

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE  
7708 WAR CRIMES GROUP  
UNITED STATES FORCES, EUROPEAN THEATER  
APO 17A

21 February 1947

UNITED STATES )

v )

Michael KAISER, German )  
National )

Case No. 12-2616

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

1. TRIAL: The accused was tried before an Intermediate Military Government Court which convened at Dachau, Germany, 16 September 1946 and concluded this case that same day. The court was appointed by paragraph 2, Special Orders No. 250, Headquarters, United States Forces, European Theater, APO 757, dated 7 September 1946.

2. FINDINGS: The offense involved was: Plea Findings  
CHARGE: Violation of the Laws of War. NG G

Particulars: In that Michael KAISER, German national and then Gendarmerie Kreisführer and Bezirksoberleutnant der Gendarmerie, did, at or near MOERLACH, Germany, on or about 16 July 1944, deny proper and adequate medical aid and attention to two unknown wounded members of the United States Army who were then unarmed surrendered prisoners of war in the custody of the then German Reich.

NG G

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 imprisonment for one year beginning 15 July 1946 (R 27).

4. DATA AS TO ACCUSED:

The accused Michael KAISER is 66 years old, a German national and resident of LEMBACH (R 3). In July 1944 he was a district leader of the rural police (R 14). He joined the NSDAP in August 1935. He was married with no children (P. Ex. 6, R 11).

5. RECOMMENDATIONS: That the above findings and sentence be set aside and the case remanded for a new trial in conformity with this

opinion.

6. EVIDENCE:

a. For the Prosecution: The prosecution's case consisted entirely of statements prepared by the accused and various witnesses. The first statement (P. Ex. 1, R 6) was made by one Johann KOLLER. He stated that at about 1030, 16 July 1944 he saw a flyer parachute to earth in a field near MOERLACH and brought him to the burgomeister's (LICHTENSTEIN's) home. The flier was apparently wounded as he bled from the eye, face and arm. KOLLER bandaged his arm. Shortly thereafter one Karl KORNPROBST arrived and insisted that the injured man needed medical aid. Other persons came in, the accused among them. The accused flew into a rage and shouted at those present saying something about "prohibiting the bandaging of the flier." The accused and KORNPROBST left shortly thereafter. Between 1500 and 1600 the victim was picked up by a truck in which other Americans were being transported and taken to Roth where he received adequate medical treatment from a Luftwaffe physician.

The second statement was prepared by Karl KORNPROBST (P. Ex. 2, R 7). He stated that the parachuted flier was brought to the burgomeister's courtyard substantially as shown supra. Here he sat on a bed and bled from his head and quite freely from the shoulder. Shortly thereafter KAISER, the accused, entered the room and KORNPROBST asked him if he might dress his wounds. KAISER is alleged to have answered, "What do you think, we need the bandage material for our own soldiers." KORNPROBST then pointed out that the flier had his own bandages, but KAISER roughly refused permission. When need for medical attention was pointed out, KAISER refused it, saying the victim could wait until he was transported to the prisoner of war camp, and left. The burgomeister entered and took away all the prisoner's belongings including his bandages, saying it was at KAISER's order. About four hours later he was taken to the airfield at Roth. KORNPROBST then added his own comments on what he considered the poor conduct of the accused and accused him of similar prior mis-

treatment of Poles and Russians.

The next statement was prepared by Kurt LICHTENSTEIN (P. Ex. 3, R 8). He stated that the wounded prisoner had been brought to him. He then informed KAISER of this fact by telephone and requested the services of a physician. KAISER said these services were not necessary and bandages were unnecessary. As a result medical aid was not administered until the arrival of the air force detail at "1600".

The next statement was signed by one "Sister Cyrilla THURNER, Nurse, Invalids' Welfare, III Order." (P. Ex. 4, R 9). She described the parachute landing between Weinsfeld and Mindorf at about 1030, 16 July 1944. She stated she was summoned to administer first aid about 1130. She described the wounds as a broken left thigh and several bullet wounds which were bleeding freely. She bandaged him and at about 1230 had him carried on a stretcher to Mindorf. A doctor was needed but efforts to obtain one brought no results. Two gendarmes came in during the afternoon and after "1500" KAISER came in and left shortly thereafter. At about "1700" a doctor and two medical corpemen came from the prisoner of war camp at Langwasser and rendered medical aid. The patient was taken away about "1730".

The next statement was given by Christian SREBAUER, a retired Gendarmerie Chief (P. Ex. 5, R 10). He described the events of 16 July 1944 substantially as the affiant THURNER. He told how he had seen her administer first aid in a field and that the patient had then been removed to Mindorf. A call to KAISER for medical aid brought the answer that the patient would have to await the arrival of a car for transport. The affiant then gave an opinion reflecting somewhat on KAISER's personality.

The final statement was prepared by KAISER himself. Upon report of the capture of the two parachutists he went to the burgomeister's (LICHTENSTEIN's) home at MOERLACH and viewed one of the victims. He concluded that the prisoner's wounds were superficial, required no immediate attention and left shortly thereafter to attend to.

additional duties. Upon receipt of the reports of the capture of the two fliers he telephoned the Roth airbase and requested that the prisoners be given medical aid and transported to a place of detention. He was assured that they would be picked up immediately. He does not remember refusing SEEBAUER'S request for a private physician and does not know whether SEEBAUER'S and LICHTENSTEIN'S statements are true. He also does not remember whether or not he gave an order that the prisoner should not be bandaged.

b. For the Defense: The accused, Michael KAISER, was the only witness to give oral testimony in the case. He stated that when LICHTENSTEIN'S telephone call came in, he informed him he would go there immediately, which he did (R 15). He saw the wounded man in a room in the burgomeister's home. His injuries appeared to be face scratches which had stopped bleeding. The alleged shoulder injury was not observed. Since the wounds did not appear serious he left to search for other injured persons (R 16). He then received the information from SEEBAUER relative to the other wounded prisoner. He reported the facts to the Roth air field and requested that medical aid be dispatched and the wounded prisoners be transported to a place of detention. This transportation and aid was sent but was slow in arriving since it made several stops before arriving at Mindorf and ROERLACH. He was also informed that a nurse had previously bandaged the prisoner's wounds (R 17). Since no private physician was available he tried to facilitate the arrival of the Luftwaffe physician. He denied that the burgomeister, LICHTENSTEIN, had informed him of any wounded prisoner at his place and claimed that LICHTENSTEIN had talked with one BAUER, head of the rural police station. He also testified that he had been told that SEEBAUER had said, during his interrogation, that he (SEEBAUER) would have furnished a physician if KAISER had not done so. This, he claimed was incorrect. SEEBAUER had never mentioned to him about being able to secure a private doctor (R 18). He also denied the statements attributed to him during his visit to LICHTENSTEIN'S home, claiming he had no conversation with KORNPROBST at all (R 19, 20). He further claims that KORNPROBST was prejudiced against him because

of a charge the rural police had once filed against KORNPROBST either in 1939 or 1940. He further denied that the prisoner at LICHTENSTEIN's needed any medical attention but that his injuries were superficial and had stopped bleeding (R 20, 21). Several other fliers had been grounded and taken into custody at the same time (R 21). On cross examination he denied ever refusing the affiant KORNPROBST permission to bind up the prisoners wounds (R 23).

7. JURISDICTION: The Court was legally constituted and had jurisdiction of the person of the accused and of the offense.

8. COMMENTS: The evidence in this case is not believed to be sufficient to support the findings of the court. However a study of the record indicates that sufficient evidence may be available to support a finding of guilty by the court if the same were presented. Furthermore, the issues in this case involve an unusual principle of law, *i. e.*, failure to furnish medical aid. Very little law is found on this point other than conventions and the comments of writers on international law. Therefore, a judicial determination in this case would be desirable.

9. RECOMMENDATIONS:

a. It is therefore recommended that the findings of the court be set aside and that the accused be given a new trial (MGR 2-337 par. e-1).

b. Forms of action designed to carry out the foregoing recommendations, should meet with approval, are submitted herewith.

/s/ David P Hervey  
/t/ DAVID P HERVEY  
Attorney  
Post Trial Section

Having examined the record of trial, I concur.

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

HEADQUARTERS  
EUROPEAN COMMAND, FRANKFURT

AG 383 JAG

APO 757  
26 March 1947  
LEGAL FORM NO: 16

SUBJECT: Execution of Sentence in the Case of the United States vs.  
Michael KAISER (Case No. 12-2616).

TO : Commanding General,  
First Military District,  
APO 1, U.S. Army.

Reference is made to letter, this Headquarters, AG 383 JAG-P  
26 February 1947, subject: "Designation of Prisons for War Criminals  
and to the inclosed copies of the Order on Review in the above entitl  
case as to accused Michael KAISER.

Upon compliance with the Order on Review the certificate b  
will be completed and returned to the Deputy Judge Advocate for War  
Crimes, 7708 War Crimes Group, APO 178, U. S. Army.

BY COMMAND OF LIEUTENANT GENERAL CLAY:

/s/ Wa E. Bergin  
/t/ Wm. E. BERGIN  
Brigadier General, USA  
Adjutant General

1 Incl:  
1 Form 13 (In cup).

Tele: Frankfurt 2-2310

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CERTIFICATE OF COMPLIANCE

Michael KAISER, the accused in the above entitled case was  
transported to War Crimes Enclosure, Dachau, Germany on \_\_\_\_\_  
\_\_\_\_\_, 1947 as provided by the above mentioned Order on Review.

\_\_\_\_\_  
(Signature and Rank)

\_\_\_\_\_  
(Organization)

\_\_\_\_\_  
(Countersignature and Rank  
of Witnessing Officer)