

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

5 June 1947

UNITED STATES )  
                  ) )  
                  ) vs ) Case No. 12-25  
                  ) )  
Karl BAUMGAERTNER, a German )  
national. ) )

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

ACCUSED

Tried at Dachau, Germany	Married
Date: 11 and 14 April 1947,	Age, 57
Intermediate Military	Chief of Police, Regional Police
Government Court.	Commissariat, SINSHEIM, Post-
Sentence: Not Guilty of Charge	NECHWARRISCHOFHEIM since 1
and Particulars,	January 1941.
	Rank, Master of the Gendarmerie (T/Sgt.)

	<u>Pleas</u>	<u>Findings</u>
CHARGE: Violation of the Laws and Usages of War.	NG	NG

PARTICULARS 1: In that Karl BAUMGAERTNER, NG  
a German national, did, at or near  
BAUERBACH, Germany, on or about 21 July  
1944, deliberately and wrongfully encour-  
age, aid, abet and participate in commit-  
ting assaults upon a member of the United  
States Army, 2nd Lt. O'ville E. Flora, Jr.,  
ASN C-765788, who was then and there an  
unarmed and surrendered prisoner of war  
in the custody of the then German Reich.

PARTICULARS 2: In that Karl BAUMGAERTNER, NG  
a German national, did, at or near  
BAUERBACH, Germany, on or about 21 July  
1944, deliberately and wrongfully encour-  
age, aid, abet and participate in commit-  
ting assaults upon a member of the United  
States Army, S/Sgt. Frank Phillip  
RACZYLOWSKY, ASN 1217034, who was then  
and there an unarmed and surrendered  
prisoner of war in the custody of the  
then German Reich.

2. EVIDENCE:

For the Prosecution: On about 21 July 1944, from a group of American planes  
an undetermined number of planes were shot down in the vicinity of Bretten,  
Germany, and the crews landed by parachute (F-Ex 4). Three flyers, one a  
lieutenant, landed near the village of Bauerbach (R 18). Accused, in his state-  
ment, admits that he struck one flyer on the shoulder as the flyer stood in

front of the City Hall (P-Ex 4). This corroborated (P-Ex 7). However, the flyer was not knocked down nor injured (P-Ex 7). Two flyers were taken into the Mayor's office and questioned by accused (P-Ex 4, 7). Two witnesses in the room at the time heard what sounded like a blow and turned and saw accused standing in front of flyer and saw a red spot on flyer's cheek (P-Ex 10, R 20). The victim named in Particulars 1, by statement says that he was severely beaten by a German Army Sergeant at the City Hall in Boorbach (phonetic spelling) who had been called by telephone and came about two hours after victim had reached the City Hall (P-Ex 2). This victim gives a lengthy description of his assailant, some of the points conforming to the physical appearance of accused, and some materially dissimilar (P-Ex 2). The victim mentioned in Particulars 2 entered the room before Lt. Flora (victim in Particulars 1) was removed and saw him lying on the floor and that he had been severely beaten (P-Ex 3). The second victim was beaten when he refused to answer questions; he says by three or four German civilians in the room (P-Ex 3). The body of an American flyer, believed to be Sgt. John J. Kempovich, Jr., of the same crew as the two victims mentioned in Particulars, was later found near and buried at Bauerbach. Post-mortem examination tends to establish that death was caused by fall (P-Ex 11, 12).

For the Defense: The accused admits he struck a flyer, whose identity is unknown, as the flyer stood outside the City Hall at Bauerbach. He denies that he struck any flyer inside the City Hall, and that any flyer was beaten in the City Hall (P-Ex 4, R 43). Accused says he struck the one flyer out of excitement, aroused because his (accused's) home had that morning been bombed (P-Ex 4). The Defense showed that eight towns, in addition to Bauerbach in Western Germany, have similar names and could have been phonetically spelled "Boorbach" (R 55); accused at time of incident wore a police uniform which in color and style is dissimilar to that of a 1st Sergeant of the German Army (R 38); there were no telephones in operation (R 51); there were never four German civilians present and participating in the interrogation of the flyers at the City Hall in Bauerbach; that the physical appearance of accused is materially dissimilar in Bauerbach; that the physical appearance of accused is materially dissimilar in several particulars to the description given by the victim, Lt. Flora (R 29 - 31); accused was never in civilian clothes on the alleged date of the assault (R 29).

3. CONCLUSION: No formal approval is required. The Court was correct in finding the evidence insufficient to sustain a conviction under the specific allegations in each of the Particulars. It is recommended that the record of trial and this Review and Recommendations be filed without further action and that a copy hereof be forwarded to the Judge Advocate for his information.

/s/ V. H. McClintock  
V. H. McCLINTOCK  
U.S. Civilian Attorney  
Post Trial Branch

Having examined the record of trial, I concur.

/s/ C. E. Straight  
C. E. STRAIGHT (15 Sept. 47)  
Colonel, JAGC  
Deputy Judge Advocate  
for War Crimes