

11 September 1947

UNITED STATES )  
                  ) )  
                  v. )  
Max SCHMID      ) )

Case No. 11-514

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 19 May 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

CHARGE I: Violation of the Laws and Usages of War.

PARTICULARS: In that Max SCHMID, a German national, did, at or near MERTHEM (Pas-de-Calais), France, in or about May 1944, wilfully, deliberately and wrongfully kill 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.

CHARGE II: Violation of the Laws and Usages of War.

PARTICULARS: In that Max SCHMID, a German national, did, at or near MERTHEM (Pas-de-Calais), France, in or about May and June 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the maltreatment of a dead, unknown member of the United States Army.

CHARGE III: Violation of the Laws and Usages of War.

PARTICULARS: In that Max SCHMID, a German national, did, at or near MERTHEM (Pas-de-Calais), France, on or about 6 June 1944, wilfully, deliberately and wrongfully kill 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.

III. EVIDENCE AND RECOMMENDATIONS:

1. Max SCHMID

Nationality:	German
Age:	38
Civilian Status:	Medical Doctor
Party Status:	NSDAP from May 1933; SA from March 1934
Military Status:	Medical Captain, Air Corps



Plea: NG Charge I; NG Charge II; NG Charge III  
Findings: NG Charge I; G Charge II; NG Charge III  
Sentence: 10 years, commencing 7 January 1947

Evidence for Prosecution: In or about May or June 1944, the accused, who was a doctor and Commanding Officer of a dispensary at Marcuis, France, severed the head of an American flyer from the body with a saw, boiled the head for several hours, removed the skin and flesh, and bleached the skull in hydrogen peroxide. The skull later was seen on the accused's desk where it remained until about 20 August 1944, at which time the accused sent the skull to his wife in Germany as a souvenir (P-Ex 2a, pp 1, 2; P-Ex 3c, pp 1, 2; P-Ex 4a, p 1; P-Ex 5a, pp 7, 8; P-Ex 6a).

In or about the end of May or the first part of June 1944, an injured American flyer was brought into the shower room of the dispensary at Marcuis. There were no visible wounds but the accused on examination discovered that the flyer had a fractured back. The accused gave him three injections and he died from bleeding of the lungs within three minutes after his arrival at the dispensary. The following morning witnesses saw the body of a man clothed only in a pair of trunks in the shower room. The accused told one of these witnesses, "From now on, all Allied airmen will have the same fate." Previously, the accused had said that he would kill any American with an injection who was brought to the dispensary (P-Ex 2a, p 2; P-Ex 3c, p 2; P-Ex 4c, p 2; P-Ex 5a, pp-1, 2, 3, 4).

Evidence for Defense: At the time the prosecution rested the court granted a motion of the defense for a directed verdict of "Not guilty" of charges one and three and the particulars thereof. The accused then elected to testify under oath in his own behalf in substance as follows: He cut off the head of the flyer and prepared the skull because he needed it as a training aid in orientation lectures (R 28). He performed this act for scientific reasons



and not as an expression of hatred for Americans. The body was procured from a detail whose duty it was to collect dead bodies (R 29). The accused used the skull for instructional purposes during June and July 1944 and then sent it home so that it would be properly cared for and for possible medical use later. He intended to bury the skull in a Catholic cemetery after it had served its scientific purposes (R 33, 34).

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.

#### IV. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the person of the accused and of the subject matter.

The Geneva Red Cross Convention of 27 July 1929 (47 Stat. 2074), Article 3, imposes the obligation upon belligerents to take measures to search for the wounded and dead and to protect them from robbery and ill treatment. Dead soldiers must not be disgracefully treated or mutilated (Oppenheim's, International Law, Volume II, Sixth Edition, Revised 1944, p 288; War Department Basic Field Manual 27-10, "Rules of Land Warfare", paragraph 176, 1 October 1940).

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

#### V. CONCLUSIONS:

1. It is recommended that the findings and sentence 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

Having examined the record of trial, I concur, this 15th day  
of Sept., 1947

/s/ C. E. Straight  
C. E. STRAIGHT  
Lieutenant Colonel, JLCD  
Deputy Judge Advocate  
for War Crimes