

DEPUTY THEATER JUDGE ADVOCATES OFFICE
7708 WLR CRIMES GROUP
UNITED STATES FORCES EUROPEAN THEATER
APO 178

17 February 1947

UNITED STATES)

v)

Case No. 12-1115)

Ludwig LIMMENICH, Heinrich
OVERDICK, Hugo SCHUCK, Adolf
KNELL, Philipp JAEGER, and
Wilhelm KRAFT, German nationals.)

REVIEW AND RECOMMENDATIONS

1. TRIAL: The accused were tried before a General Military Government Court which convened at Ludwigsburg, 23 May 1946, set on the 23rd, 24th and 26th May, moved to Dachau and continued sessions on 4, 5, and 6 June 1946. This court was appointed by paragraph 3, Special Orders Number 100, Headquarters Third United States Army, APO 403, dated 20 April 1946 as amended by paragraph 25, Special Orders 100, dated 20 April 1946, same headquarters.

2. FINDINGS: The offenses involved were:

FIRST CHARGE: Violation of the Laws of War

Particulars: In that Ludwig LIMMENICH, Heinrich OVERDICK, Hugo SCHUCK, Adolf KNELL, Philipp JAEGER and Wilhelm KRAFT, German nationals, did, at or near BINGEN, Germany, on or about 12 September 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of an unknown member of the United States Army, who was then an unarmed, surrendered prisoner of war in custody of the then German Reich.

SECOND CHARGE: Violation of the Laws of War

Particulars: In that Ludwig LIMMENICH, Heinrich OVERDICK, Hugo SCHUCK, Adolf KNELL, Philipp JAEGER, and Wilhelm KRAFT, German nationals, did, at or near BINGEN, Germany, on or about 12 September 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in assaults upon an unknown member of the United States Army, who was then an unarmed, surrendered prisoner of war in custody of the then German Reich.

To both charges and particulars all the accused pleaded not guilty (R 5).

CLASSIFICATION CANCELLED
By authority of JAG it
did 4 Aug 1950.

3. SENTENCE: The court by at least two-thirds vote of the members present at the time the vote was taken concurring made the findings as to and passed sentences upon the respective accused as are set forth in the following table:

	<u>1st Charge</u>	<u>2nd Charge</u>	
Ludwig FIRMINICH,	G	G	Life imprisonment commencing 6 June 1946
Heinrich OVERDICK	G	G	Life imprisonment commencing 6 June 1945
Wilhelm KRAFT	NG	G	10 years' imprisonment commencing 9 June 1945
Philipp JAEGER	NG	G	6 years' imprisonment commencing 20 March 1945
Adolf KNEILL,	NG	G	6 years' imprisonment commencing 10 April 1945
Hugo SCHUCK	NG	G	1 year's imprisonment commencing 31 July 1945

4. DATA AS TO ACCUSED:

a. The accused Ludwig FIRMINICH is a German national, 54 years old and a resident of Bingen/Rhine (R 2). He is married and has two children, 25 and 20 years old, respectively. He was a janitor in the savings bank at Bingen and had held that position since 1 October 1923. He had been a member of the N.S.D.A.P. subsequent to 1 May 1937 but became a member of the Sturm Abteilung on 1 June 1934 (R 159). Prior to that time and subsequent to 1930 he had belonged to the Stahlhelm Reserve. In November 1944 he became an Obersturmfuehrer in the Sturm Abteilung and held that position until the end of the war (R 160).

b. Heinrich OVERDICK is a German national, 53 years old and a resident of Bingen/Rhine (R 2). He is married and has

one feeble-minded child. He was janitor of the City Commerce school in Bingen, which position he has held since 1934. He was not a party member but had been in the Sturm Abteilung since 1933. In 1944 he was a Scherfuchrer (R 188).

c. Wilhelm KRAFT is a German national, 48 years old and a resident of Bingen (R 3). He is married, has two children and was an inspector on the German railways. He had been a member of the N.S.D.A.P. since 1 December 1929 and his last position was that of Ortsgruppenleiter in Bingen (R 255).

d. Philipp JAEGER is a German national, 52 years old and a resident of Ockenheim (R 3). He is married with two children, 21 and 24 years old (R 294). He was farm leader in the District Nutrition Office (R 228). The record is silent as to further personal data.

e. Adolf KNELL is also a German national, 57 years old, and presently a resident of Venderschim (R 3). He had previously lived in Fingen (R 123). He was an employee of the Bingen Branch of the Labor Office and is married and has two children. He joined the National Socialist Party in November 1937 but held no position therein or in any of its affiliates (R 208, 209).

f. Hugo SCHUCK is also a German national, 22 years old and a resident of Oberwesel/Rhine (R 2). He is unmarried (R 293) and in September 1944 was an emergency helper in the bank at Bingen (R 103). He had no party affiliations (R 107).

5. RECOMMENDATION: It is recommended that the findings and sentences of the trial court be approved.

6. EVIDENCE:

a. For the Prosecution: On 12 September 1944 an allied airman bailed out of a plane in the vicinity of Bingen,

Germany (Pros. Ex. 3; R 66). He was seen in the custody of the accused JAEGER when he first made his appearance in the town of Bingen (R 8). How he came into JAEGER's control will be shown later in connection with the discussion of that accused's testimony (see post pp. 9, 15). The captive and JAEGER approached the center of the town from the south-ward (R 20) along the road which parallels the left bank of the Rhine River. After entering the limits of the town they drew near a filling station, operated by one SEIBERT, on the right side of the road. The accused FIRMENICH called out, "Are these the bums that are killing us? Let's us beat them to death. Let's beat them kaput." A bystander picked up a stone and threw it at the flier, striking him on the back of the head. The person who threw this stone was identified as the accused KNELL. FIRMENICH and OVERDICK crossed the street and kicked the victim and struck him with their fists (R 8) on the back, face and head (R 9). The prisoner proceeded on his way while the two last above-mentioned accused continued to belabor him as he walked up the street in the direction of the Kreis Savings Bank (Kreis Sparkasse) which was located about 120 to 150 meters from the filling station (R 15).

When he passed the filling station there was a crowd of about 10 or 15 people, which increased later to 150 to 200. FIRMENICH and OVERDICK were wearing Sturm Abteilung uniforms (R 9). As the victim came abreast of the Savings Bank a man approached the crowd, elbowed his way through the mass of people, took a pistol out of a satchel or brief case he was carrying, and shot the victim. The flier appeared to have been shot in the stomach, as he grasped his stomach, stumbled along for a few steps and then collapsed. The person who

fired this shot was identified as one KUNZ from Buedesheim. The victim lay on the street for 10 or 15 minutes when KUNZ returned knelt down beside him and fired another shot into his neck (R 10). During the entire incident the victim made no indication that he was armed and made no attempt to escape (R 11). About 45 minutes elapsed from the time of the victim's first appearance until the second shot was fired (R 21). KUNZ seemed to act entirely on his own initiative, as nobody else appeared to aid him in any way (R 24). Especially was none of the accused seen to speak to him (R 23).

A second witness testified that on 12 September 1944 he saw JAEGER walking along the street accompanying a man who was later identified as a parachuted flier. These two pedestrians were apparently walking with the accused KRAFT. As they approached the witness, the accused OVERDICK was seen to jump on the captive and to start beating him. OVERDICK was wearing an SA uniform. He was assisted by a small, young man in civilian clothes who administered blows with some object in his hand (R 31). The witness was unable to identify this second assailant. FIRNENICH was also seen to be present, and he too participated in the beating (R 29). The group moved along the street while OVERDICK and FIRNENICH continued their assaults. KRAFT followed, riding his bicycle at low speed. The assault consisted of blows with the fists and feet by the assailants. The victim was seen to be injured on the right side of the face (R 30). The young man was "possibly" identified as SCHUCK (R 31). During the melee FIRNENICH was heard to shout "On him . Jump on him: He must creak." (R 32). The victim appeared to grow weaker and took hold of a nearby fence for support. The accused KELL was seen to approach and strike the prisoner with his fists and kick him as he

hung on the fence for support (R 32). This happened in front of the office of the witness GOETZ, which was located across the street from the local Evangelical Church (R 33). The witness saw the aforementioned KUNZ approach from the direction opposite to that in which the flier and his captors were travelling. He saw KUNZ go into the crowd and shortly thereafter heard a shot. The prisoner stumbled and fell. The witness was unable to see who fired the shot (R 34). Fifteen or twenty minutes later a second shot was fired (R 35). On cross-examination the witness admitted he had not seen KRAMT beat the prisoner or incite the bystanders to do so (R 36). OVERDICK and FIRMENICH were both identified as being present and wearing SA uniforms (R 38). KUNZ was stated to be a man of 52 or 53 years of age who was wounded and subsequently died as the result of an air raid on the town of Bingen later in 1944 (R 41). He was described as not having had a good reputation in the community, and had borne the nickname of "The Thief" (R 41) for a long time. The witness was unable to identify SCHUCK as being a member of the crowd (R 43).

A third prosecution witness first saw a crowd of people approaching on the Mainzerstrasse on the day in question. KUNZ explained to him that it was caused by an enemy flier who had been shot down and was being brought into the town. As the crowd approached, OVERDICK was seen to kick the prisoner and strike him with his fists (R 49). The prisoner appeared to be in the custody of the accused JAEGER (R 49). The witness saw the victim shot, and identified KUNZ as the actual perpetrator (R 50). FIRMENICH was not seen to participate in any of the beatings but was identified as being present (R 51).

The undertaker who was charged with disposing of the victim's body testified that he picked up the corpse in front of the bank on 12 September 1944. The body had some burns on the right side of the face and a bullet wound on the right side of the back of the neck. There was some swelling about the face. The corpse was placed in a coffin and delivered to cemetery inspector RUDOLF at the New Cemetery in Bingen. The undertaker was given this duty by a telephone called from the local Wehrmacht detachment (R 58, 59).

The cemetery inspector RUDOLF testified that he received the corpse as hereinbefore described and buried it in the New Cemetery at Bingen (R 62). On cross-examination he admitted that he had received three bodies that day. One had been "fished out of the Rhine", a second had been found on top of the nearby mountains, and the third was the one herein described (R 62). A German army officer ordered him to make the notation "Airplane crash" with regard to this victim. This victim was said to have been named APPLE (R 63).

This concluded the oral testimony for the prosecution. A pre-trial statement by each of the accused was then introduced and admitted into evidence, some over the objection of the accused's counsel as follows:

Prosecution's Exhibit #1	statement of Hugo SCHUCK	Page 64
"	" 2 " " Adolf KNELL	" 65
"	" 3 " " Ludwig FIRMEINICH	" 66
"	" 4 " " Rudolf OVERDICK	" 67
"	" 5 " " Wilhelm KRAFT	" 67
"	" 6 " " Philipp JAEGER	" 67

SCHUCK, in his statement described how he and another bank apprentice, RECHERT, were having luncheon on 12 September 1944. Firmenich, the bank janitor and SA Obersturmfuehrer, entered

the restaurant and ordered the youths to come with him. The three went to the bank together where FIRMENICH took a rubber truncheon out of his desk and attempted to give it to RECKERT, who refused to take it. FIRMENICH explained that an enemy flier was being brought into town and was to be beaten. FIRMENICH then ordered SCHUCK to take the truncheon, which SCHUCK did after some protest. The trio then proceeded to the SEIFERT filling station, picking up OVERDICK while en route. The prisoner was seen approaching, accompanied by JAEGER on foot and KRAFT on a bicycle. FIRMENICH and OVERDICK began to pummel the flier. KRAFT was seen to throw a large rock which missed its mark. KRAFT then appeared to incite the gathering crowd to violence. FIRMENICH urged SCHUCK by threats to take part in the assault. SCHUCK struck the victim three or four times while the group proceeded, and the truncheon broke. In front of the Labor Office the flier held on to the fence for support. When the group arrived in front of the bank KUNZ was seen to elbow his way through the crowd with a pistol in his hand and to shoot the flier. A short while later an unknown civilian came up and shot the victim in the back of the head. KRAFT and JAEGER offered the victim no protection.

The accused KNELL stated that he first saw the flier approach down Mainzerstrasse, surrounded by KUNZ, OVERDICK and JAEGER. OVERDICK was seen to strike and push the flier. KNELL admitted he may have struck the prisoner but claimed that it was in retaliation for a blow the flier gave him. He later saw the victim hang on a fence in exhaustion. He subsequently heard two shots but he did not give any further details concerning the incident.

FIRMENICH's statement alleged that he received an order

to report to the Kreisleitung with some SA men. He took SCHUCK and RECKERT with him. He gave SCHUCK a short piece of rubber hose. He knew of the capture of the parachutist. He denied that he maltreated this captive in any way. He admitted there was a melee but claimed that he was not part of the crowd and that he stood at some distance from the affray. As he arrived in front of the bank he heard a shot and saw the dying aviator lying on the ground. Shortly thereafter a civilian came forward and shot the flier a second time in the back. FIRMENICH then ordered the removal of the corpse.

OVERDICK's pre-trial statement was in question and answer form. He first saw the captive on 12 September 1944 on Adolf Hitlerstrasse, presently known as Mainzerstrasse, in company with the accused JAEGER. OVERDICK believed the prisoner was an American. He admitted striking the flyer with the flat of his hand but denied making any more aggravated assault on him. He claimed that he saw FIRMENICH, as well as KWELL, strike several blows. He followed the group for 500 or 600 yards and saw KUNZ kill the victim. A short while thereafter he saw some one in military uniform fire a second shot into the victim's body. The victim died immediately and OVERDICK caused the police and hospital to be notified. He gave the necessary information to the police and Luftwaffe and returned to his home.

Wilhelm KWAIT's statement was also in question and answer form. He first saw the flier in the company of the accused JAEGER in the yard of the Kreis Administration building. He took his bicycle and accompanied JAEGER and the flier toward the center of the city, leaving them en route to return to his office. He remained there a few minutes, came out on the street again, and proceeded in the direction of

the savings bank, where he saw a crowd of 10 to 15 people. As he approached he heard a shot and hurried to investigate. He saw the flier lying on the ground, apparently dead. He left and returned to his home. When questioned he denied seeing any acts of violence committed on the prisoner. Neither did he see JAEGER relinquish the custody of the prisoner to anyone. He heard from bystanders that KUNZ had committed the homicide.

JAEGER's statement was in narrative form. On 12 September 1944, while en route by automobile to Bingen, he was stopped by a non-commissioned officer and requested to take a captured parachuted enemy flier to that town where a previously designated military unit would assume control of him. He proceeded to the Kreisleitung building and found a truck with two soldiers in it. One soldier admitted he was looking for a captured enemy flier. JAEGER ordered the flier to dismount while he (JAEGER) went on into the city. He sauntered along, stopping to converse with some passers-by. The soldier and his captive went by en route to the center of the city while JAEGER finished his conversation and followed at a distance of some fifty meters. He then passed the pair and hurried along. When he was about 60 meters distant he heard a shot. He turned around and saw a crowd of people but the pilot had disappeared. He believed there were two shots. He proceeded to his home. During the entire incident he saw no mistreatment of the prisoner.

b. For the Defense:

The first defense witness was Lorenz RECHERT. He lives presently in Ockenheim, works on a farm, and is 18 years old. In September of 1944 he was employed with the accused SCHUCK in the savings bank in Bingen. He corroborated the

facts as set out in SCHUCK's statement relative to how SCHUCK obtained the rubber truncheon on FIRMEINICH's insistence, subsequent to their luncheon on 12 September. At first FIRMEINICH tried to make him (NECKERT) take the truncheon but he refused (R 78). Due to FIRMEINICH's threats SCHUCK took it and accompanied his superior. The two went out on the street and were joined by OVERDICK (R 79). FIRMEINICH made several attempts to arouse residents in the vicinity without success, saying: "A pilot has bailed out and shall be beaten to death" (R 80). NECKERT saw the captive pilot for the first time at the SEIFERT garage. SCHUCK struck the pilot several times after repeated threats by FIRMEINICH (R 80). In all, four or five such blows had been struck (R 81). About ten or fifteen minutes after these blows had been struck the crowd reached the front of the savings bank. A man was seen to ride up on a bicycle, take a pistol from his brief case and shoot the victim. The witness heard only one shot (R 81). On cross-examination he admitted that on first sighting the prisoner FIRMEINICH shouted, "After him. Let's go." He and OVERDICK therefore crossed the street and began to rain blows on the prisoner. This was at the filling station (R 84). Witness further admitted that when first seen the prisoner was accompanied only by JAEGER (R 86). Later in the cross-examination NECKERT quoted FIRMEINICH as saying to OVERDICK, "Don't shoot. He must die slowly" and claimed that this statement was made by FIRMEINICH three times (R 91). As the crowd proceeded down the street FIRMEINICH was heard to ask for any object he could use for striking. He was so heard to ask for an air pump or a shovel while crying: "Beat him to death. Beat him to pieces." All this time nothing was done to protect the flier and he made no attempt to escape or showed any signs of being armed. He was heard to utter in German, "I want to

surrender" (R 93). This latter was when SCHUCK was administering his blows (R 94). JAEGER accompanied the pilot the entire distance to the bank (R 95).

The accused Hugo SCHUCK then took the stand in his own defense. He repeated what has already been told relative to FIRMENICH's ordering him from his luncheon and giving the order concerning the truncheon (R 103, 104, 105). He claimed that he finally took the truncheon because he was afraid of the consequences if he refused. He also described how OVERDICK joined the group (R 105). Upon sighting the prisoner from a distance of 30 to 40 meters FIRMENICH and OVERDICK "plunged toward the pilot with much crying and shouting." A man riding a bicycle on the other side of the street was seen to throw a stone which missed its mark. The witness admitted striking the pilot with the truncheon several times upon receiving threats from FIRMENICH, who pointed his pistol at him (R 106). As the witness tore himself away from the crowd the victim was shot. A man across the street on a bicycle was seen to take a pistol out of a brief case. He was not known to the witness (R 107). On cross-examination he identified the man who threw the rock as the accused KRAFT (R 109, 112). He also identified the man having custody of the flier as the accused JAEGER. JAEGER was with the prisoner continually from the time he was first seen until the commission of the homicide. However, he himself was not seen to commit any mistreatment (R 112). After the beating incident JAEGER was seen to drop about 10 or 15 meters away from the victim and was closely accompanied only by FIRMENICH and OVERDICK (R 112).

The next defense witness was Rudolf KRAVETZ. He was 17 years old, a resident of Ockenheim, and had been an apprentice

telephone call from a certain Mr. FREUND at the Kreisleitung (R 160). FREUND told him to send around some trustworthy SA men and told him he had 10 or 20 minutes in which to produce. When asked for what purpose these men would be used, he was told, "We have a paratrooper. Burgomeister JAEGER is bringing him to the police.. The paratrooper must not get all the way to the police. Something must happen to him on the way." To these orders he protested (R 162), but his protests were overruled. He claimed that he found one of the three apprentices in the back and that two of them went along with him willingly and without orders. He stated that the victim should get a few blows but should not otherwise be harmed. He claimed the weapon was not a truncheon but a piece of damaged garden hose. This was offered first to RECKERT, who refused it. He was in JAEGER's custody and both were afoot (R 166). As the group came abreast of the Lutheran church an assault was made on the flier (R 167). RECKERT was seen to kick him and SCHUCK struck several blows (R 168). JAEGER and OVERDICK did not strike any blows.. KRAIT was not seen to participate in the assault in any way (R 169). FIRMENICH had left the group and was proceeding home when the victim was shot. He returned and saw KUNZ but did not know that KUNZ had fired the fatal shot. When he inquired as to who had fired the shot he was informed that KUNZ had done so (R 170). However, after shooting the victim, KUNZ had quietly left (R 171). Neither JAEGER nor KRAIT were in sight. The victim was then shot a second time by a soldier in the uniform of an anti-aircraft unit, who jumped on a bicycle and rode away. FIRMENICH then had the police remove the corpse (R 171). He stated that the witness HASSINGER was incorrect in some of the details of her testimony (R 173). He also

in the savings bank subsequent to 1 April 1943 (R 124). He stated that on 12 September he was having lunch with RECHERT and SCHUCK as heretofore testified. FIMMICH entered and ordered all to come with him, but gave no reason therefor. The other two followed him but KNAVERTZ finished his meal and returned to the bank (R 125). He was personally unfamiliar with any further details of the incident.

Franzi HASSINGER then took the stand in defense of the accused FIMMICH. She was 26 years old, a housewife, and a resident of Bingen (R 130). She saw none of the actual incidents prior to the actual shooting of the victim. However, she positively stated that FIMMICH did not wear a uniform on that day (R 131).

Anton Josef KAISER then took the stand in behalf of the accused JAEGER. He is a grape grower, 52 years old, and a resident of Bingen (R 130). On 12 September 1944 he heard the commotion in the street while he was in his home, which was about 20 or 25 meters from the savings bank building. He was just emerging from his garden gate on to the street when the fatal shot was fired. JAEGER was standing beside the gate and immediately became quite excited and walked rapidly in the direction of the city, which lay opposite from the scene of the shooting (R 151).

The accused Ludwig FIMMICH took the stand in his own defense. He admitted that his pre-trial statement was not correct when it stated that he had not struck the flier while en route from the Seifert filling station to the savings bank building. He admitted he had struck him but claimed that he had stated otherwise because he was afraid of the interrogator (R 160). His quarters were in the bank itself. While in his quarters on 12 September 1944, he received a

stated that the accused KUEHL had not been present during the incident at all (R 174). On cross-examination he claimed that he saw only RECKERT and SCHUCK strike the victim. SCHUCK struck him with the hose and RECKERT kicked him and struck him on the back. OVERDICK was not seen to participate in any way (R 153). The flier was not thought to be seriously injured by these blows (R 183).

The accused OVERDICK then took the stand in his own defense. On 12 September he was in the school of which he was the janitor when an apprentice came from the bank with an order from FIRMEWICH telling him to meet FIRMEWICH in front of the cinema. He claimed this messenger was RECKERT. He set out with RECKERT (R 189). When he first saw the flier between 10 and 20 people were present. JAEGER was accompanying the prisoner. He claimed the flier looked at him and laughed. This angered him so that he struck him. The flier struck back and OVERDICK received a blow on the cheek (R 192). After this several people in the crowd struck the prisoner. KUEHL was seen to approach the flier with upraised hands but was not actually seen to strike a blow (R 193). A shot was heard and OVERDICK turned and saw KUNZ with a pistol in his hand near the flier (R 194). The witness saw the victim shot a second time by a man clad half in civilian clothes and half in uniform. He stayed with the victim until a police official and a Luftwaffe physician arrived (R 195). On cross-examination he stated that he saw the beating administered by the crowd but he did not feel that it was his duty to interfere, since JAEGER was apparently in charge of the prisoner and was consequently responsible for furnishing any protection (R 204). He further described that this entire incident occurred in the Ortsgruppe Rhine

and that KRAFT was Ortsgruppenleiter of the Ortsgruppe NAER (R 206).

The accused Adolf KUELL then took the witness stand in his own defense. He testified that on 12 September he was leaving his office in the Arbeitsamt (Labor Office) when the crowd came by. This office is on Mainzerstrasse across the street from the Seifert filling station. He did not know the occasion for the crowd. JACGER was about 8 to 10 meters ahead of him. RECKETT was also seen near the flier and OVERDICK was in the vicinity (R 210). KUELL then returned to his office and he saw the flier clinging to the fence in front of his house. KUELL then admitted that he pushed the flier. About 5 or 10 minutes later he heard the report of a firearm and he subsequently heard that the victim had been shot (R 211). He denied the correctness of GOETZ's testimony when the latter stated that he had seen KUELL strike the prisoner. He likewise stated that BRAND's testimony was false relative to his (KUELL's) over having thrown any stones at the captive (R 213). On cross-examination he gave a lengthy explanation why GOETZ was unfriendly to him. He had the job of placing labor and GOETZ did not like the way KUELL placed him in war industry (R 214, 224). He claimed that his pre-trial statement was incorrect in that he said therein that the flier struck him, whereas it was OVERDICK who had struck him. His lack of spectacles caused him to allow this error to pass unchallenged (R 217). He further claimed that at the time he did not even know or recognize the prisoner as such as a flier. He further claimed to have been badly handled by American M.P.'s when his statement was taken in Kreuznach (R 218).

The accused Phillip JACGER then took the stand. He

described how he drove to Bingen on 12 September 1944 in order to carry on with his duties in the District Nutritional Office (R 228). These duties required that he go to Sponheim about 11 A.M. (R 228). While returning he was stopped by a soldier in the vicinity of Eingen-Buedesheim. He was told that an enemy flier had parachuted to earth and that he (JAEGER) should take him to Bingen where he would be relieved of the captive (R 229). JAEGER drove to the burgomeister's office, picked up the captive (R 231) and headed for Bingen, accompanied by a policeman who wanted a ride to that city (R 232). He stopped at the entrance to the city, left the car and waited for someone to come up and relieve him of the prisoner. He saw one soldier, who disclaimed any responsibility in the matter (R 232). A small truck drove up and JAEGER ordered the captive to dismount. One soldier got out of the truck and the vehicle drove off. JAEGER turned the flier over to this soldier (R 235). The soldier was wearing a pair of blue trousers and a summer uniform jacket. He was armed with a pistol (R 236). JAEGER then walked about 40 or 50 meters off when he met Kreisamtsmann FUEHLING and had a short conversation with him (R 237). While holding this conversation the soldier and the prisoner passed by headed in the direction of the city (R 237). JAEGER finished his conversation and followed in the direction they had gone (R 238) at a distance of 60 or 70 meters. He noticed KWAIT in the vicinity of the labor office. He did not see him again until after the flier's death (R 239). He pulled away from the soldier and his captive when about 10 or 12 meters distant from the filling station (R 242). When about 50 meters from the filling station he turned around and saw the pair following slowly. He was about 35 meters distant from them when a shot was fired. He could give no details because of the crowd

of people which obstructed his vision (R 243). The second shot was heard shortly thereafter (R 244). He attempted nothing in order to protect the captive, as he assumed that that was the business of the soldier, and he had no authority to interfere. He never saw the prone body of the flier, and left shortly thereafter (R 245).

The accused Frederick Wilhelm KRAFT then took the stand in his own defense. On 12 September 1944 he went to the Kreisleitung to handle some business. He first saw the captive flier near the Kreisleitung accompanied by JAEGER. KRAFT entered the building and JAEGER proceeded down the road (R 256). After leaving the building KRAFT noticed that JAEGER and the prisoner were accompanied by a soldier and were proceeding down on the street. He overtook them and passed them midway between the Kreisleitung and the filling station (R 257). After continuing a short distance, he paused, leaned his bicycle against a nearby tree and returned slowly to the group which had the captive in its center (R 258). Either OVERDICK or FIMENICH gave the flier a push. He assumed, according to party doctrine, that he should do something too, so he picked up a stone and tossed it at the prisoner. He claimed he threw the stone merely for effect and did not want to harm the captive. The stone actually missed its target. This happened across the street from the filling station (R 259). KRAFT then went on his bicycle to his office, remained a short while, then mounted his bicycle and returned to the crowd (R 261). He followed the crowd at some distance and stopped to converse with a stranger in front of the post office. While there he heard a shot. He glanced up and saw the flier turn around and fall. KUNZ seemed to be fumbling with something in his hands (R 263).

He was the only person showing any movement in the crowd. The strange civilian with whom KRAFT had spoken a short time before came up, elbowed his way through the crowd and bent down. Another shot was heard. KRAFT presumed the shot had been fired by this unknown civilian. Before leaving the scene he (KRAFT) saw the flyer lying on the street (R 264). JAEGER then arrived and expressed his distaste over the incident (R 265). On cross-examination he stated that he threw the stone in order to incite FIRMENICH and OVERDICK (R 272). The witness gained the impression that KWELL was acting also merely for effect (R 274).

The accused SCHUCK was recalled to the stand. He stated that, contrary to FIRMENICH's testimony, he and RECHERT did not go along willingly but were forced by orders and threats to do so (R 285). He also stated that FIRMENICH and OVERDICK had struck the flier before he (SCHUCK) was forced to follow suit (R 288).

7. JURISDICTION:

The particulars allege a violation of the laws and usages of war which was committed prior to 9 May 1945 by enemy nationals against members of the United States Armed Forces or their allies at a time when a state of war existed between the German Reich and the United States of America and its allies. The court which was appointed to hear the case and had jurisdiction of the persons and subject matter in accordance with previous decisions of this office in similar cases. Further discussion of this point will not be attempted but reference is made to the case cited where the subject is treated at length.

8. DISCUSSION:

a. A perusal of the entire record indicates that the

proof of the victim's nationality was not as strong as would be required in civil practice. It is believed, however, that sufficient evidence has been introduced to show that the victim was an Allied airman, with strong indication that he was an American. No question was raised by the defense about this point and it does not appear that the interests of the accused were prejudiced in any way. In view of the fact of nationality of the victim, American or other Allied, will not affect the jurisdiction of the court or necessitate altering the findings and sentences in any way, no recommendation for changing the wording of the particulars is made.

In his testimony the witness BRAND stated, "Yes, he put the muzzle of the pistol against the head of the flyer because the American flyer was moving around" (R 10).

The witness GOERTZ said, "The people were saying he was a Canadian" (R 35).

In his pre-trial statement OVEDICK said,

"Q. Do you know his nationality?
A. I believe he was an American" (Pros. Ex. 4)

SCHUCK in his pre-trial statement testified,

"Q. Did you see an Allied flier beaten and shot in September 1944.
A. Yes.
Q. What was the nationality of the flier?
A. I was told he was a Canadian." (Pros. Ex. 1).

The accused KRAFT said in his pre-trial statement,

"Q. Did you see an Allied flier in the custody of Ortsgruppenleiter Philipp JAEGER in Bingen in September 1944?
A. Yes" (Pros. Ex. 5).

Whether the victim was American or a member of the armed forces of the other allies is immaterial. The evidence shown supra is sufficient to show that he was one or the other and this is sufficient to give the court jurisdiction. The question of jurisdiction of an American court over defendants being tried for offenses against members of other Allied

armed forces has been treated at length and reference is made to such prior cases (See United States vs SCHIEDHERING and MUTZECK, Case No. 12-1783, December 1946).

b. The pre-trial statements of the accused were admitted into evidence over the strenuous objection of the accused (R 64, 65, 66, 67). This ruling was proper. There is no question that such exhibits have probative value and that they had some bearing on an explanation as to how the events of 12 September 1944 occurred. A complete perusal of the record fails to disclose that injustice resulted to the accused.

c. The court denied the motion for a finding of not guilty (R 74). A perusal of the prosecution's case discloses that a prima facie case was made. Such being the fact it would have been grave error to sustain such a motion. (See also United States vs STAUDINGER et al, Case No. 12-1542).

d. The defense made a motion requesting the court not to consider any matter in any pre-trial statement except that having to do with the actions of the affiant of the particular statement (R 101). This motion was overruled by the court.

"The rules of procedure in Military Government Courts provide that 'Military Government Courts shall in general admit all written and physical evidence having a bearing on the issues before it, and may exclude any evidence which in its opinion is of no value as proof'. (Military Government Regulations, Title 5, Legal and Penal Administration para 5-329). This rule permits the admission of any evidence 'which in the opinion of the court is of probative value'. The Guide to Procedure in Military Government Courts provides that hearsay evidence, including the statements of the witness not produced, is admissible in Military Government Courts. These authorities most certainly permit the admission of hearsay evidence.

"The general rule, applicable in courts-martial, that the confession or admission of one accused, made out of court, is admissible only as against such accused, is simply an application of the hearsay rule. A confession or admission, made out of court, is admissible against the maker as an exception to such rule, (M.C.M. par. 114; M 27-255, par. 64) and, of course,

that exception is not applicable when the statement is used against another accused. The fact that the basis for the admissibility of an extra-judicial statement of one accused against another accused is simply the application of the hearsay rule is demonstrated by the fact that one co-accused may testify in court against his co-accused.

"It is clear that a statement made out of court by one accused is admissible before a military government court against all accused to the same extent as any other hearsay evidence."

(Letter, Deputy Theater Judge Advocate for War Crimes, subject: "Admissibility before a Military Government Court of extra-judicial Statement of co-accused," dated 10 November 1945).

e. A motion was presented requesting that the accused be allowed to testify under oath (R 102). The motion was rightly denied. In making its ruling the court followed the rule laid down in paragraph 5-327.5 Military Government Regulations supra. This procedure follows the continental practice and has been discussed in prior cases.

f. In passing it might be noted that the order appointing the court (Special Orders No. 100, paragraph 3, USFET, supra) made no mention of there being on the court a member with legal training. No discussion will be made on this point of law herein as the same has been discussed at length in a previous opinion by this reviewer and reference is made thereto (See U.S. v HEENE et al, Case No. 12-1086, December 1946). It has theretofore been held that the failure to designate a law member on a General Military Government Court does not affect the jurisdiction of that court. This conclusion would also apply in this case.

9. SUFFICIENCY:

An examination as to the evidence relative to each accused will now be made and a conclusion drawn concerning its sufficiency. A recommendation will also be made as to the findings and sentences handed down by the court.

a. Ludwig FIRMEINICH.

A complete review of the case relative to this accused and concerning the second charge and specification is not thought to be necessary. The testimony is clear and convincing that he participated to the extent of rounding up the accused SCHUCK and witness RECKERT, leading them to the victim and ordering and exhorting them to take part in beating the allied captive. There is also evidence that FIRMEINICH himself also struck the flyer several times. The findings of the court relative to the second charge therefore rest on solid ground. With regard to the first charge and specification (homicide) it is necessary for some discussion. There is no doubt that a homicide was perpetrated and that an allied airman was killed at the time and place specified in the specification. How far did the actions of this accused contribute to this result? The uncontradicted evidence also shows that one KUNZ was the actual instrument for perpetrating this killing. How far did this accused's actions go towards causing this result? There is evidence in the record that the accused KUNZ was standing at the Seifert filling station when the victim appeared on the scene in the custody of the accused JAEGER (R 24). The pre-trial statement of the accused KUEHL which was introduced in evidence also places KUNZ in a group which surrounded the victim at the start of the incident. OVERDICK and JAEGER were also in this group (Pres. Ex. 2, P. 65). We can therefore safely say that he was present when the flyer first appeared on the scene and before any overt acts had been made by any person present. The record is not clear as to what happened to KUNZ between that time and the time the actual killing occurred. It is an elementary principle of criminal law that a person is responsible for any reasonably contemplated result which may

that this accused did all in his power to whip up the local populace in causing an assault on the victim. The evidence is uncontradicted that this accused and OVERDICK were party officials, leaders in the community, with the power to enforce any demands made by them on the local population. The record shows that the assembled crowd was whipped up to a frenzy and participated in an aggravated assault upon the victim due to the efforts of these two accused and the record also shows FIRMENICH was shouting that the flyer should be killed. It may thus be safely inferred that KUNZ' action also was a result of their efforts. For the reasons above stated it is therefore recommended that the judgment and sentence of the trial court be approved.

b. Heinrich OVERDICK:

Much heretofore said in the discussion relative to FIRMENICH can be repeated with regard to this accused. A full discussion will not therefore be made concerning the findings of guilty on the first charge and specifications, but the line of reasoning followed supra will be followed here. There is no doubt that OVERDICK was also guilty of participating in a very reprehensible assault, the natural and logical consequences of which was the death of the flyer. OVERDICK was in a position comparable to that of FIRMENICH in the local Party organization and along with him participated to the same extent in whipping the assembled crowd into a frenzy which resulted in the death of the allied airman. To this extent he was equally guilty with FIRMENICH. It is considered unnecessary to discuss the subject of the assault as the evidence is clear and convincing that OVERDICK participated to the same extent as his co-accused. It is there-

more recommended that the findings of guilty and the sentence of the trial court be approved.

c. Wilhelm KRAFT

This accused was present early in the march of the captured flyer through the streets of Bingen. In fact, the evidence showed that KRAFT accompanied JAEGER and the prisoner for a short distance while they were in the vicinity of the Seifert filling station, and gradually dropped behind the captive and his escort. There is no evidence that he participated in the striking of any blows. In fact it was affirmatively stated that he neither struck any blows nor incited the other bystanders to do so (R 38, 169). However, he was seen to pick up a rock and throw it at the prisoners, but it missed its mark (Pros. Ex. 1; R 106). SCHUCK, in his pre-trial statement, did say that KRAFT incited the crowd (Pros. Ex. 1; supra, p 7).

The court may also have inferred that KRAFT's guilt was enhanced by his relatively inactive presence, i.e., being clothed with the authority of an Ortsgruppenleiter his presence lended tacit approval of the actions of the mob and lended support thereto. In view of all the facts thus brought out it is recommended that the findings and sentence of the court be approved.

d. Philipp JAEGER

It is not believed that an exhaustive discussion of the evidence relating to this accused is necessary. There is no question that he accepted the custody of the prisoner and was present in the mob, as he admits such himself. He then tried to absolve himself of responsibility by claiming that the captive was later turned over to a third party who assumed control. There is some slight evidence to this effect

but it appears furthermore, that a preponderance of the evidence points the other way, and, establishes he was present and a part of the mob. It is therefore recommended that the findings and sentence of the court be approved.

e. Adolf KWEIL

One witness testified that KWEIL was guilty of throwing a rock which struck the flyer on the back of the head. This accused was also seen to strike at least one blow with his fists and kick the exhausted flyer as he hung on the fence for support. Irrespective of the ultimate results of his specific acts of violence, he should be held strictly accountable for his participation in the mob and it is recommended that the finding of guilty on the second charge and the finding of not guilty on the first charge be approved. It is further recommended that the sentence as to this accused also be approved.

f. Hugo SCHUCK

This accused was found guilty on the second charge and specification and sentenced to imprisonment for a term of one year to commence on 31 July 1945. A study of the complete record clearly reveals that he participated in the mob. Since such is the case and the accused has now completed his sentence, no further attempt will be made to discuss his case. It is therefore recommended that the findings and sentence of the court be approved.

10. CLEMENCY:

A petition for clemency has been filed by Marie KWEIL, the wife of the accused ADOLF KWEIL, dated 27 July 1945, and supported by statements from residents living in the vicinity of his home. She bases her petition on humanitarian grounds and the fact that her husband is in poor health.

She further alleges that she and her husband were misled by the statements of the Nazi regime, as were many of their contemporaries. No new material is shown which might have influenced the court to bring in a finding other than the one handed down. It is not believed any clemency is indicated and none is therefore recommended.

In arriving at the recommendations herein set forth in the cases of all the remaining accused the question of clemency was considered. Consequently no further mitigation of any of the sentences is recommended.

11. RECOMMENDATIONS:

After due consideration of all the evidence presented to the court relative to each individual accused it is recommended that the findings and sentences of the court be approved. Forms of action designed to carry the foregoing recommendation into effect, should they meet with approval, are submitted herewith.

DAVID P. HENNEY,
Attorney,
Post Trial Section

Having examined the record of trial, I concur.

C. E. STRIGHT,
Colonel, JAGC
Deputy Theater Judge Advocate
for War Crimes

Order on Review,
Verfügung nach Überprüfung

Case No.
Strafsache Nr. 12-1115

Order No.
Verfügung Nr.

Whereas one Hugo SCHUCK
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of wrongfully assaulting a prisoner of war
wegen der folgenden strafbaren Handlung ~~gesetzwidrige Angriffen eines~~
Kriegsgefangenen

by the ~~Intermediatska~~ Military Court
at Dachau, Germany
General in Dachau, Deutschland
~~Einflusskreis~~
Mittleren Militärgerichte
Obere
(Address of Court)
(Anschrift der Gerichts)

and sentenced to imprisonment for 1 year, commencing 31 July 1945
schuldig erkannt und zu 1 Jahr Gefängnis verurteilt, mit Wirkung ab 31 Juli 1945

by Judgment dated the 6 June and
durch Urteil vom 6. Juni 1946
(date)
(Datum)

Whereas the case has now come before me by way of review and after due con- sideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechen dem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will place Hugo SCHUCK in the War Criminal Prison No. 1, Landsberg, Germany for a term of 1 year, commencing 31 July 1945.

Dass der Befund und das Urteil hiermit bestätigt werden. Der Kommandierende General des ersten militärischen Bezirks wird veranlassen, dass Hugo SCHUCK in Kriegsverbrecher-Gefängnis Nr. 1 in Landsberg, Deutschland, für die Dauer von 1 Jahr, mit Wirkung ab 31 July 1945, inhaftiert wird.

Dated this 26 March 1947
Gegeben am

..... s/ C. B. Mickelwait
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

..... C. B. MICKELWAIT
Colonel (Title) JAGD
(Titel)
Judge Advocate, European Command.

06
No 107
FLM