

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

8 December 1947

UNITED STATES)
))
) v.)
Kurt GROSS, et al.)

Case No. 12-43

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 26 September - 8 October 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Kurt GROSS, Adolf MATTES, Eduard MACK, Rudolf SPLETZER, and Thomas ASCHNER, German nationals, did, at or near RADOLZFELL, Germany, on or about 20 July 1944, wrongfully encourage, aid, abet and participate in the killing of two members of the United States Army who were then and there unarmed and surrendered prisoners of war in the custody of the then German Reich.

The Charge Sheet was amended during the trial to show Christian name of SPLETZER as Rudolf instead of George (R 5).

III. SUMMARY OF EVIDENCE: Following a bombing attack upon Friedrichshafen, Germany, on 20 July 1944, two American flyers parachuted in the vicinity of Oehningen, near Radolfzell, Germany, both being apprehended. Pursuant to an order issued by the accused GROSS and transmitted through the accused MACK, the accused SPLETZER and MATTES shot and killed two flyers. The accused ASCHNER served as driver of the truck used to pick up the flyers.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Kurt GROSS

Nationality:	Austrian
Age:	35
Civilian Status:	Attorney
Party Status:	Member Nazi Party

Military Status:	SS Major
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: On the day of the alleged offense, 20 July 1944, the accused, an SS major, was the acting Commanding Officer of a noncommissioned officers school at Radolfzell, Germany, and had appointed accused MACK as acting adjutant (R 258, 259). . . While the accused was at Wellmattingen on a field exercise with most of the students, he was advised by a motorcycle messenger that two flyers had been captured (R 261). In his extrajudicial sworn statement accused MACK stated that the accused sent him a written message directing that accused MATTES pick up the flyers, who were to be "shot when escaping;" (R 33; P-Ex 13A, p. 2). MACK in turn transmitted the order to MATTES and directed accused SPLETZER to accompany him (R 30, 33; P-Exs 12A p.1, 13A p.3). The accused testified that after the double killing he formally commended MATTES and SPLETZER upon their work by an entry in the daily bulletin (R 281). Traub testified that a few days after the incident he heard the accused tell accused MATTES that he had done very well to shoot the two American flyers (R 65, 66, 602, 603). The accused in his extrajudicial sworn statement stated that he saw the two dead bodies in a truck, ordered their burial, and that he was responsible for the sign placed over the grave reading "Air Gangsters".(R 16, 18; P-Exs 10A, 11A pp 1, 2). The burial took place the night of 20-21 July 1944 (R 79, 80). Althammer testified that the accused ordered a placard placed over the graves of the two flyers reading, in effect, "Here rests the two American Gangsters or Flyers" (R 44). The witness also testified that the accused, after he had appeared for interrogation, asked him to realize the difficult position of the accused and to try to remember that someone else had given the order (R 611). The accused on direct examination admitted that he may have sent MACK a message when advised the flyers had been captured (R 265), and that he knew about the Goebbels' editorial (R 301, 332). On cross-examination

the accused admitted that on the day the flyers were killed he had considered the bombing of Friedrichshafen and the killing of women and children (R 341). The names of the flyers were on their dog tags and may have been Newhouse and Hamlin (R 16; P-Ex 10). Niedermann testified that after the burial the bodies remained in the grave until the occupation troops arrived. Later exhumation of the bodies was ordered (R 81).

Evidence for Defense: The accused testified that he had been advised by messenger that two flyers had been captured; and that he was later notified in the same manner that they had been shot, while attempting to escape (R 261, 262). The bodies were brought to Wollmattingen where he saw the two dead flyers (R 263). He also testified that, because of the attempt on Hitler's life, the school had been alerted for a move on three hours' notice, and he therefore ordered the burial to be conducted at night (R 264). He could not recall sending a message to MACK after he had been advised of the capture (R 265, 328), nor could he recall ordering the defamatory placard placed on the grave (R 266) and blamed his defective memory on a head injury (R 265). The accused testified he had conducted an inquiry into the incident and had determined that the flyers had been shot attempting to escape (R 279, 280). He never interrogated accused ASCHNER or Paminger (R 320), the tech sergeant who had accompanied SPLETZER and MATTES (R 175). He could not remember questioning MATTES about the seating arrangements in the truck (R 282). The accused knew about the Goebbels' editorial, but did not instruct his men thereon (R 303) and referred to paragraph 47 of the German military court-martial regulations forbidding soldiers to obey unlawful orders (R 288). The accused admitted that MACK was his junior and could not issue major orders without his permission (R 317), and that MACK would not have ordered the flyers picked up without the accused's authorization (R 318). The accused also testified to having had ample opportunity to discuss the case with SPLETZER (R 305), Althammer (R 306), MATTES and MACK (R 311), and that he did discuss the case with Althammer (R 306) and with MATTES at the hospital (R 313). However he never discussed it with SPLETZER during the time interval between the latter's two statements (R 301).

He denied having complimented MATTES at the officers' buffet (R 285).

Sufficiency of Evidence: It is clear that the accused directed his subordinates to kill the two flyers. Austria was a cobelligerent of Germany.

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.

2. Adolf MATTES

Nationality:	German
Age:	35
Civilian Status:	Plumber
Party Status:	None
Military Status:	SS 1st Lieutenant
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused, an SS first lieutenant (R 6), reported to accused MACK's office pursuant to a telephone call, where he was told to pick up two flyers at Oehningen and Wangen, respectively (R 33, P-Ex 13; R 441). Accused SPLETZER in his extrajudicial sworn statement stated that by accused MACK's instructions these flyers were not to arrive whole in Radolfzell (R 30; P-Ex 12A p. 1). The accused was accompanied by accused SPLETZER and by Paminger (R 175). Accused ASCHENER drove the truck, a wood-burning vehicle (R 16, 18; P-Exs 10, 11; R 444-446). Both flyers were picked up and the truck was driven to a woods at a point between Gundholzen and Itznang, on the way back to Radolfzell (R 447, 452, 458). Accused SPLETZER in his extrajudicial sworn statement stated that the accused gave an order to get the pistols ready, having previously told the guards to be prepared, and that the accused then fired at the two prisoners, hitting both of them (R 30, P-Ex 12A, p. 1). In

two extrajudicial sworn statements accused GROSS stated that in his investigation made the day after the killings the accused admitted that he, together with accused SPLETZER, shot the flyers (R 16, 18; P-Exs 10A, 11A p. 2). After a brief examination of the bodies by the accused, which disclosed no signs of life (R 458, 459), the accused, the two guards and ASCHNER drove to the dispensary at Radolfzell, with the two bodies in the truck (R 460). One flyer had a bullet wound in the back of the head; the other had a bullet wound in the left back (R 531). The German doctor at Radolfzell informed the accused that the two flyers were dead (R 462, 531). ASCHNER in his extrajudicial sworn statement stated that the flyers were in American uniforms (R 40; P-Ex 15 p. 9). The accused admitted in Court that he had received a commendation from accused GROSS for the shooting and further admitted that he had previously made false statements in his extrajudicial sworn statement of 1 July 1947. The accused also testified in an equivocal fashion that he had - and had not - ordered the flyers to sit on the rear seat and that he had - and had not - discussed the case with GROSS (R 499-505).

Evidence for Defense: The accused testified that 15 minutes after he received an order from accused MACK to pick up two flyers he was joined by SPLETZER who had been assigned by MACK to assist him (R 443). The accused further testified that he sat in the front seat next to the driver while SPLETZER and Sergeant Paminger sat in the back of the driver's cab (R 445); that at Oehningen, the accused and the guards picked up one flyer who was placed on the truck, together with his effects (R 448) which included a small map (R 451); that thereafter the accused remained in the back of the truck until it reached Wangen, where the other flyer was picked up (R 450); that then both flyers sat in the rear of the truck, backs toward the guards (R 449-452); that at Wangen the accused resumed his seat next to the driver after having placed the effects of the flyers at the feet of the two guards (R 453). The accused further testified that at the woods between Gundholzen and Itznang he heard shouting from the rear of the vehicle, ordered the driver to stop, and jumped out; that he saw

SPLETZER standing at the rear of the truck, pistol in hand, and was told by SPLETZER that he had shot at the prisoners because they had tried to escape (R 458). The accused testified that he then saw one flyer 15 meters behind the truck and the other 25 meters behind (R 458, -59), and said that after determining that neither one showed any signs of life, he loaded the bodies on the truck and returned to the school, stopping at the dispensary (R 460). He typed a report to GROSS and verified that the flyers were dead (R 460,461); then had the bodies loaded on to another truck driven by the witness Althammer and sent to Wollmattingen (R 463). The accused admitted that the standard operating procedure concerning captured flyers was known to all, namely, that they were to be delivered to the regiment in Constance (R 470, 471). He also admitted in his testimony that he could not recall MACK saying anything about the use of weapons at the time the order was transmitted (R 484), nor whether he had let the guards see the flyer's map (R 499). The accused also testified that the extrajudicial sworn statements by GROSS and SPLETZER were untrue; that he himself had never fired (R 510-514); and that, although he had received a commendation from GROSS in the daily bulletin (R 499, 500), the testimony of Traub concerning GROSS' oral compliment in the officers' buffet was untrue. He also testified that D-Ex 3, the sketch of the officers' buffet was inaccurate and that he did not believe Traub could have overheard the remark allegedly made by GROSS (R 523-525). The accused admitted that prior to giving the statement of 7 August 1946 at Baden Baden he was not mistreated by the American investigator (R 506).

Accused SPLETZER testified that the accused did not shoot and did not give any preparatory orders (R 194-197).

Sufficiency of Evidence: The Court might well have concluded from the evidence that the accused, as the senior officer in charge of the detail, was responsible for all that occurred during the trip; that the killings were deliberately executed at the direction of the accused; and that the accused participated in the actual shootings.

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.

3. Eduard MACK

Nationality:	German
Age:	41
Civilian Status:	Businessman
Party Status:	Member Nazi Party
Military Status:	SS 2d Lt.
Plea:	NG
Findings:	G
Sentence:	5 years, commencing 18 May 1945.

Evidence for Prosecution: The accused, an SS 2d Lieutenant (R 7), was appointed acting adjutant of the noncommissioned officers school at Radolfzell at 1000 hours on the day of the killings, which occurred at about 1300 hours (R 362). In his extrajudicial sworn statement the accused stated that on 20 July 1944 he advised GROSS, his Commanding Officer, by messenger that two flyers had been apprehended and that in reply he received a written order directing that the flyers were to be picked up and shot when "escaping"; that he then relayed the order to MATTES (R 33, P-Ex 13). SPLETZER in his extrajudicial sworn statement stated that he also received the order from the accused and was ordered to assist MATTES (R 30, P-Ex 12). The accused testified that in June 1947 he was confronted with SPLETZER during an interrogation and that when SPLETZER was asked what the accused had said in connection with the order, SPLETZER replied that he understood that the flyers were not to be brought back alive (R 373, 374). The accused at the trial could not recall whether he had relayed the order to MATTES word for word (R 367, 402, 403), even though he had so stated in his extrajudicial sworn statement. However, he testified that to the best of his memory the contents of his statement were true (R 33, 404; P-Ex 13). He admitted that he may have told SPLETZER to be careful (R 370). When the accused was informed by SPLETZER that the flyers had been shot, he did not inquire who had done the shooting (R 380, 433).

Evidence for Defense: The accused testified that he became acting adjutant only a few hours before the incident (R 362); that he had had no prior orientation (R 363); and that in the early afternoon he was advised that two flyers would have to be picked up, and since he could not act without orders, he sent a messenger to GROSS, who was then directing field exercises at Wollmattingen (R 364). He further testified that he received a return message from GROSS ordering that the flyers be picked up, but could not recall the exact wording in so far as shooting during an escape was concerned. He understood the order to mean that weapons were to be used only if an escape attempt were made (R 365). The order did not specify the place to which the flyers should be brought (R 388). The accused further testified that he first told MATTES to pick up the flyers and bring them to Radolfzell (R 365, 388) and that he then sent for SPLETZER and told him to accompany MATTES (R 367). The accused at that time was not familiar with the standard operating procedure requiring captured flyers to be brought to Constance (R 388). The accused denied saying that the flyers should not be brought to Radolfzell alive (R 423). He did not recall having been in the corridor of the officers' buffet on the occasion described by the witness Traub (R 375). He never heard any talk about GROSS' commendation to MATTES and SPLETZER (R 380). Upon GROSS' orders he arranged for the burial of the flyers at night because of the alert resulting from the attempt on Hitler's life (R 383, 384). After the incident the accused learned for the first time that orders in effect prior to 20 July 1944 were for captured flyers to be turned over to Constance (R 394). The accused further testified that he saw GROSS after coming to Dachau but never discussed the case with him (R 397) or any of the other accused, although the opportunity existed (R 398, 399).

Accused SPLETZER testified that the statements contained in his extrajudicial sworn statement to the effect that the accused had told him that the flyers "***are not supposed to arrive whole ***" are not true, and that the accused did not say anything to that effect (R 194).

Sufficiency of Evidence: It is clear that the accused received and

relayed the order to pick up and shoot the two flyers. It is evident that the Court fully considered all such mitigating circumstances in imposing the sentence.

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.

4. Rudolf SPLETZER

Nationality:	German
Age:	34
Civilian Status:	Carpenter
Party Status:	None
Military Status:	SS Master Sergeant
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused, an SS master sergeant (R 8), reported to accused MACK at the adjutant's office where he was assigned to assist accused MATTES. The accused stated in his extrajudicial sworn statement of 1 August 1946 that he was informed by MACK that the flyers were not supposed to arrive in Radolfzell alive (R 30; P-Ex 12). After picking up one flyer at Oehningen and one at Wangen, the truck continued on its way back to Radolfzell (R 30, P-Ex 12; R 448-450). The accused and Paminger sat in the back with the two flyers (R 175). The accused stated that MATTES sat in the back with them (R 30; P-Ex 12). Accused GROSS in his extrajudicial sworn statement, stated that MATTES informed him that he and SPLETZER both participated in shooting the two flyers during an alleged escape attempt (R 16; P-Ex 10A). The accused testified that he definitely had shot at one of the flyers and that he saw this flyer lying on the right side of the road 25 to 30 meters from the truck and one to two meters from the edge of the road (R 182, 183); and that

both flyers may have been struck down by the shots that he fired (R 185). The accused admitted in Court that the contents in his statement of 1 August 1946 (R 30; P-Ex 12), to the effect that he had not done any shooting, were false (A 197). The accused also admitted that a statement that he gave to Mr. Rothschild was obtained without suggestion, influence, or duress (R 203), but that nevertheless he had falsely denied therein being interrogated by GROSS (R 206). His admission to Rothschild that he had been told to bring the flyers back to the caserne under any and all circumstances, dead or alive, was false (R 212, 213), although he also testified that the statement he gave Mr. Rothschild was true (R 201). The accused admitted that when he was confronted with MACK by Rothschild he stated he had understood by MACK's order that the flyers were not to return alive. The accused also admitted that when he was interrogated by Captain Meyer he told the same untruth about the orders, but he told this unintentionally (R 213-216). (See also R 373, 374). He admitted that his assertion that accused ASCHNER was present when the orders were given, as contained in his extrajudicial sworn statement given to Mr. May (R 30, P-Ex 12) was false and that he had made said assertion in order to push the guilt away from himself (R 216, 217); that the reason he told an untruth to Mr. May was to get his peace and not be bothered any more, although Mr. May was not abusing him in any way (R 221). When the accused gave his extrajudicial sworn statement to Mr. May at Neuengamme, he showed no signs of beating (R 148, 149). He never told May, who also appeared as a witness, that he had been threatened (R 150) nor did he complain of any pain (R 151). He was interviewed in his own language and made changes in his own handwriting (R 152). The witness Parks testified that he had communicated with the hospital at Neuengamme through a war crimes detachment located in the British Zone, and had ascertained that the reason for the accused's admission to the hospital was the fact that he was suffering from sciatica and that no record showed that the accused had been admitted to any hospital or received medical treatment for any other cause (R 620). The accused admitted that he had previously put the blame

on MATTES because he had thought MATTES was dead (R 224) and that when he was interrogated by Mr. May his memory was not so good (R 210). He further testified that MATTES did not shoot, and did not give any preparatory orders; he said that his own prior denial of participation in the shooting was false (R 194-197).

Evidence for Defense: The accused testified that he had been told by accused MACK to pick up two flyers at Oehningen and Wangen, respectively (R 173). The accused, MATTES, and Paminger sat in the truck which contained sacks filled with wood (R 175). After picking up one flyer at Oehningen (R 176), they all remained in the back of the truck until it reached Wangen where the second flyer was picked up and placed next to the first, with MATTES thereafter sitting in the front seat next to the driver (R 178). As the flyers sat in the rear seat, backs to the guards, SPLETZER watched Paminger slit open with his knife a "Mae West" belonging to one of the flyers (R 179). Suddenly he heard Paminger shout "Stop". He looked up and saw the upper half of one flyer hanging over the side boards of the truck. The other was not visible. Thereupon, he pulled his pistol and shot and then ran from the rear bench to the front of the truck (R 181, 182, 590, 597). The accused further testified that he then jumped out and ran to the flyer he had shot (R 183) and saw him lying in the road, with Paminger standing near the second flyer (R 184). The accused noticed that the one he had shot was bleeding from the head. MATTES then came over, reprimanded the two guards, then helped carry the bodies to the truck (R 185). He had not heard of any order concerning captured flyers (R 239). The accused further testified that from the time he heard the cry of "Halt" until he finished shooting, he had moved from behind the driver to the second bench of the truck and he thought that the cry "Halt" should have been heard by those in the cab (R 598). The accused was beaten by British interrogators before he was interviewed by Mr. May. He was placed in the hospital as a result of these severe beatings and was still afraid when Mr. May questioned him (R 110-117).

Sufficiency of Evidence: The Court might well have concluded from

the evidence that the accused did receive the order from MACK; that this order was repeated by MATTES; and that the accused, acting alone or in concert with MATTES and Paminger, shot the flyers without excuse. Although a superior was present, it does not appear that the accused unwillingly participated or that he acted under immediate compulsion to any substantial degree. The Court gave ample consideration to any element of superior orders which may have been present.

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.

5. Thomas ASCHNER

Nationality:	Austrian
Age:	36
Civilian Status:	Farmer
Party Status:	Member Nazi Party
Military Status:	SS Corporal
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 26 June 1945

Evidence for Prosecution: The accused, an SS corporal employed as a truck driver for the school at Radolfzell (R 543-544), went to the school sometime between 1300 and 1400 hours on the day of the killings to get wood for his vehicle (R 544), and was told to report to accused MACK for a trip to Oehningen (R 545). Accused SPLETZER in his extrajudicial sworn statement stated that the accused drove first to a town to pick up one flyer and then to a nearby town for another; that before they drove off, accused MATTES told them in the presence of the accused to be prepared and he assumed that the accused as driver was also informed as to the purpose of the trip (R 30; P-Ex 12A, p. 1). But at the trial, SPLETZER testified that his statement in regard to the accused being present was false (R 217). In his own extrajudicial sworn statement the accused stated

that the flyers were in American uniforms (R 40; P-Ex 15A).

Evidence for Defense: The accused testified that after he drove away from Oehningen he was under the impression that both flyers had been picked up (R 551). At MATTES' order he then drove on to Wangen with accused MATTES sitting beside him in the driver's cab. At Wangen he was told to stop, and 20 minutes later he was told by MATTES, who had rejoined him in the driver's cab, to proceed (R 552). After driving 15 or 20 miles along the main road to Radolfzell, he heard four or five shots and immediately pulled the truck over to the right side of the road. Accused MATTES simultaneously called out "Stop" (R 553, 554). The accused remained in the truck, not daring to leave it because of its defective hand brake. He then opened the driver's door on the left and saw the figure of a person on the ground about 25 meters back of the truck on the left side of the road (R 557). The accused did not notice the other flyer nor did he see either body loaded on the truck (R 561). After five to eight minutes they continued on the way to Radolfzell, MATTES remarking that those two flyers had tried to escape (R 561, 562). At the school dispensary the accused saw the bodies lying in about the middle of the truck covered with sacks (R 563). The accused also testified that he was not armed during the trip (R 40; P-Ex 15, p. 4), and that he was never interrogated by any of his superiors concerning this incident (R 566).

Sufficiency of Evidence: The only evidence against the accused is contained in an extrajudicial sworn statement by SPLETZER (R 30; P-Ex 12a) wherein the latter presumed that the accused knew the plan as he heard MATTES' order to get ready. SPLETZER subsequently repudiated this statement during his testimony at the trial. There is no evidence to corroborate SPLETZER's original statement. Austria was a cobelligerent of Germany. The findings of guilty are not warranted by the evidence.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be disapproved.

V. QUESTIONS OF LAW:

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

Evidence: a. The defense by motion requested that the prosecution be required to produce two statements made by accused SPLETZER and in possession of the prosecution. The prosecution opposed the motion on the ground it was not required to produce any self-serving declarations made by the accused. This defense motion was properly denied (R 188-192). Section 551 of "Evidence from American Jurisprudence" lays down the principle involved as follows: "The fact that declarations made by the accused were self-serving does not preclude their introduction in evidence as a part of his whole statement if they are relevant to statements introduced by the State and were made on the same occasion as the statements introduced by the State." It is stated in Underhill on Criminal Evidence, Section 255: "The statements or declarations of the accused in his own favor which are independent of the res gestae of the crime and which are simply narrative in their character are not relevant as a part of his defense. The theory back of this rule is that such evidence is not rejected because it may not aid in finding the truth but because in the majority of instances it is false and misleading, and a person charged with a crime cannot make evidence for himself". (See Hermann vs. United States 48 Fed (2d) 479; Busch vs. United States 52 Fed (2d) 79; Carle vs. People 200 Ill 494; Commonwealth vs. Baldi 250 Mass 528; People vs. Raizen 208 NYS 185). It seems clear, therefore, that since these statements were of a self-serving nature and taken on a different occasion, the prosecution could not logically be compelled to produce them for the benefit of the accused.

b. The defense called as a witness Fred D. Rothschild, a U.S. civilian investigator, and attempted to question him as to informational matters elicited from the accused SPLETZER in an extrajudicial sworn statement taken in June 1947 at Dachau, Germany (R 241-243). Upon objection by the prosecution that such material was confidential, the defense was prohibited from continuing its inquiry along these lines. The witness testified that so far as he knew the classification of the material in question

had never been downgraded and remained confidential (R 244). The Court ruled finally that the witness might testify to circumstances surrounding the interrogation, e.g., the manner in which it was conducted and on points leading up to the interrogation (R 247, 248). This ruling did not result in an injustice to the accused. The Court went out of its way to grant the accused an opportunity to question the investigator as to the manner of taking a statement, which was never used against the accused.

c. Defense Counsel moved to strike from the record an extrajudicial sworn statement by the accused SPLETZER admitted in evidence as P-Ex 12, on the ground that SPLETZER was under severe duress, fraud, and undue influence when he made this statement (R 627). This motion was properly denied, there being not the faintest suspicion that the American investigator who obtained the statement exerted any kind of influence whatever.

Absence of Accused During Trial: On 8 October 1947 defense counsel objected to the resumption of the trial without the presence of the accused GROSS, who was at that time sick in hospital (R 582). The Court pointed out that the time set for reconvening was actually 10 minutes later than that previously requested by defense counsel and directed him to proceed. In a few minutes, during which relatively unimportant questions were asked of the accused SPLETZER, accused GROSS appeared in Court (R 584). The Court's action was proper and no injustice resulted to the accused.

Procedure During Sentencing: When the accused came up for sentence, the Court of its own motion adopted a rule of excluding all accused from the court room, and called each accused in separately to receive sentence. Defense counsel protested vigorously that the rights of the various accused were imperiled since they were entitled to be present throughout the entire trial. The point involved is purely technical. Suffice it to say that findings had been made and evidence in mitigation received. No injustice resulted to the accused and no advantage could possibly have flown from each being present while others were sentenced.

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

VI. CONCLUSIONS:

1. It is recommended that the findings and sentences be approved, but that the findings and the sentence as to the accused ASCHNER be disapproved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto should it meet with approval.

HERMAN PLATT
Attorney
Post Trial Branch

Having examined the record of trial, I concur, this _____

day of _____ 1948.

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

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. **12-43**
Strafsache Nr.

Order No.
Verfügung Nr.

Whereas one

Thomas ASCHNER

Name of Accused

was convicted of the offence of **participation in killing surrendered prisoners of war**

wegen der folgenden strafbaren Handlung **Teilnahme an der Tötung von Kriegsgefangenen die sich ergeben hatten**

by the **General** Military Court

vom **Oberem** Militärgerichte at **Dachau, Germany**

and sentenced to **imprisonment for three years, commencing 26 June 1945**
schuldig erkannt und zu **drei Jahren Gefaengnis verurteilt mit Wirkung ab 26 Juni 1945**

by Judgment dated the **9 October 1947**
durch Urteil vom **9 Oktober 1947**

Date

194 and

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach ersprechendem Studium des Sachverhalts und in Ausübung der
upon me, I hereby order:
mir übertragenen Befugnisse verfüge:

That the findings and sentence are disapproved. The Commanding General, First Military District, will release Thomas ASCHNER from confinement in War Criminal Prison No. 1, Landsberg, Germany.

Dass der Befund und das Urteil nicht bestaetigt werden. Der Kommandierende General, vom Militaerbezirk I, wird Thomas ASCHNER aus der Haft im Kriegsverbrechergefaengnis Nr. 1, Landsberg, Deutschland, entlassen.

Dated this
Gegeben am

Signature of Reviewing Authority

J. L. HARBAUGH, JR.
Colonel **JAGD**
Judge Advocate

1232 OMGB Printshop

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-43
Strafsache Nr.

Order No.
Verfügung Nr.

Whereas one **Kurt GROSS**

Name of Accused: *Prisoner of War / Kriegsgefangener*

was convicted of the offence of **participation in killing surrendered prisoners of war**
wegen der folgenden strafbaren Handlung **Teilnahme an der Tötung von Kriegsgefangenen, die sich ergeben hatten**

by the **General** Military Court

vom **Oberen** at **Dachau, Germany**
Militärgerichte in **Dachau, Deutschland**

Address of Court: *Anschrift des Gerichts*

and sentenced to **imprisonment for life**
schuldig erkannt und zu **lebenslänglicher Gefängnisstrafe verurteilt**

by Judgment dated the **9 October 1947**
durch Urteil vom **9 Oktober 1947**

Date: 1947 and

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der

upon me, I hereby order:
mir übertragenen Befugnisse verfüge ich

That the findings and sentence are approved. The Commanding General, First Military District, will confine Kurt GROSS in War Criminal Prison No. 1, Landsberg, Germany, for the duration of his life.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die lebenslänglicher Inhaftierung von Kurt GROSS in Kriegsverbrechergesängnis Nr. 1, Landsberg, Deutschland, veranlassen.

X

Dated this 23 Mar. 1948
Gegeben am

J. L. Harbaugh, Jr.
Signature of Reviewing Authority *Unterschrift der nachprüfenden Behörde*

J. L. HARBAUGH, JR.
Colonel Title: **JAGD**
Judge Advocate

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. **12-43**
 Strafbache Nr.

Order No.
 Verfügung Nr.

Whereas one

Eduard MACK

Name of Accused / Name des/der Angeklagten

was convicted of the offence of

wegen der folgenden Straftaten Handlung

participation in killing surrendered prisoners of war
Teilnahme an der Tötung von Kriegsgefangenen, die sich ergeben hatten

by the

General

Military Court

at **Dachau, Germany**

vom

Oberen

Militärgerichte

in **Dachau, Deutschland**

and sentenced to

schuldig erkannt und zu

imprisonment for five years, commencing 18 May 1945
fünf Jahren Gefängnis verurteilt mit Wirkung ab 18 Mai 1945

by Judgment dated the
 durch Urteil vom

9 October 1947
9 Oktober 1947

Date

194 and

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
 Diese Strafbache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes, und in Ausübung der mir übertragenen Befugnisse verfüge ich

That the findings and sentence are approved. The Commanding General, First Military District, will confine Eduard MACK in War Criminal Prison No. 1, Landsberg, Germany, for a period of five years, commencing 18 May 1945.

Dass der Befund und das Urteil bestaetigt werden. Der Kommandierende General, vom Militaerbesirk I, wird die Inhaftierung von Eduard MACK im Kriegsverbrechergefaengnis Nr. 1, Landsberg, Deutschland, fuer die Dauer von faenf Jahren, mit Wirkung 18 Mai 1945, veranlassen.

Dated this
 Gegeben am

23 March 1948

J. L. Harbaugh, Jr.

Signature of Reviewing Authority / Unterschrift der nachprüfenden Behörde

J. L. HARBAUGH, JR.

Colonel Title Titel **JAGD**

Judge Advocate

1232 OMGB Printshop



MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No.
Strafsache Nr. **12-43**

Order No.
Verfügung Nr.

Whereas one

Adolf MATTES
Name of Accused / Name des/der Angeklagten

was convicted of the offence of **participation in killing surrendered prisoners of war**
 wegen der folgenden strafbaren Handlung **Teilnahme an der Tötung von Kriegsgefangenen, die sich ergeben hatten**

by the **General** Military Court
 vom **Oberen** Militärgerichte in **Dachau, Germany**
Dachau, Deutschland
Address of Court / Anschrift des Gerichts

and sentenced to **imprisonment for life**
 schuldig erkannt und zu **lebenslänglicher Gefaengnisstrafe verurteilt**

by Judgment dated the **9 October 1947** 103 and
 durch Urteil vom **9 Oktober 1947** Date / Datum

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred
 Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der
 upon me, I hereby order:
 mir übertragenen Befugnisse verfüge ich

That the findings and sentence are approved. The Commanding General, First Military District, will confine Adolf MATTES in War Criminal Prison No. 1, Landsberg, Germany, for the duration of his life.

Dass der Befund und das Urteil bestaetigt werden. Der Kommandierende General, vom Militaerbezirk I, wird die lebenslaenglicher Inhaftierung von Adolf MATTES im Kriegsverbrechergefaengnis Nr. 1, Landsberg, Deutschland, veranlassen.

Dated this
Gegeben am

23 Mar 1948

J. L. Harbaugh, Jr.
Signature of Reviewing Authority / Unterschrift des überprüfenden Behörden

J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
1232 OMGB Printshop

MILITARY GOVERNMENT COURT
MILITARGERICHT

Order on Review
Verfügung nach Überprüfung

Case No.
Führer Nr. 12-43

Order No.
Verfügung Nr.

Whereas one

Rudolf SPLETZER

Name of Accused

was convicted of the offence of **participation in killing surrendered prisoners of war**
wegen der Teilnahme an der Tötung von Kriegsgefangenen, die sich ergeben hatten

by the **General** Military Court

at **Dachau, Germany**
in **Dachau, Deutschland**

and sentenced to **imprisonment for life**
lebenslänglicher Gefängnisstrafe verurteilt

by Judgment dated the **9 October 1947**
am 9 Oktober 1947

Date 194 and

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Sache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine Rudolf SPLETZER in War Criminal Prison No. 1, Landsberg, Germany, for the duration of his life.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die lebenslänglicher Inhaftierung von Rudolf SPLETZER in Kriegsvorberechergefängnis Nr. 1, Landsberg, Deutschland, veranlassen.

Dated this
Gegeben am

23 Mar 1948



Signature of Reviewing Authority (Unterschrift der überprüfenden Behörde)

J. L. HARBAUGH, JR.
Colonel Title: **JAGD**
Judge Advocate

1232 OMGB Printshop

23 March 1948

MEMORANDUM FOR: Colonel Harbaugh

SUBJECT : US vs Kurt Gross, et al
(Case No. 12-43)

1. An examination of the record of trial in the subject case reveals the following data:
 - a. A copy of the charges was served on the accused on 7 July 1947.
 - b. The case was referred for trial on 26 September 1947.
 - c. The personnel of the prosecution and the defense were appointed on 15 July 1947.
 - d. Trial was had on 26 September 1947.

2. I concur with the recommendations of War Crimes Board of Review No. 2 and the Deputy Judge Advocate for War Crimes that the sentence of the accused Adolf MATTES and Rudolph SPLETZER be approved and that the sentence as to the accused Thomas ASCHNER be disapproved.

As to the accused Kurt GROSS I concur with the majority opinion of War Crimes Board of Review No. 2 and the Deputy Judge Advocate for War Crimes that the sentence be approved.

As to the accused Eduard MACK I recommend that the findings be approved but that the sentence be reduced to three years. If you concur an amended Legal Form No. 13 will be prepared.

Howard F. Brusee

HOWARD F. BRUSEE

Colonel AGD

Chief, War Crimes Board of Review Branch