

UNITED STATES)

14 April 1947

vs.)

Case No. 12-1395

Karl GROSCH, Fritz Erich
HAEHNERT, and Albert
HENDRICH, German Nationals)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried at Dachau, Germany
Date: 20 and 21 February 1947
General Military Government Court
Sentences: Karl GROSCH: Life imprisonment.
Fritz Erich HAEHNERT: Death by hanging.
Albert HENDRICH: 20 years, commencing from 25 January 1946.

ACCUSED

Karl GROSCH: Married, 2 children
Age 49
Nazi Party since 1933.
Employed by SS as locksmith
in Camp Buchenwald since 1939.

Albert HENDRICH:
Widower, 1 daughter
Age 57
Nazi Party since 1933.
Political Leader since 1936.

Fritz Erich HAEHNERT:
Married, 3 children
Age 43
Nazi Party since 1933.
Local Nazi Unit Leader since
1937.
Mayor of Ettersburg since 1941.
Received Iron Cross, 2nd Class
for active Party work.

Plea

Findings

CHARGE: Violation of the Laws (As to all accused) (As to all accused)
and Usages of War NG G

PARTICULARS: In that Karl (As to all accused) (As to all accused)
GROSCH, Fritz Erich HAEHNERT, NG G
and Albert HENDRICH, German

nationals, did, at or near OTT-
BENSCHLAGEN, Germany, on or about
29 July 1944, wilfully, deliberately
and wrongfully encourage, aid, abet
and participate in the killing of
five members of the United States
Army, whose identity is unknown,
who were then and there overpowered and
surrendered prisoners of war in the
custody of the then German Reich.

CLASSIFICATION CANCELLED
Army of JAG W

2. RECOMMENDATIONS: That the findings and sentences be approved.

3. EVIDENCE:

For the Prosecution: Proof of Prosecution's case rested wholly on documents. The evidence shows that on or about 29 July 1944, an American plane was shot down near the village of Ottmannshausen, Weimar District, now in the Russian Zone (I-1a, R 8; I-7a, R 14; I-13a, R 18; I-18a, R 23; I-27a, R 13). Five American flyers were captured and were taken to Ottmannshausen in trucks for the purpose of being lynched and publicly shot (I-2a, R 9; I-3a, R 10; I-4a, R 11; I-7a, R 14; I-13a, R 18; I-15a, R 21; I-18a, R 23; I-23a, R 26). The Nazi district leader HOFFMANN and the local unit Nazi leader, accused HAHNERT, organized this plan for the mistreatment and public shooting of the prisoners of war (I-2a, R 9; I-23a, R 26; I-26a, R 30), and summoned men to go to Ottmannshausen for this purpose (I-1a, R 8; I-5, R 12; I-23a, R 26), amongst whom were the accused, HENDRICH and GROSCH (I-2a, R 9; I-23a, R 26). The latter two agreed to participate in this plan at the request of HOFFMANN (I-19a, R 24). In Ottmannshausen the flyers were brought into the house of a Mrs. HOCHSTEIN who had been previously killed during the aerial combat (I-15a, R 21; I-18a, R 23; I-24a, R 28; I-28a, R 32). The flyers were then mercilessly beaten and tortured by various persons including the accused HENDRICH who beat them with a stick (I-1a, R 8; I-2a, R 9; I-3a, R 9; I-5, R 12; I-13a, R 18; I-14a, R 20; I-15a, R 21; I-17a, R 22; I-18a, R 23; I-22a, R 26; I-23a, R 26; I-28a, R 32). and the accused GROSCH who beat them with his fists and a stick (I-2a, R 9; I-4a, R 11; I-15a, R 21; I-18a, R 23; I-20a, R 24; I-22a, R 26; I-23a, R 26; I-28a, R 32). All five were then publicly shot, two by the accused HAHNERT with his pistol and the others by HOFFMANN and unidentified members of the Gestapo (I-1a, R 8; I-2a, R 9; I-3a, R 10; I-4a, R 11; I-5, R 12; I-15a, R 21; I-18a, R 23; I-22a, R 26; I-23a, R 26; I-24a, R 28; I-26a, R 30; I-28a, R 32). The bodies were buried in a common grave in the cemetery at Ottmannshausen on the same day (I-5, R 12; I-6a, R 13; I-7a, R 14; I-8a, R 14; I-16a, R 22;

I-18a, R 23; I-24a, R 28; I-27a, R 31; I-28a, R 32). Three days later the bodies were exhumed and taken to the crematorium at Weimar where they were cremated. Later, five urns containing the ashes were buried in the grave formerly occupied by the bodies of the five flyers (I-6a, R 13; I-7a, R 14; I-8a, R 14; I-9b, R 15). The five flyers were identified as Americans (I-9b, R 15; I-21a, R 25; I-27a, R 31).

For the Defense: The accused GROSCH and HAEHNERT took the stand and testified on their own behalf under oath. GROSCH admitted he beat two flyers with his fists, one about five times and the other two or three times (R 34). HAEHNERT admitted he shot two flyers due to excitement brought about by the general situation and the order of Kreisleiter HOFFMANN to shoot (R 46, 51).

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

5. COMMENTS: All of the elements of the crime charged against the accused were overwhelmingly proved. In pre-trial statements made both to the Russian authorities who first investigated the crime and subsequently to American authorities, all of the accused fully and freely confessed their part in its commission. The accused GROSCH and HAEHNERT both made the same admissions from the witness stand. The irrefutable evidence indicates that Kreisleiter HOFFMANN and accused HAEHNERT conceived and put into effect the plan to publicly mistreat and lynch the flyers. HENDRICH and GROSCH voluntarily joined this combination at the request of HOFFMANN. Thus, a conspiracy was formed to commit an unlawful act. Each conspirator is liable for all the consequences that naturally flow from the conspiracy and for the acts of each and all who participated with him in executing the unlawful purpose (Miller, Criminal Law, p 114). It matters not that some of the conspirators were not active participants or that their acts were not as reprehensible as the acts of the others. Each is liable for the acts of all, since each is deemed the agent of the other.

The accused HAEHNERT testified he shot two flyers in a moment of excitement induced by the general situation and the order of Kreis-leiter HOFFMANN to shoot. In a war crimes case the defense of superior orders is not an absolute one. It may be taken into consideration in determining culpability either by way of defense or in mitigation of punishment (F.M. 27-10, par 345.1). The weight to be given to the defense of superior orders is within the discretion of the court in light of the particular circumstances of the case (U.S. vs Kalchior, et al, 12-1821). In speaking of the weight to be given to the defense of superior orders, Mr. Justice Jackson, in his Report to the President, dated 7 June 1945, had this to say: "The Tribunal can then determine whether they constitute a defense or merely extenuating circumstances or perhaps carry no weight at all". In light of the circumstances in this case; that accused HAEHNERT did not know what punishment would ensue if he refused to obey the order (R 60), together with his active participation in the plan to lynch the flyers and his deliberate and premeditated killing of them, no immediate compulsion was present to obey the order and the court was justified in refusing to give any weight to the plea of superior orders. Examination of the entire record fails to disclose any error or omission which resulted in injustice to any of the accused.

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

7. CONCLUSIONS:

- (a) It is recommended that the sentences be approved.
- (b) Legal forms No. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ Ronald Dadamio

/t/ RONALD DADAMIO

2nd Lt. Post Trial Section

Having examined the record of trial, I concur.

/s/ C. E. Straight

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