

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

12 May 1947

UNITED STATES)

vs)

Paul RUBSAMEN, Paul WINKLER,
Martin BAESSE, Karl SCHRADER,
Jacob EHLEN, Reinhard BECK,
and Josef CRUMBACH, German
nationals.)

CASE NO. 12-1915

REVIEW AND RECOMMENDATIONS

Tried at Dachau, Germany, 28 August to 3 September 1946.

<u>ACCUSED</u>	<u>DATA</u>	<u>SENTENCE</u>	<u>RECOMMENDATIONS</u>
Paul RUBSAMEN	Married, 5 children Age 45 E. M. German Army, World War II Occupation miner	Death	Approval
Paul WINKLER	Married, 2 children Age 51 E. M. German Army World War I Occupation mining inspector	Death	Approval
Martin BAESSE	Married, 3 children Age 50 E. M. German Army, World War II Occupation auto lacquerer	25 years from 25 June 1945	Approval
Karl SCHRADER	Married, 1 child Age 46 occupation machinist	12 years from 14 July 1945	Approval
Jacob EHLEN	Married, 7 children 7 grandchildren Age 63 German Army, World War I occupation miner	3 years from 25 June 1945	Approval
Reinhard BECK	Married, 4 children Age 47 Occupation baker	2 years from 15 Aug. 1946	Approval
Joseph CRUMBACH	Age 59	Acquittal	Approval

	<u>Fleas</u>	<u>Findings</u>
FIRST CHARGE: Violation of the Laws of War		
PARTICULARS: In that Paul RUBSAMEN, Paul WINKLER, Martin BAESSE, Karl SCHRADER, Jacob EHLEN, Reinhard BECK, and Josef CRUMBACH, German nationals, did, at or near Nenterhausen, Germany, on or about 27 September 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of an unknown member of the United States Army, who was then an unarmed surrendered prisoner of War in the custody of the then German Reich.	RUBSAMEN NG WINKLER NG BAESSE NG SCHRADER NG EHLEN NG BECK NG CRUMBACH NG	G G G G NG NG NG

	<u>Fleas</u>	<u>Findings</u>
SECOND CHARGE: Violation of the Laws of War		
PARTICULARS: In that Paul WINKLER, Martin BAESSE, Karl SCHRADER, Jacob EHLEN, Reinhard BECK, and Josef CRUMBACH, German nationals, did, at or near Nenterhausen, Germany, on or about 27 September 1944, wrongfully encourage, aid, abet and participate in an assault upon an unknown member of the United States Army, who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich.	WINKLER NG BAESSE NG SCHRADER NG EHLEN NG BECK NG CRUMBACH NG	G G G G G G

EVIDENCE

For the Prosecution: On or about 27 September 1944 an American pilot parachuted to safety near a settlement in the vicinity of Nenterhausen, Germany, surrendered to and was searched by local citizens (R 16, 17, 74, 75, 76, 98, 99; Pros. Exs. 10, 11). A crowd gathered, were excited, were pushing each other and yelling. One witness heard the words: "Shoot this dog to death" (R 37, 79, 80; Pros. Ex. 11). The flyer was beaten about the face by accused SCHRADER with his fist several times (R 29, 32, 99; Pros. Exs. 9, 10). Accused BAESSE kicked the flyer over the buttocks, causing the flyer to fall forward and then kicked him again after he had fallen (R 30, 31, 102, Pros. Exs. 3, 13). Accused EHLEN beat the flyer with his open hand (R 29, 30; Pros. Exs. 7, 8). Two witnesses saw accused BECK at the scene with a club in his hand (R 65, 78,); and

accused WINKLER saw accused BECK hit the flyer with a horsewhip (Fros. Ex. 5). BECK made a pre-trial statement to the effect that he protected the flyer (Fros. Ex. 11). In a pre-trial statement one Franz NOTZEN averred that he saw CRUMBACH hit the flyer once with his fist and kick him (Fros. Ex. 3). Accused WINKLER beat the flyer with his open hand (R 29; Fros. Exs. 9, 10, 14). In a pre-trial statement written in German WINKLER stated that he took part in the calls of the people to kill the flyer, hit the flyer twice on the head with his fist, and along with the crowd encouraged accused RUBSAMEN again to kill the flyer (Fros. Ex. 5). There is some evidence that WINKLER ordered RUBSAMEN to kill the flyer (Fros. Exs. 7, 8, 14). RUBSAMEN in a pre-trial statement said WINKLER attempted to take the gun from him, that when he refused, WINKLER with many others beat and kicked the pilot, that WINKLER again demanded the rifle and threatened to take it from him, then he (RUBSAMEN) called "Look out" and shot the pilot. RUBSAMEN further stated that WINKLER gave him an order to shoot the pilot (F. Ex. 14). Following the beating and kicking of the flyer by the other accused and the calls of the crowd to kill the flyer, RUBSAMEN shot the flyer in the back of the head with his carbine and killed him (R 32, 66, 80, 94, 95, 103; Fros. Exs. 5, 12).

For the Defense. Nara IOWANOWSKI, a witness for the Prosecution was called as a defense witness and testified that she had lived near Nenterhausen, a village of about 2000 population, for 8½ years and did not know a family by the name of NOTZEN (see, Fros. Ex. 3) (R 131).

A stipulation was entered into between the Prosecution and Defense Counsel to the effect that another witness for Prosecution and five of the accused did not know and had never heard of Franz NOTZEN (R 133, 134).

Josef CRUMBACH took the witness stand in his own behalf and testified in substance as follows: CRUMBACH had only been in

Nonterhausen eleven days ~~at the time of the~~ incident (R 139). He was returning from the factory where he worked and saw a large crowd gathered around the flyer but walked on past to his home and did not take part in or witness the incident (R 137, 138). CRUMBACH testified that he did not know and had never heard of Franz NOTZEN, who in a pre-trial statement (Pros, Ex. 3) gave the only testimony against CRUMBACH (R 140).

The other 6 defendants did not testify in their own behalf but after the findings of the court were announced Defense Counsel requested permission to question the defendants in an effort to introduce evidence of extenuating circumstances. Accused RUBSAKEN stated that he did not go out on that particular day to kill the flyer and that he was sorry he was swayed by the crowd to commit the act (R 185). Accused BAESSE stated that he tried to push the flyer out of the crowd with his foot and when he failed rushed into the crowd and tried to push them backwards. (R 187). Accused SCHRADER stated that he was walking by the flyer when he was suddenly hit on his left side, that he assumed that the flyer had hit him and that in his excitement he slapped the flyer in the face twice. He stated that if he had seen the shooting he would have tried to prevent it (R 189). Accused WHELEN testified that he was very excited and that when passing by he gave the flyer a light blow from behind on the shoulder (R 191). Accused BECK stated that he protected the flyer (R 193). Accused WINKLER did not make a statement (R 186).

COMMENTS

There was sufficient evidence before the court to establish beyond reasonable doubt that the six accused were guilty of the charges and particulars in accordance with the findings of the court.

The court was presented with compelling evidence in connection with the exact extent of participation of each defendant in the assault on the flyer and the killing of the flyer. The only evidence before the court against Jacob CRUMBACH was contained in a statement written by one Franz NOTZEN and the court was justified in not giving full

credence to this statement and in accuitting accused CRUMBACH.

Defense Counsel objected strenuously to the introduction of the several pre-trial statements, i.e., extrajudicial sworn testimony, introduced by Frosecution. It is well-settled in war crimes cases that such testimony taken by War Crimes Investigating Teams is admissible.

The argument was presented by Defense Counsel that the Court was not properly constituted by reason of the fact that the members of the court had not been sworn (R 162, 195). It is stated in the "Manual for Trial of War Crimes and Related Cases," Section 501, page 402, "No member of the court or of the prosecution is sworn".

After the Frosecution rested Defense Counsel made a motion for finding of not guilty of all defendants of the particulars of the first charge and a motion for finding of not guilty of BECK and CRUMBACH of the particulars of the second charge. These motions were denied (R 125, 126, 127). Then a motion was made for a finding of not guilty of the first charge and particulars on behalf of all of the accused except Paul RUESAMEN and this motion was likewise overruled (R 129, 130). The evidence presented by the Frosecution prior to the time the Frosecution rested was sufficient to establish a prima facie case that an American flyer had been assaulted and killed and that the 7 defendants participated in the incident as charged.

When the Frosecution rested the statement was made that the Frosecution had numerous statements of the accused in the file but felt that such statements should not be introduced until the accused had an opportunity to take the stand and testify and announced an intention to re-open the case and introduce the statements if the accused failed to take the stand (R 125). Only one of the accused elected to testify and the court over the objection of Defense Counsel allowed the Frosecution to re-open its case and present Exhibits 7 through 14. A strenuous objection was made to the re-opening of the case and the introduction of Frosecution's Exhibits

7 through 14 (R 156 - 160). It was within the province of the court to allow the re-opening of the case by the Prosecution.

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

CLEMENCY

Accompanying the record of trial are three Petitions for Review filed by Defense Counsel Nathan RACHAEL dated 13 September 1946 on behalf of accused WINKLER, SCHRADER and BAESSE and a petition for Review filed by Dr. BURGER, German Defense Counsel, dated 11 September 1946 on behalf of defendant RUBSAKEN.

Consideration was given to Petitions for Clemency and Certificates of good character from the following:

On behalf of Karl SCHRADER:

Wilhelm Wille, 30 December 1946; Frau Minna Wille, 10 November 1946; Frau Minna Wille, undated; Boettner, 21 September 1946; Frau Gertrud Dunkel, 21 September 1946; Martha Giebbhardt, 15 September 1946; Frau Witwe Elise Gebhardt, 20 September 1946; August Huffeld, 20 September 1946; Wilhelm Raskopf, 21 September 1946; Mrs. Elise BECK, 22 September 1946; Liesel Ruger, 22 September 1946; Elise Raub, 18 September 1946; Heinrich Windemuth, 21 September 1946; A. Windemuth, 21 July 1946; Hessian copper-slate mining Co. Ltd., 2 signatures (illegible), 23 September 1946; Heinrich Heckroth, 20 September 1946; Elsa Mangold, 20 September 1946; Konrad Mangold, 20 September 1946; Karl Mangold, undated; Wilhelm Schmidt, 22 September 1946; Ernst Schmauch, 22 September 1946; Anna Voekenberg, undated; Jakob Knoth, 20 September 1946; Charlotte Gerlach, 22 September 1946; Heinrich Mangold, 20 September 1946; H. Landemann, 21 September 1946; Ernst Landemann, 20 September 1946; Ernst Lengemann, 20 September 1946; Johannes Krause, 22 September 1946; Georg Roll, 20 Sept-

tember 1946; Wilhelm Kolditz, 22 September 1946; Frau M. Schrader, 14 September 1946; Frau M Schrader, 8 September 1946; Gerlach, 7 September 1946; Certificate of Lutheran Church office, signature illegible, 7 September 1946; Dr. Heinrich Gunther, 8 September 1946; an official of the Office of the Vital Statistics, signature illegible, 9 September 1946, Georg Hilmes II, 9 September 1946; Karl Krah, 9 November 1946; Mrs. Elsie Beck, 10 September 1946; Widow Luise Vorge, 8 September 1946.

On behalf of Jacob EHLEN:

Franz Faupel, 17 September 1946; declaration, 7 signatures (illegible), 15 September 1946; Faupel, 14 September 1946; Franz Faupel, 5 December 1946.

On behalf of Reinhard BECK:

Gerlach, 13 September 1946.

None of the Petitions for Review, Petitions for Clemency, or certificates disclose any grounds for not approving the findings and sentences of the court, or present any grounds for granting recommendations for clemency.

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

RECOMMENDATIONS:

- a. It is recommended that the sentences be approved.
- b. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ Nora G. Springfield
/t/ NORA G. SPRINGFIELD,
1st Lt WAC
Post Trial Section

Having examined the record of trial, I concur.

/s/ C. F. Straight
/t/ C. F. STRAIGHT,
Colonel, JAGC
Deputy Judge Advocate
for War Crimes