

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

11 April 1947

UNITED STATES )

vs )

Peter ETSCH and Heinrich  
SCHMITT, German Nationals )

Case No: 12-1830

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried at Dachau, Germany  
Date: 20 February 1947  
Intermediate Military  
Government Court

<u>ACCUSED</u>	<u>DATA</u>	<u>SENTENCE</u>
ETSCH, Peter	Married, 3 children age 59 Police Sergeant of Protective Police Member NSDAP from 1933.	Imprisonment 2 years at hard labor from 16 July 1945.
SCHMITT, Heinrich	Married, 2 children age 52 Occupation, Caster Member DAF from 1933 and NSD from 1936.	Imprisonment 2 years at hard labor from 15 July 1945.

CHARGE: Violation of the  
Laws and Usages of War.

Pless      Findings

PARTICULARS: In that  
Peter ETSCH and Heinrich  
SCHMITT, German nationals,  
did, at or near Heddosheim,  
Germany, on or about 31  
July 1944, wilfully, de-  
liberately and wrongfully  
encourage, aid, abet and  
participate in committing  
assaults upon an unknown  
member of the United  
States Army, who was then  
and there a surrendered  
and unarmed prisoner of  
war in the custody of the  
then German Reich, by  
beating him in the face  
with hands, kicking him  
on the buttocks and body  
and beating him on the  
back with the butt end of  
carbines.

ETSCH	NG	G
SCHMITT	NG	G

6. RECOMMENDATIONS: That the findings and sentence be approved.

3. EVIDENCE:

For the Prosecution: On or about 31 July 1944 an American flier parachuted to safety in the vicinity of Heddeshelm, Germany (P.Ex. 7A). The flier, who was unarmed, was taken into custody by some German civilians, turned over to some members of the Wehrmacht and placed on a military truck driven by a German soldier. The truck, enroute to Heddeshelm, containing the flyer, some German civilians and members of the Wehrmacht was stopped at an intersection on the main road leading to Heddeshelm by the Burgemeister, a Gendarmeriemeister and the two accused. Accused WTSCH pulled the flyer from the truck, the Gendarmeriemeister and Burgemeister slapped and kicked him, the two accused beat him in the back with the butts of their carbines three or four times, and WTSCH and the Gendarmeriemeister kicked him while he was lying on the ground. The flier was then marched to Heddeshelm in the custody of WTSCH and SCHMITT and later turned over to the Protective Police in Weinheim (pp 2, 3, P.Ex. 1; p 2, P.Ex. 3; pp 3, 4, P.Ex. 5; P.Ex. 7A; pp 2, 3, 4, P.Ex. 8; p 2, P. Ex. 9).

For the Defense: accused Peter WTSCH elected to testify in his own behalf in substance as follows: Accused WTSCH did not take the flier off the truck (R 15). He hit the flier two or three times with his hand in the back but did not strike him with his carbine (R 16). accused was bombed out twice, lost a son in the war in 1942 and was constantly exposed to air raid attacks, day and night, and did this act in a moment of excitement. In spite of an order that no enemy pilot was to be taken into captivity or arrested alive, accused did not kill this flier because he "had to act as a human being" (E 17).

Accused Heinrich SCHMITT elected to testify in his own behalf in substance as follows: accused SCHMITT struck the flier with his open hand two or three times but did not strike him with a butt of a

carbine and did not have a carbine in his possession at the time (R 27). He struck the flier in a moment of excitement because of numerous air-raid attacks. As a result of air-raids the roof of his house was caved in two or three times (R 28). Accused SCHMITT did not take the flier out of the truck; in fact, the flier was already out of the truck when he and EISCH arrived on the scene (R 30).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offense.

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

6. CLEMENCY: There are no Petitions for Review nor Petitions for Clemency.

7. CONCLUSIONS:

a. It is recommended that the sentence be approved.

b. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ Vera G. Springfield  
VERA G. SPRINGFIELD  
1st Lt.           MAC  
Post Trial Section

Having examined the record of trial, I  
concur.

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