

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
UNITED STATES FORCES, EUROPEAN THEATER

December 1946

UNITED STATES)

vs)

Karl Gottlieb CONZMANN,
a German National.)

Case No. 12-1807

REVIEW AND RECOMMENDATIONS
OF THE DEPUTY THEATER JUDGE ADVOCATE
FOR WAR CRIMES

1. TRIAL: The accused was tried at Dachau, Germany, on 9 September 1946, before an Intermediate Military Government Court appointed by paragraph 2, Special Orders No. 250, Headquarters, United States Forces, European Theater, APO 757, U.S. Army, dated 7 September 1946.

2. <u>FINDINGS</u> : The offense involved was:	<u>Pleas</u>	<u>Findings</u>
CHARGE: Violation of the Laws of War.	NG*	G
PARTICULARS: In that Karl Gottlieb CONZMANN, a German national, did, at or near HESSELACK, Germany, in the summer of 1944, wrongfully commit an assault upon an unknown member of the United States Army, who was then an unarmed and surrendered prisoner of war in the custody of the then German Reich, by hitting him in the face with his fists.	NG*	G

*Upon arraignment accused, through his counsel, entered a plea of Guilty to the Charge and Guilty to the Particulars, except the words, "with his fist", substituting therefor the words, "with his open hand", to the excepted words, Not Guilty, to the substituted words, Guilty. The court, however, refused to accept such a plea, and entered a plea of Not Guilty to the Charges and Particulars as originally laid, after which the trial proceeded with the findings as above set forth (R 6).

3. SENTENCE: The court, by at least a two thirds vote of the members present at the time the vote was taken concurring, sentenced

the accused to a term of eighteen (18) months' imprisonment, commencing 4 June 1945 at Dachau, or such other place as may be designated by competent military authority (R 48). The record of trial has been forwarded for final action (paragraph 8d, Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", dated 14 October 1946).

4. DATA AS TO ACCUSED: Accused is a German national, married, and has three children, aged 19, 26, and 27 years respectively. He is in his 37th year. He served in the German Army during the first World War, and joined the Nazi Party in May 1932 (R 4, 35, 36, 47). He became Ortsgruppenleiter of Geradstetten, a town nearby to Stuttgart, in May of 1933 (R 4) and was also acting burgomeister (R 43). No other personal data pre disclosed by the record.

5. RECOMMENDATION: That the findings and the sentence be approved by the Theater Judge Advocate, as provided in paragraph 8d, Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", dated 14 October 1946.

6. EVIDENCE:

a. For the Prosecution: The evidence for the prosecution consisted of the testimony of two German civilian eye-witnesses to the act of which accused was charged, and accused's own pre-trial statement.

According to the testimony of Max MACK and Ernst HASSETT, the witnesses, an air attack was made upon Stuttgart during the Summer of 1944 (no witness was able to fix the date with any greater certainty, and the particulars alleged only the Summer of 1944), and during the battle which ensued the crew of one of the American planes parachuted to the ground (R 8). One of the fliers landed safely in a forest near the adjoining towns of Geradstetten and Hebsack (R 8). Various German civilians undertook to search for him, including accused, witnesses MACK and HASSETT, and perhaps 8 others

(R 9, 13, 32). The flyer was captured and searched for weapons by HASSETT and one MORGENTHAUER (R 9, 13, 24) and was brought to where a part of the group of searchers were gathered.

Accused asked the flyer in German how many of his comrades had come down, and where they were (R 9, 26). The flyer answered in English, and accused asked the question again, presumably in German. and when the flyer again answered in English accused slapped the flyer in the face with his open hand (R 9, 27, 29). According to HASSETT accused struck a cigarette out of the flyer's hand (R 26). Accused asked further questions in English, and after every answer accused struck him in the face with his right fist (R 10, 14, 16, 27, 29). Accused was also armed with a revolver, which he brandished or pointed at the flyer (R 14, 27). HASSETT also testified that accused demanded of the flyer's captors, "Why didn't you bump him off right away?" (R 27). Four, five, or six blows were administered by accused with his fist, as a result of which the flyer's left eye became swollen and discolored (R 10, 15, 27). Neither witness knew what later became of the flyer (R 10, 17).

The flyer was an American (R 9; 28).

The defense brought out upon cross-examination of witness MACK that he had been convicted and imprisoned in 1929 by a German court for arson, for setting fire of his father's home. Witness disclaimed knowledge of the fact, as alleged by counsel for the defense, that accused had been the person who reported witness' guilt (R 17, 18). He did not serve in the German army, though 33 years of age at the commencement of the war, because of his criminal record. When such restrictions were later removed he was not taken into the army because he suffered from a hernia and is handicapped by three stiff fingers on his right hand, as a result of an accident in 1943. Defense Counsel accused this witness of having deliberately maimed himself to avoid service (R 17-19; 20).

Witness also claimed that a pre-trial statement made by him (not introduced in evidence) was true in its entirety and expressed surprise when told by counsel that in it he had not mentioned accused's blows with his fist (R 14-16).

On cross-examination witness HASSETT stated that all answers made by him to questioning at the time his pre-trial statement was made were correct (R 28). He claimed also that he had mentioned in making it the fact of accused's statement about "bumping off" the flier, and was unable to account for the alleged lack of such evidence in the pre-trial statement (R 28). Witness admitted that he had said in his pre-trial statement that accused struck the flyer with his open hand, (R 29) but maintained that the evidence given by him on direct examination was a correct version of what had happened (R 30). He denied having conversed with BACH immediately prior to the trial relative to the facts of the case (R 31), and denied harboring ill will towards accused (R 32).

Prosecution's Exhibit 1, conceded by the defense to have been obtained without duress, was a pre-trial statement made by accused (R 33). It discloses that accused is a farmer, and that he was Ortsgruppenleiter of Gersdettchen and Hebsack from 10 May 1933 until the capitulation. An American plane, was shot down about 18 kilometers south by west of Hebsack in the early summer of 1944. Accused was notified by telephone that 5 American airmen had parachuted into his area, and that they might be armed with weapons and demolition charges for sabotage purposes. As acting assistant burgomaster he was ordered by the Landrat to assume charge, and so notified BACH and one BRENNER to report to him in their automobiles. One flyer landed about 2 kilometers south of Hebsack and was eventually taken into custody by MERTENWALTER. When accused first encountered the captor and captive he asked MERTENWALTER whether the flyer had been searched. Upon learning that he had not

been, accused searched him but found no weapons. Accused then ordered the flyer in German to put up his hands, but the flyer did not understand and did not obey. Due to his "nervous state" accused struck the flyer twice with the palm of his hand about the face, but there were no "outward effects" from the blows struck by accused. The flyer then put up his hands. He was later taken away by the Luftwaffe (Fros. Ex. 1).

Accused testified in his own defense. His testimony on direct examination consisted, other than in the personal data previously set forth, of the statement that the answers to the questions put to him as the basis of his pre-trial statement were correct (R 35, 36).

On cross-examination accused testified that on the morning of the day in question he was notified by telephone of the presence of an American flyer in the neighborhood and that he first saw the flyer about eleven, in the custody of MERCENTHALER. HASSETT was also present. Accused had been instructed "in a lecture" about fourteen days previously "that it had been possible for pilots to shoot through the combination suits and injure people". In his excitement he slapped the pilot before searching him (R 37, 38).

Accused denied that he could or did speak to the pilot in English, stating that the only words he knew to say were "Speak German" (R 38). He admitted that he had spent seven months in the United States in 1923, but he did not learn to speak English while there (R 39).

The defense introduced one character witness, Friedrich SCHATZTELER, who was born and lived in the same town as accused, and who had known him for 37 years. He testified that accused provided vegetables from his own land for foreign workers who worked for him, was well-liked, and was a peaceable person (R 40-45).

7. JURISDICTION: The Particulars alleged an offense against the Laws of War, in that accused wrongfully assaulted a prisoner of

war. This is clearly prohibited by Article 2 of the Geneva Convention of 27 July 1929. Convictions for similar offenses have repeatedly been upheld in previous opinions of this office, in which the jurisdiction of specially appointed Military Government Courts to try war crimes cases was fully discussed. The present case is analogous, and no further discussion of the court's jurisdiction is deemed necessary here.

8. LEGAL SUFFICIENCY OF EVIDENCE: The accused offered to plead guilty to the Charge and so much of the Particulars as alleged that he struck the pilot with the flat of his hand. The court refused to accept this plea. Accused admitted in his pre-trial statement, and on the stand, that he slapped the pilot. The only real question presented for the court's consideration was whether he had also struck the pilot with his fist. Evidence was presented by the prosecution which, if believed by the court, proved that he did. While the credibility of one of the prosecution's witnesses was attacked by the defense, it cannot be said that his testimony was refuted. The other witness, HASETT, supported his story. It is likewise clear that insofar as the sentence is concerned, it could be upheld had the court accepted the original plea offered by accused. There is no reason to disturb either the findings or the sentence of the court on the basis of the evidence introduced during trial.

9. DISCUSSION: The Special Orders by which the court was appointed indicate that Major Allen R. Lind, 0406973, AC, was appointed a member of the court, but the record does not indicate that he sat at the trial. This is a technical error and did not prejudice any substantial right of the accused, inasmuch as the court contained the requisite number of members despite his absence.

The proceedings satisfied all the requirements of a fair trial. No error by the Court, technical or otherwise, resulted in injustice to the accused. Competent counsel and interpreters were provided and

accused was given full opportunity to present any matters in his defense which he might desire. The findings and sentence were concurred in by the requisite majority of the Court and the sentence was within the power of the court to impose and lawful for the offense committed.

10. CLEMENCY: No petitions for clemency have been received. By the terms of accused's sentence it has already expired. It may be stated here that the appropriate authorities have already been notified of this fact and have been instructed to release him from confinement if this has not already been accomplished.

11. RECOMMENDATION: It is accordingly believed that the sentence should be approved by the Theater Judge Advocate under the provisions of paragraph 5d, Letter, Headquarters, United States Forces, European Theater, File AG 000.5 JAC-AGO, subject: "Trial of War Crimes Cases," dated 14 October 1946. Forms of action to accomplish this result are attached hereto.

/s/ Samuel Sosenfield
/t/ SAMUEL SOSENFELD
Attorney,
Chief, Post Trial Section

Having examined the record of trial, I concur:

/s/ C. E. Straight
/t/ C. E. STRAIGHT,
Colonel JACD,
Deputy Theater Judge Advocate
for War Crimes

SUBJECT: United States v. Karl G. CONZMANN (Case No. 12-1807)
TO : Commanding General, Third US Army Area, AJO 403, U.S. Army.
Reference is made to letter, this Headquarters, AG 013-37
GAF-AGO, dated 11 July 1946, Subject: "Designation of Prison for War
Criminals," and to the inclosed copies of the Order on Review in the
above entitled case as to accused Karl G. CONZMANN.

Upon compliance with the Order on Review the Certificate
below will be completed and returned to the Deputy Theater Judge
Advocate for War Crimes, 7708 War Crimes Group, AJO 178, US Army.

BY COMMAND OF GENERAL MCNARNEY:

/s/ George F. Herbert
/t/ GEORGE F. HERBERT
Colonel AGC
Adjutant General

Telephone: Frankfurt 23310

CERTIFICATE OF COMPLIANCE

The sentence imposed on Karl G. CONZMANN, a German National, was put
into execution at the War Criminal Prison, Landsberg, Germany, on

1 November 46 1946, at 1215
(Date) (Hour)

/s/ Collin J. Boyd
(Signature and Rank)
/t/ COLLIN J. BOYD
Maj. INF
Prison Officer
WAR CRIMES PRISON
Landsberg
(Organization)

/s/ Joseph H. Williams
(Countersignature and Rank
or Witnessing Officer).
/t/ JOSEPH H. WILLIAMS
1st Lt. INF
Assistant Prison Officer