

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 407

30 October 1947

UNITED STATES)

v.)

Case No. 12-1774

Kurt HARTMAN, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 15-21 April 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

CHARGE 1: Violation of the Laws and Usages of War.

Particulars: In that Kurt HARTMAN, Otto HEENE and Emil HOFMANN, German nationals, did, on or about 24 December 1944, at or near FREIENSEEN, Germany, willfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of 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 2: Violation of Par. 1(d), Article II of Control Council Law No. 10.

Particulars: In that the accused, Emil HOFMANN, German national, was a member of an organization declared criminal by the International Military Tribunal in Case No. 1, i.e., the Leadership Corps, and did remain a member after 1 September 1939, with knowledge that the said organization was being used in the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, annexed to the agreement establishing the Tribunal, dated 8 August 1945, and was personally implicated in the commission of such criminal act.

On motion by the prosecution, the charges and particulars were amended to delete Charge 2 and the particulars thereunder (R 2).

III. SUMMARY OF EVIDENCE: On 24 December 1944 an American flyer parachuted from his disabled plane and landed at Freienseen, Germany. Accused HEENE took the flyer into custody, and meanwhile a crowd collected including accused HARTMAN and HOFMANN. While accused HEENE was marching the flyer to the next town of Laubach, he was joined by accused HOFMANN who shot the flyer some minutes later.

The victim died shortly thereafter.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Kurt HARTMAN

This accused was acquitted (R 156).

2. Otto HEENE

This accused was acquitted (R 156).

3. Emil HOFMANN

Nationality:	German
Age:	53
Civilian Status:	Farmer
Party Status:	Ortsgruppenleiter, NSDAP
Military Status:	None
Plea:	NG Charge I
Findings:	G Charge I
Sentence:	Death by hanging

Evidence for Prosecution: The accused, an Ortsgruppenleiter in the NSDAP since 1933, arrested an American flyer, 24 December 1944, at Freisenen, Germany. The American flyer was in the custody of HEENE (R 14; P-Ex 7, p. 2). After winning an argument with a German noncommissioned officer for the custody of the flyer, the accused left the flyer in the custody of HEENE while he returned to his home. Shortly thereafter the accused reappeared in his part uniform carrying a revolver in his hand. The accused and HEENE together with another German then marched the flyer toward Laubach, Germany (R 10; P-Ex 4) where the flyer was to be turned over to the Kreisleiter's office (R 36). HEENE was on the left of the flyer and the accused was on the right (R 37, 70, 79). Suddenly the accused jumped up behind the flyer (R 13; P-Ex 6, p. 3) and fired a shot into him (R 38, 119, 13, 14; P-Ex 6, p. 3, P-Ex 7, p. 3). The flyer staggered and the accused grabbed him by the arm (R 38, 119, 13; P-Ex 6, p. 3) and shot him again (R 38, 119, 13, 14; P-Ex 6, p. 3, P-Ex 7, p. 3) in the upper part of the chest (R 14; P-Ex 7, p. 3). The flyer then fell to the ground (R 38, 81, 13, 14; P-Ex 6,

p. 3, i-Ex 7, p.3). The accused returned to Freienseen, secured his horse and wagon, and returned to fetch the flyer to Laubach (R 120, 13, 14, 16; P-Ex 6, pp.3, 4, P-Ex 7, p. 3, P-Ex 94) where the victim was buried (R 10, 13, 14, 16; P-Ex 4, P-Ex 6, p. 9, P-Ex 7, p. 3, P-Ex 94).

The pathologist's report shows only two gunshot wounds in the victim's body (R 18; P-Ex 134, p. 2).

The flyer at no time tried to escape on the way to Laubach (R 37, 119, 13; P-Ex 6, p. 5).

Evidence for Defense: The accused testified that while the flyer was in the custody of HEENE, he, the accused, told HEENE to turn him over to the guard battalion in Freienseen and HEENE refused; that he then went home to get his coat and gun in order to help HEENE take the flyer to Laubach (R 78); that he joined HEENE again on the way to Laubach; that as he was walking four meters behind the flyer, he suddenly observed the flyer make a movement toward HEENE as if he were going to jump at him; that he then shot the flyer; and that in his excitement he fired a second shot. However, the fatal shot was fired by HEENE while the flyer was in the accused's wagon being taken to Laubach (R 86).

HEENE testified that sometime after the shooting incident, the accused reported that the flyer was shot while trying to escape (R 121, 126). He denied that he shot the flyer while transporting the victim to Laubach in the wagon (R 133, 146).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Captain Frank E. Morse, defense counsel, on 23 April 1947 and 23 October 1947. A Petition for Clemency was filed by Franz Bucherl, a German attorney, 9 October 1947.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

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

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

VI. 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.

ROBERT E. L. WELCH
Attorney
Post Trial Branch

Having examined the record of trial, I concur, this _____ day
of _____ 1947.

C. E. STRAIGHT
Lieutenant Colonel, JAGC
Deputy Judge Advocate
for War Crimes.