

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 178

25 June 1947

UNITED STATES)
 v.)
Peter SCHERF.)

Case No. 12-2114

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 14 April 1947, before an Intermediate Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

PARTICULARS: In that Peter SCHERF, a German national, did, at or near WILDROCH, Germany, on or about 9 August 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in committing assaults upon a member of the Armed Forces of a nation then at war with the then German Reich, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

III. EVIDENCE AND RECOMMENDATIONS:

PETER SCHERF

Nationality:	German
Age:	56
Civilian Status:	Mayor of town of Wildroch from 1931 until end of war
Military Status:	None
Plea:	KG
Findings:	G
Sentence:	Imprisonment at hard labor for five years, commencing 1 June 1946

Evidence for Prosecution: On or about 9 August 1944 an American pilot parachuted to safety in the vicinity of Waldrach, Germany (P-Ex 1a, 2a, 11a). He surrendered to a German civilian and was taken into custody by some soldiers of a guard detachment who searched him (P-Ex 1a, 3a). The flyer, who had suffered an injury to one leg in landing, was mistreated by the soldiers and members of a crowd that gathered (P-Ex 1a-3a, 5a, 7a, 9a, 10a). The accused SCHEFF arrived and jabbed or beat the flyer several times with a hunting rifle (P-Ex 1a-4a, 6a, 8a, 11a). The flyer was forced to limp 200 to 300 meters, followed by the crowd, to a camp where he was hospitalized and given medical treatment for a fractured leg and a bruised eye (P-Ex 5a, 10a, 11a). There is some evidence that the flyer was severely mistreated and that the accused participated in this mistreatment by kicking the flyer and by beating him with his rifle butt while he was lying on the ground (P-Ex 2a, 5a, 7a-8a).

Evidence for Defense: The accused SCHEFF elected to testify in his own behalf in substance as follows: The accused was Mayor of the village of Waldrach at the time of the incident and in that capacity took charge of the flyer when he arrived at the scene (R 14, 20). He directed that the flyer be taken to a camp where French prisoners of war were interned, a distance of approximately 200 meters. He attempted to disperse the crowd and touched the flyer on the side with the muzzle of his rifle in an effort to get him to move faster and get off the street (R 15, 16, 21). He did not kick or beat the flyer, but a non-commissioned officer kicked him once in the buttocks, knocking him to the ground (R 17, 19-21, 24). The accused could not have prevented this mistreatment because he saw it only after it happened (R 21).

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

Petitions: There are no Petitions for review nor Petitions for Clemency.

Recommendation: That the findings and sentence be approved.

IV. QUESTIONS OF LAW:

The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses. Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

The Court overruled an objection by defense counsel to the admission of Exhibit P-1, on the ground that the statement was taken in Waldrach in the French Zone that witnesses from the French Zone were readily available. It is clear that this testimony was admissible. The Deputy Theater Judge Advocate for War Crimes in a letter AG 000.5, subject: "Admissibility of Reports of Investigation in the Trial of Suspected War Criminals," dated 6 October 1945, stated "numerous factors make it impracticable in many cases to secure the personal presence of witnesses, and, in such cases, the trial should not be needlessly delayed nor should admissible evidence be excluded by reason of their absence."

At the time the prosecution rested, defense counsel moved for a finding of not guilty on the ground that no evidence was presented to the Court to establish the identity of the accused. When questioned by the Court at the beginning of the trial the accused identified himself as Peter SCHEFF, Mayor of the town of Waldrach at the time of the incident which resulted in the trial of the accused. Evidence was presented in Exhibits P-1 and P-1a that one Peter SCHEFF, Oberbuergermeister of Waldrach, participated in this incident.

V. 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.

NORA G. SPRINGFIELD
1st Lt., WAC
Post Trial Branch

Having examined the record of trial, I concur.

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