly beat the fliers (70, 73). The fliers were bleeding. One flier was so badly beaten by the time they neared the end of Taunusstrasse that he sat on the sidewalk three or four houses away from Grabenstrasse. His right shoulder and the upper part of the right side of his chest were battered. A piece of stone was sticking in his skull. Johannes Seipel went over to him and kicked him on the neck and chin (76).

When the fliers reached Grabenstrasse one was bleeding badly at the throat. They turned right and proceeded down Grabenstrasse toward Bahnhofstrasse. They crossed Grabenstrasse and proceeded along the wall which separates Grabenstrasse from the railroad tracks. The crowd continued to follow and swarm around them. August Wolf was on a pile of wood behind the wall and near the tracks. He and Karl Fugmann threw stones at the fliers (Pros Ex 4). Wolf had what appeared to be the handle of a hammer in his hand. He tried to beat the fliers, but did not succeed (97, Pros Ex 8). Friedrich Wust leaned over the wall and hit one of the fliers one or two cracks (Pros Ex 4). He then went over the wall and into Grabenstrasse with a piece of wood in his hands. He struck the Americans forcefully several times (98). The fliers stumbled on. One was limping badly, and the entire street was crowded and noisy. After the fliers passed Geiersbuhl all but two collapsed and fell to the ground next to the wall. The other two could just drag themselves along, and soon fell to the pavement. They crept together to protect each other. Wust started hitting them with a hammer, beating to and fro (113, 115, 116, Pros Ex 6). Joseph Hartgen asked all of the people to beat them. Johann Oppen was inciting and "needling" the crowd (104), and himself beat the fliers several times (117, 119). Joseph Hartgen beat them repeatedly (118). He then shot the Americans (103, 109, 110), who, by this time, lay in a heap against the wall.

After the incident was over Johannes Seipel met Ria Bastian, whom he told he had kicked someone with his feet (49). He later approached a boyhood friend and stated "I also beat them" (93). The Taunusstrasse was empty of the crowd when Johann Oppen returned to it. He met

and beat them (87, 1108 EA 2). As Philipp Guggenberger testified at the scene he stopped in front of Wilhelmine Biendel's window and told her "my hands hurt so from the beating". (65)

Between 1100 and 1200 hours the same day the bodies of the American prisoners were placed in a farmer's carriage drawn by Hitler Youth, and were taken to the cemetery near Russelsheim. They were placed in the cart one on top of the other, and some were still alive at the time. An SA man, Stoltz, accompanied the cart. First it was taken to the chapel where it was left. Later in the afternoon it was moved further into the cemetery. Joseph Hertzgen went to the cemetery late in the afternoon, fully attired in his SA uniform. The following day the Americans were buried (137).

On 28 June 1945 six bodies of American soldiers were disinterred at the cemetery in Russelsheim, Germany. They were clothed in American Air Corps uniforms, and four wore dog tags. These bore the names of John N. Sekul, William A. Dumont, Thomas D. Williams, and Elmore L. Austin (140). All of the bodies except one had a fractured skull, which injuries were obviously caused by being struck with heavy, blunt instruments. The one whose skull had not been fractured had two bullet holes in the skull. Two others had bullet holes in the skulls. No other bones were broken.

b. For the Defense

Various witnesses were called by the defense. A 76 year old Anti-Fascist who had been driven from the scene of the occurrence in Grabenstrasse by the accused Opper stated that the accused Fugmann left the crowd and did not participate in the beatings. Character witnesses were introduced for the accused Fugmann, Wolf, Witzler, Reinhardt, Gutlich, Seipel, Opper, Deum, and Hertzgen. The assistant Chief of the Public Health Office at Darmstadt, who was also the prison doctor, testified that the accused Seipel was a very senile person. Mrs. Deum and another woman who lived in the Deum household stated that to their knowledge the accused Deum did not follow the crowd and did not beat the fliers. Other witnesses testified that they did not hear or see the accused Witzler, Reinhardt and Berthel in the crowd and molesting the fliers.

Each accused, after having been duly advised of his rights, elected to take the stand and to make either sworn statement or an unsworn statement in regard to the incident which occurred in Russelsheim on 26 August 1944, in which six American fliers met their death at the hands of an unruly mob of German civilians.

The accused Deum, age 50 years, in a sworn statement stated that he saw the prisoners pass his home in a crowd of people. He swore that he did not join the crowd, and did not in any manner use his shovel on them.

The accused Berthel in a sworn statement admitted having been in the crowd which surrounded the prisoners on Grabenstrasse, but denied striking one of them on the rectum with a piece of wood. He saw the accused August Wolf and Johann Opper in the crowd, but did not see what they were doing. He saw the fliers being beaten by members of the crowd, and saw three or four of them collapse near the well on Grabenstrasse, but he took no part in the beating.

The accused Gutlich, in an unsworn statement, also admitted being present in the crowd on the day in question. He had never seen foreign fliers before, and wanted to get a close look at them. He was excited, having lost much in the bombing the night before. One of the fliers "made some kind of a face" at him, and he slapped the flier with the fist of his hand. He denied striking any of the prisoners with a club.

The accused Oppen, in an unsworn statement, stated he saw an enormous crowd beating foreign fliers in the Grabenstrasse, and later saw their bodies being taken away in a cart. He admitted having a broom when he first saw the crowd in Taunusstrasse, but put it aside when he joined the crowd. He vehemently denied the accusations of his fellow townspeople.

The accused Seipel, in an unsworn statement, admitted being in the middle of the crowd on Taunusstrasse. He stated that he was hit in the face with a stone and was hit over the head with a big beam. He admitted seeing a flier sitting on the curb near Grabenstrasse, but as he was dizzy from the blows he received he was unable to state whether or not he kicked this flier. He denied making damaging statements after the incident.

The accused Reinhardt in an unsworn statement, admitted being on the corner of Bahnhofstrasse and Frankfurterstrasse on the morning in question. She saw a crowd of people following a group of fliers who had been shot down. There was much excitement, and lots of yelling. She admitted that in the excitement she yelled "beat them" twice. She saw the anti-aircraft soldier beat the fliers. There was a large crowd and much noise, and she heard no shooting. Two days later she learned the fliers had been murdered.

The accused Witzler, in an unsworn statement, admitted seeing the crowd and being very excited, but denied participating, shouting and throwing stones. Though she followed the crowd down Frankfurterstrasse and Taunusstrasse to Waldstrasse, she did it purely out of curiosity. She had never seen foreign fliers before. She could not see very well because of the crowd, and did not see any blows struck or stones thrown. She did not hear her sister, Mrs. Reinhardt, shouting. Two days later she learned that on that morning the fliers had been beaten to death.

The accused Wust in an unsworn statement, stated that he heard the noise and saw the large crowd coming into Grabenstrasse from Taunusstrasse. He ran to the wall on Grabenstrasse, took a hammer from his pocket and tried to beat the fliers, but did not succeed. Sticks and stones were flying "like machine gun fire". Someone in the crowd took the hammer from him and beat with it until the head of the hammer came off. He saw Wolf and Fugmann throwing stones or wood at the fliers, and later admitted striking the fliers himself after they lay on the ground.

The accused Joseph Hertzgen, in an unsworn statement, stated he was Nazi Propaganda leader in the town of Russelsheim. On the morning in question he was standing on the corner of Bahnhofstrasse and Frankfurterstrasse and saw a crowd approaching. Asking what was happening, he was told that they were fliers who had been over the night before. The fliers were guarded by a sergeant who told him his orders were to lead the fliers through the town. Hertzgen was excited, as a result of his experiences during the raid the night before. He struck one of the fliers with the back of his hand. The crowd was excited and menacing. He heard shouts of "beat them, they are the ones of last night". He told the sergeant to get the prisoners out of town. At this point he left the crowd, and later went to the corner of Taunusstrasse and Kurbisstrasse. He saw the crowd turn from Taunusstrasse into Grabenstrasse. He followed, and saw the crowd beating the fliers. When they

were on the ground a soldier beat them. After the crowd dispersed he examined the bodies, straightened them out, and saw that their skulls had been battered. He noticed no bullet holes. None of them groaned. He obtained a cart and got some people to help load the fliers' bodies in it. He then ordered the cart taken to the cemetery. He denied hearing any shots fired, or taking part in the beatings.

The accused Wolf made a sworn statement to the court. He stated that he heard the noise of the crowd and left his home to investigate. He went to the corner of Grabenstrasse and Teunusstrasse, and jumped over the wall. He heard shouts and cries of "beat them to death, beat them to pieces", and was told that they were the fliers who had been there the night before. He saw the fliers being beaten by a flak-soldier, but did not see anyone else beating, at that time. The accused Wolf did not throw anything at them, but he did see the accused Wust kneeling on the ground and beating a flier's head with a hammer. Wolf himself claimed to be only an innocent bystander.

The accused Karl Fugmann, in a sworn statement, stated that he too was attracted to Grabenstrasse by the great noise of the crowd. He jumped over the wall which separates Grabenstrasse from the railroad tracks, and saw there were American fliers in the crowd. He walked with the crowd toward Geiersbühl, and then left. At no time did he have anything in his hand, and he did not strike the fliers in any way. He heard shots fired, but did not know who fired them.

The accused Berthel, recalled by the court, stated he saw the accused Wolf next to the wall with a stick in his hand, but did not see him strike anyone.

4. DISCUSSION

a. The accused Fugmann was acquitted by the Commission. One witness stated that Fugmann threw stones at the fliers, and he himself admitted jumping over the wall and walking with the crowd along Grabenstrasse. In his sworn testimony, Fugmann denied striking the fliers in any way. A mere bystander in a concerted action of this nature is not guilty of participation. Whether or not Fugmann participated was a question of fact for the commission which cannot justly be criticized for determining it in favor of the accused.

b. The remaining accused are charged jointly with aiding, abetting, encouraging and participating in the death of four identified and two unidentified American aviators, who were then prisoners of war. All elements are established and although not with the preciseness required of evidence produced before courts-martial, still with clarity and convincingsness. The evidence portrays a blood-hungry, brutal mob, incensed by the damage done to their village during the preceding night's raid, determined to exact its revenge from the helpless aviators in its clutches. Even the old, the feeble, and the women participated, and among the crowd of vicious civilians, the accused were clearly seen and identified. That they beat the aviators is plain. Witnesses whose testimony was not discredited nor refuted saw the convicted accused plying their homely but deadly weapons and heard them shouting their inflammatory phrases, heard the shots that put an end to suffering, that punctuated the ending of this episode of horror. Witnesses saw the bodies carted to the cemetery where they were buried, there to remain until exhumed to become mute witnesses against their murderers. Undoubtedly, others besides these accused were involved; possibly other hands than theirs dealt the blows that were finally fatal, but the conclusion is firm and inescapable that these accused played an active part and that the crimes of all are attributable to each. The findings of guilty are sustained by the evidence.

c. As the commission was authorized to formulate its own rules of procedure and to accept in evidence any testimony having probative value to a reasonable man, the only test of the propriety of its actions and decisions is the impact thereof upon such rights as are accorded the accused by principles of justice, fairness, and humanity. While neither the accused nor the nation of which they are citizens has demonstrated any inclination to observe these principles, they are among those for which the war was prosecuted, and to ignore them here would be, in a large sense, to negate our victory. Viewed in this light, the hearing was eminently just, fair, and humane. The commission was diligent in its guardianship of the rights of the accused, and was in fact praised by each of the German civilian counsel. Civilian counsel could criticize only the weight given to pre-trial sworn statements executed by the accused. These statements are clearly entitled to consideration as falling within the type of evidence having probative value to reasonable men. The hearing was conducted in an impressive and dignified manner, for which much credit is due the President thereof. No harmful errors appear.

d. Wolf and Barthel were each sentenced to be imprisoned for 15 years, while Daum was sentenced to 25 years' imprisonment. All the others were sentenced to be hanged by the neck until dead. Obviously in a crime of this nature, there may be different degrees of responsibility appropriately deserving of varying degrees of punishment. The court was not limited in its punitive power, which includes power to impose a death sentence. The mode of execution prescribed is appropriate to the heinous crime of murder.

Pleas for clemency have been received and considered on behalf of the following accused:

1. Johann Seipel, age 67. His brother pleads for mercy on the grounds of prior clean record and present senility. Despite his age, Seipel was seen to kick a recumbent aviator, already desperately wounded by a piece of stone sticking in his head. What acts of brutality Seipel would have committed had he been in his prime need not be imagined here. Suffice it to say that the act he did contributed to the death of the persons named.

2. Johann Opper, age 60. His wife petitions for pardon or commutation on the grounds that he did not have a weapon in his hand and that he succumbed to the influence of the crowd. His past record is unblemished. The testimony of the witnesses belies his innocence. He was seen with a broom held high in his hands; he was seen to strike twice. In itself, old age is not an excuse for even a mitigating factor. On the contrary, a mature man could be expected to exert a restraining influence, to extend the wisdom of his experience.

3. Philipp Gutlich. His wife asks for commutation on the grounds that he was a part of the mob only during the early stages and on the grounds of his past good record. He has four minor children, the youngest eight months old. The Mayor of Russelsheim points out the good family background and the diligence of the accused, and the fairness with which Gutlich treated prisoners and foreign workers on his farm. The Chief of Police testifies to his blameless record and his industry.

4. Margerete Witzler and Katharine Reinhardt. A petition is presented by Jean Witzler, the husband of Margerete Witzler and brother-in-law of Katharine Reinhardt. He points out that their only offense was screaming against the pilots, and that no one pays attention to screaming wives. Their past record is blameless. During the air-raid of 26 August 1944, they carried their old mother in a small carriage to a shelter, and when they returned after the raid, witnessed the burning houses and the dying people. Both women have children. Their honesty and popularity as managers of a retail store, when so described by their other neighbors

5. Josef Hartgen. His wife presents an appeal for the sake of his three children, ages from 2 to 7 years. She believes he was carried away by passion. The late burgemeister states that the past record and reputation of the accused have been good, and some one signing for "Adem Opel, Aktiengesellschaft" certifies to his industry and independence as foreman in the Adem Opel plant.

The above petitions have been appended to the record and may be regarded as recommendations for clemency. In my opinion, none of the facts therein presented constitute adequate reason for the extension of clemency. The crime of which these persons were convicted was brutal, vicious, and unfeeling, and while American sympathy may be aroused at the prospect of hanging women and old men, it must always be remembered that half-way measures will never impress upon the people of Germany that their actions have been unlawful and degenerate. The deterrent effect of punishment must be great enough to prevent forever crimes that are an abomination in the eyes of men and blasphemy in the sight of God.

6. RECOMMENDATIONS

a. I recommend that as to the accused Wolf, Berthel and Deum the sentences be approved and ordered executed.

b. I recommend that as to the accused Hartgen, Wust, Witzler, Reinhardt, Seipel, Opper and Gutlich, the sentences be approved and the record forwarded for confirmation of the sentences.

c. Appropriate forms of action are included herewith for your signature if you approve.

/s/ C Robert Bard
C. ROBERT BARD
Colonel, JAGD
Staff Judge Advocate