

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 207

14 July 1947

UNITED STATES)
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Heinrich JAEGER, et al.)

Case No. 13-2071

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, on 26 May 1947, before an Intermediate Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

PARTICULARS: In that Heinrich JAEGER, Robert KUENNEMANN, and Herman Gustav SCHMIDT, German nationals, did, at or near WALLE, Germany, in or about the summer of 1944, deliberately and wrongfully encourage, aid, abet and participate in committing assaults upon an unknown member of the United States army, who was then and there an unarmed, wounded and surrendered prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: after the three accused had pleaded guilty to the charge and particulars the following stipulation was introduced in evidence (R 22, 23):

"***that in or about the summer of 1944 an unknown American airman bailed out of a disabled and burning plane and landed at or near the town of Walle, Germany, British Zone. The airman was severely burned about the hands and face when he landed. He immediately surrendered to Kurt Jaeger, a resident of Walle. Shortly thereafter Willi Baumgart and Wilhelm Glindermann, Jr. arrived on the scene, and the three Germans, together with the airman, started toward the house of the Buergermeister in Walle. As they were walking along the road a crowd gathered and several Germans in the crowd set upon the airman and began to beat the airman mercilessly. Robert Fuennemann beat the airman about his burned face with his fists, took one of the airman's boots and used it as a club to beat him over the head. Heinrich Jaeger beat the airman with his fists several times despite the airman's condition. Hermann Schmidt beat the airman about the face and as the airman lay on the ground, kicked him several times in the stomach and back. The airman was brought to the Buergermeister's house."

IV. EVIDENCE AND RECOMMENDATIONS:

1. HEINRICH JÄGER

Nationality:	German
Age:	57
Civilian Status:	Not shown
Party Status:	Not shown
Military Status:	None
Plea:	G
Findings:	G
Sentence:	Imprisonment at hard labor for 2 years and 4 months commencing 26 May 1947

Sufficiency of Evidence: 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.

2. ROBERT KUESSELMANN

Nationality:	German
Age:	40
Civilian Status:	Not shown
Party Status:	Not shown
Military Status:	None
Plea:	G
Findings:	G
Sentence:	Imprisonment at hard labor for 3 years and 6 months commencing 26 May 1947

Sufficiency of Evidence: 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. HERMAN GUSTAV SCHMIDT

Nationality: German
Age: 43
Civilian Status: Not shown
Party Status: Not shown
Military Status: None
Plea: G
Findings: G
Sentence: Imprisonment at hard labor for
2 years and 6 months commencing
26 May 1947

Sufficiency of Evidence: 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: The defense counsel challenged the jurisdiction of the Court on the ground that the case arose in territory now occupied by the British and that the prosecution had failed to introduce evidence that necessary procedural steps had been taken to insure that the British agreed to the trial of this accused by the United States, as required by "various agreements of the four powers." The right of a belligerent to try and punish individuals who commit violations of the laws of war against its own citizens is so well settled that no discussion is required (U.S. v. Alfons Klein et al., February 1946, and authorities cited therein). Further, any procedural requirement established by four power agreement to insure concurrence of the occupying power for the trial of alleged war criminals by another nation was met by application filed with the British Army of the Rhine, dated 17 January 1947, requesting delivery of the three accused to United States custody as war criminals. The Court had jurisdiction of the accused

and of the offense.

Guilty Pleas: The three accused pleaded guilty to the charge and particulars (R 16). Section 501, "Manual for Trial of War Crimes and Related Cases" provides that the Court may sentence on a plea of guilty without further proof but must receive evidence to determine that the plea was unqualified or not improvident. The Court assiduously interrogated each accused and explained the effect of a plea of guilty in each instance (R 13, 16). Although not required, the Court went further and suggested a stipulation be prepared setting forth the elements of the offense and the participation therein of each accused (R 19). This was accomplished (R 22, 23). Each accused and his counsel, separately and individually, joined in and agreed to the stipulation (R 23, 24). Section 88 (a), TM 27-255, "Military Justice Procedure", provides that an accused can be convicted on the basis of a plea of guilty without any evidence being presented. This provision follows the procedure practiced in our civil criminal courts. Furthermore, each accused testified concerning extenuating circumstances in connection with the offense charged (R 27-29, 30-33). There is no question that the crime was committed, that each of the accused participated in the commission of the offense and that their guilty pleas were neither qualified nor improvident.

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.

/s/ Maxwell S. McKnight
MAXWELL S. MCKNIGHT
Major MI
Post Trial Branch

23 September 1947

SUBJECT : US vs Heinrich Jaeger, et al

MEMO TO : Colonel Harbaugh

1. An examination of the record of trial in subject case reveals the following data:

- a. A copy of the charges were served on the accused on 1 May 1947.
- b. The case was referred for trial on 21 May 1947.
- c. The prosecution and defense counsel were appointed on 29 April 1947.
- d. Case was tried on 26 May 1947.

/s/ Howard F. Breesee
HOWARD F. BREESEE
Colonel AGD
Chairman

Having examined the record of trial, I concur.

/s/ C. E. Straight (17 Sept 47)
C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes