

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

14 November 1947

UNITED STATES)
 v.)
Georg MAYER, et al.)

Case No. 12-2218

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 7-9 July 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War

Particulars: In that Georg MAYER, Wilhelm WANDERS, Otto Paul HELLWING and Heinrich BAECKER, German nationals, did, at or near BRACKEL, Germany, on or about 18 March 1945, wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Major Robert M. BLACKBORN, ASN O-727390, who was then and there an unarmed and surrendered prisoner of war in the custody of the then German Reich.

The prosecution made a motion, which was granted by the Court, to amend the particulars by striking therefrom the following: "United States Army, believed to be Major Robert M. BLACKBORN, ASN O-727390," and substituting therefor: "armed forces of a nation then at war with the then German Reich" (R 3, 4).

III. SUMMARY OF EVIDENCE: On about 18 March 1945, during an air raid, a flyer parachuted into a field near an abandoned mine in Brackel, Germany. The mine was used as an air raid shelter. The flyer was captured by accused MAYER, the first sergeant of an anti-aircraft unit stationed in Brackel, Germany, and unidentified German soldiers. They walked the flyer toward the air raid shelter where they met Captain Lampe, commanding officer of an antiaircraft battery, stationed at Brackel. A large crowd of civilians were on their way to the shelter at the time. Lampe incited the crowd to beat and kill the flyer under the threat of being denied the use of the shelter. The soldiers also incited the civilians to kill the flyer (R 20, 25, 36). The group walked the flyer up a path towards the main street. Accused WANDERS, HELLWING, and BAECKER, who were in the crowd, followed them. Halfway up the path, accused WANDERS, HELLWING, and BAECKER severely beat the flyer with clubs, stones, and garden imple-

with the flyer. Approaching the main street, the flyer was again beaten by a crowd of civilians, which included an unidentified SA man who used a spade. To avoid the beating, the flyer ran up the main street. He was pursued by accused MAYER who shot him to death with his pistol.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Georg MAYER

Nationality:	German
Age:	39
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	First Sergeant, 9th Battery, 333d Heavy Anti-Aircraft Battalion, stationed at Brackel, Germany
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: During an air raid on about 18 March 1945, a flyer parachuted into a field near a mine used as an air raid shelter in Brackel, Germany (R 36, 166; P-Ex 114). He was taken into custody by the accused and unidentified German soldiers and brought to the vicinity of the entrance to the shelter where he was interrogated. A crowd of civilians on their way to the shelter had collected in the square in front of the bunker (R 24, 36). Captain Lampe, commanding officer of an anti-aircraft battery, incited this crowd to beat and kill the flyer under the threat of being refused admittance to the shelter (R 38). The soldiers also incited the civilians to kill the flyer (R 20, 20). The captain, the accused, and the soldiers led the flyer down the field path towards the main street, Holzwicketer Strasse (R 21, 36). The path led into the main street at right angles (R 11; P-EX 5). Accused WANDERS and BAECKER, who were in the crowd, followed the group on their bicycles (R 36). About halfway down the path, accused WANDERS and BAECKER severely beat the flyer. Accused WANDERS used his fist and a spade. He also threw stones at the flyer. Accused BAECKER struck the flyer with a

stick, approximately 30 inches long and three inches thick, about 15 to 20 times (R 12, 14, 21, 22, 37, 38; P-Exs 6A, 7A). Accused HELLWING beat the flyer with a plank (R 14; P-Ex 7A). After the beating the group, including the flyer, continued to walk along the field path toward the main street (R 44). Near the main street a group of civilians including an unidentified SA man carrying a spade approached them (R 39, 61). One witness testified that from the balcony of her home she saw an SA man beat the flyer with the spade. To avoid the beating the flyer staggered across a ditch alongside of the street opposite the witness's home. This witness saw the accused pursue the flyer and shoot him twice with his pistol (R 39, 61, 62, 11; P-Ex 5). The flyer's body was loaded on a cart and removed. The back of his head was severely smashed (R 22, 39). After the incident the accused told a woman auxiliary in his unit that he shot the flyer (R 18; P-Ex 9A). That same day in a telephone conversation with another woman auxiliary in his unit, the accused was overheard to say that he had just killed the flyer who landed (R 19; P-Ex 10A). That same evening an unidentified woman auxiliary in accused's unit said that her top sergeant had shot the flyer (R 16; P-Ex 8A). The flyer was believed to be an American (R 20, 35). To impeach the testimony of the accused regarding his denial on the witness stand that he shot the flyer, Major Lambert, an investigating officer, testified that he took a statement (not introduced in evidence as an exhibit) from the accused; that the statement was obtained without use of duress, force or threats; and that, in this statement, the accused admitted that he shot at and hit the flyer from a distance of about 10 meters (R 168-170).

Evidence for Defense: The accused testified that on about 18 March 1945 a flyer parachuted, landing in the vicinity of his barracks (R 142, 143). When he reached the spot where the flyer landed, he was already in the custody of the battalion adjutant and Captain Lampe. They walked the flyer to the battalion command post located near the shelter where he was interrogated. The flyer identified himself as an American. In the meantime a large crowd of civilians on their way to the shelter

had gathered (R 143, 144). The captain then ordered the flyer taken to the airport (R 144-145). The group walked the pilot up the field path toward Holzwicketer Strasse. On the way the flyer was beaten and mistreated by civilians. The accused stated that he attempted to prevent it (R 145). The group together with the flyer continued toward Holzwicketer Strasse. Near the junction of the path and Holzwicketer Strasse, a group of civilians, including an unidentified SA man carrying a spade, approached them (R 146-147). The SA man started to beat the flyer with the spade. To avoid the beating the flyer ran off. Captain Lampe ordered the accused to shoot the flyer. The accused ran after the flyer and fired a warning shot in the air when the flyer failed to stop at the cry of "Halt". At that moment the flyer stumbled and fell to the street (R 147). When he reached the flyer, he noticed a large wound on the side of his head. The captain ordered him to notify the adjutant and send a wagon for the body. He left for his battery, notified the adjutant, and continued with his duties (R 148). He further stated that, at the time he fired, the flyer was standing in front of the house located on the left side of the main street; and that a woman was standing on the balcony (R 147, 148, 160). He denied he heard Captain Lampe incite the crowd. He also denied he saw any of the other accused beat the flyer (R 154).

Sufficiency of Evidence: The Court was warranted from the evidence in concluding that the accused shot the flyer, causing his death and that when the flyer was shot he was not attempting to escape, but only trying to avoid further beatings. It may be that the Court concluded that the accused shot the flyer, but that in doing so he acted under orders from his superior. In any event, the Court apparently concluded that, if the accused acted pursuant to superior orders, he met, only to a limited degree, the burden of proof required by pertinent authorities discussed in Section V, post. 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.

3. Wilhelm WANDERS

Nationality:	German
Age:	41
Civilian Status:	Miner
Party Status:	Unknown
Military Status:	Unknown
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 26 April 1945

Evidence for Prosecution: Two witnesses testified that accused BAECKER and this accused followed the flyer down the field path towards Holzwicketer Strasse on their bicycles (R 20, 21, 36). Halfway down the path they beat the flyer. The accused beat him with his fists from 20 to 50 times. He also threw stones at him (R 95, 96, 98) and used a spade (R 21, 37, 14; P-Ex 7A). The accused testified that he threw some earth at the flyer (R 125). Accused BAECKER beat him with a stick (R 21, 37). While the flyer was on the ground, the accused and accused BAECKER kicked him (R 45). The fact that the accused beat the flyer was corroborated by the extrajudicial sworn statements of accused BAECKER and HELWING and witness Moerschel (R 12, 14, 16, 166; P-Exs 6A, 7A, 8A, 11A). Accused BAECKER testified that he saw this accused throw something at the flyer, but that he did not see the object hit the flyer (R 111, 112, 117). After the beating the accused and accused BAECKER followed the flyer along the path. Both were present when the flyer was shot (R 44, 52, 14; P-Ex 7A).

Evidence for Defense: The accused testified that he and accused BAECKER followed the flyer on their bicycles (R 124). He said that he merely pushed the flyer and threw dirt at him. He denied striking the flyer with his fist (R 125). He further stated that he committed this act upon the urging of Captain Lampe (R 128).

Sufficiency of Evidence: The Court was warranted from the evidence in concluding that the accused participated in the acts which culminated

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

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

Recommendation: That the findings and sentence be approved.

3. Otto Paul HELLOWING

Nationality:	German
Age:	47
Civilian Status:	Miner
Party Status:	Unknown
Military Status:	Unknown
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 6 January 1946

Evidence for Prosecution: In his extrajudicial sworn statement the accused admitted that halfway up the field path he beat the flyer over the head and back with a plank and also slapped his face. He also stated that he was present up to the time the flyer was killed (R 14; P-Ex 7A). Accused WANDERS testified that this accused beat the flyer with a stick about two feet long and four centimeters in diameter (P 130, 133).

Evidence for Defense: The accused repudiated his extrajudicial sworn statement in his testimony in Court. He testified that he did not know how he came to sign it. At the time he was suffering from a heart ailment and silicosis which caused him to collapse after a long interrogation during which he had continuously protested his innocence. He further testified that the British captain who conducted the investigation laid a pistol on the table and accused him of lying. A German policeman, Strekle, told him he was going to get the information out of him and that the extrajudicial sworn statement resulted from duress exercised by the German policeman (P 82, 83, 84). He denied beating the flyer. He testified that he saw accused WANDERS and BAECKER near the bunker (R 86). Accused BAECKER shook the flyer and accused WANDERS

picked up something and threw it at the flyer (R 88, 98). He remained in front of the bunker throughout the entire period of the air raid. During this time he heard the flyer had been shot (R 93, 94).

Sufficiency of Evidence: The Court may well have concluded that the accused's extrajudicial sworn statement was voluntarily made and true. Moreover, the beating of the flyer by the accused is corroborated to a material degree by the testimony of accused WANDERS and such beating contributed to the ultimate killing of the flyer. 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.

4. Heinrich BAUCKER

Nationality:	German
Age:	50
Civilian Status:	Baker
Party Status:	Unknown
Military Status:	Unknown
Flea:	NG
Findings:	G
Sentence:	10 years, commencing 4 November 1945

Evidence for Prosecution: Two witnesses testified that the accused, together with accused WANDERS, followed the flyer down the field path towards Holzwicketer Strasse on their bicycles (R 20, 21, 36). Halfway down the path both beat the flyer. The accused beat the flyer about 15 to 50 times with a stick. The stick was some 40 centimeters long and four or five centimeters in diameter (R 21, 22, 37, 38). The accused procured the stick from the luggage rack of his bicycle (R 29, 43). He beat the flyer over the body and head. After the flyer was beaten to the ground, the accused and accused WANDERS kicked him (R 45). After the beating both accused continued to follow the flyer down the path (R 44). Both were present when the flyer was shot (R 52, 14; P-Ex 7A). Accused WANDERS testified that he saw the accused take a stick from his bicycle

rack and beat the flyer four or five times (R 125, 132, 133). In his extrajudicial sworn statement the accused admitted that he beat the flyer a few times on the body and head, using a stick (R 12, 166; P-Exs 6A, 11A). The beating of the flyer by the accused was also corroborated by the extrajudicial sworn statement of accused HELLWING and witness Moerschel (R 14, 16; P-Exs 7A, 8A). Accused HELLWING testified that he saw the accused shake the flyer rather roughly (R 88, 98). The accused testified that he shook the flyer (R 103, 104); that he had a stick on the luggage rack of his bicycle.

Evidence for Defense: The accused testified that his extrajudicial sworn statement was untrue; and that he did not know how he came to make it since at the time he was suffering from a heart ailment (R 102, 103). He admitted that he shook the flyer but denied beating him (R 103, 104). After shaking the flyer roughly, he went back to the bunker (R 105). He denied that he followed the flyer (R 106, 107). He also admitted that he carried a stick about 25 to 30 centimeters in length and about two and a half inches in diameter on the luggage rack of his bicycle (R 107). He denied using the stick on the flyer (R 108).

Sufficiency of Evidence: The allegation by the accused that his extrajudicial sworn statement was obtained by duress is not sustained by the evidence. The record contains no evidence that any duress either express or implied was used to obtain it. The Court may well have concluded that the extrajudicial sworn testimony of the accused was voluntarily made and true and that the accused committed a brutal and unprovoked assault upon the flyer, thereby participating in the acts which resulted in the death of the flyer. 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.

V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the

person of the accused and of the subject matter.

Superior Orders: Accused MAYER sought to justify his actions by offering evidence to show that he was acting in compliance with "superior orders" from his military superior. Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 15 American Journal of International Law, page 708; United States v. Thomas, opinion DJAWC, December 1945; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, February 1946; and French Republic v. Wagner, et al., Court of Appeals, July 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior in fact, directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U.S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the

CLASSIFICATION - CANCELLED

Rules of the Law", by Ernst Fraenkel; United States v. Bury, et al.,
opinion DJAWC, September 1945, United States v. Thomas, supra; and United
States v. Beck, et al., opinion DJAWC, December 1946.)

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

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached
hereto, should it meet with approval.

RONALD DADAMIO
2nd Lt., Inf
Post Trial Branch

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

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

HEAD QUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs.
Georg MAYER, et al. (Case No. 12-2218)

TO : Director, War Criminal Prison
APO 61, US Army

Reference is made to letter, Hq USFET, AG 383 JAG-AGO, 26
February 1947, subject: "Designation of Prisons for War Criminals,"
and to the inclosed copies of the Order on Review in the above en-
titled case as to accused Georg MAYER

Upon compliance with the Order on Review the Certificate
below will be completed and returned to the Deputy Judge Advocate for
War Crimes, 7708 War Crimes Group, APO 407, US Army.

BY COMMAND OF GENERAL CLAY:

/s/ John A. Klein
/t/ JOHN A. KLEIN
Colonel AGD
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review
was carried into execution at War Criminal Prison No. 1, Landsberg,
Germany, on 23 March 1948, at 0800.
(Date) (Hour)

/s/ Lloyd A. Wilson
(Signature and Rank)
/t/ LLOYD A. WILSON, Capt. CMP
War Crimes Prison Landsberg
(Organization)

/s/ David A. Oakley
(Countersignature and Rank of
Witnessing Officer)
/t/ DAVID A. OAKLEY, 1st Lt., Cml C
Asst. Prison Director