

U.S. No. 13.

Trial against

JOSEF HARTGEN.

and

Ten Others.

13

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
WAR CRIMES BRANCH
UNITED STATES FORCES, EUROPEAN THEATER

WCT Report

#(13)

(duplicate)

UNITED STATES

v

Josef Herten, Friedrich Wust,
Margarete Witzler, Katho
Reinhardt, August Wolf, Johannes
Seipel, Heinrich Berthel, Georg
Daum, Johann Oppen, Karl Fug
mann, Philipp Gutlich, all of
whom are German Civilians.

29 September 1945

REVIEW AND RECOMMENDATIONS OF
THE DEPUTY THEATER JUDGE ADVOCATE

Case No. 12-1497

1. TRIAL: Accused were tried at a joint trial at Darmstadt,
Germany, from 25 to 31 July 1945, by a Military Commission ap-
pointed by paragraph 1, Special Orders No. 196, Headquarters,
Seventh U. S. Army, 15 July 1945.

2. FINDINGS: The offense involved was:

CHARGE: Violation of the Laws of War	Pleas (as to each accused)	Findings (as to each accused except Fugmann)
	NG	G

Specification: In that JOSEF HERTGEN, FRIEDRICH
WUST, MARGARETE WITZLER, KATHE REINHARDT, AUGUST
WOLF, JOHANNES SEIPEL, HEINRICH BERTHEL, GEORG
DAUM, JOHANN OPPER, KARL FUGMANN, and PHILIPP
GUTLICH, German civilians, acting jointly, did,
together with other persons whose names are un-
known, at RUSSELSHEIM, Germany, on or about 26
August 1944 wilfully, deliberately and wrong-
fully encourage, aid, abet and participate in the
killing of JOHN N. SEKUL, WILLIAM L. DUMONT,
THOMAS D. WILLIAMS, and ELMORE L. AUSTIN, members
of the United States Army, and two other members
of the United States Army whose names are unknown,
each of whom was then unarmed and a prisoner of
war in the custody of the then German Reich NG G

Accused FUGMANN was found not guilty as to both charge and speci-
fication.

3. SENTENCES:

The Commission sentenced DAUM to confinement at hard labor
for 25 years; BERTHEL, confinement at hard labor for 15 years; WOLF,
confinement at hard labor for 15 years. Said sentences were approved
by the Reviewing Authority. The Commission sentenced Mrs. REINHARDT

and Mrs. WITZLER to be hanged by the neck until dead, which sentences were commuted by the Reviewing Authority to confinement for 30 years. Accused GUTLICH, OPPER, SEIPEL, WUST and HARTGEN, were sentenced by the Commission to be hanged by the neck until dead and such sentences were approved by the Reviewing Authority.

The record of trial has been forwarded to the Commanding General, U. S. Forces, European Theater, for final action as to those cases involving the death penalty as approved by the Reviewing Authority (Letter, Headquarters, U. S. Forces, European Theater, AG 250.4 J/G-MGO, 25 August 1945, subject: "Military Commissions").

4. DATA AS TO ACCUSED: All accused are German civilians. Additional personal data are set forth in paragraph 9 in connection with the discussion of clemency.

5. RECOMMENDATIONS: That the action of the Commission and of the Reviewing Authority, as to those sentences imposing the death penalty, be confirmed.

6. EVIDENCE:

a. On the morning of 26 August 1944, eight unarmed American flyers, prisoners of war, were being escorted through the town of Russelsheim, Germany, by two German soldier guards. The flyers were set upon by a large crowd of German civilians and struck with rocks, clubs, and other objects until they lay bleeding and prostrate upon the ground. Numerous persons, allegedly excited and inflamed by the results of a severe air-raid upon the town during the preceding night, participated in the attacks. At the conclusion of the merciless beatings, four of the victims were shot through the head by the accused HARTGEN (103, 109, 110). Five of the eight victims, including three of the four who were thus shot, had received fractures of the skull sufficient to cause death (143, 144, 145). The eight victims, some of whom were still alive, were then loaded into a farmer's cart and taken to a cemetery near Russelsheim. It has been learned subsequent to the trial that two of the group escaped while the cart was left unattended (see copy of

letter from Sergeants William M. Adams and Sidney E. Brown to Brigadier General Davidson, appended to record of trial). The following day the bodies of the six remaining victims were buried (137). These bodies were exhumed on 28 June 1945 and four of the victims identified by means of identification discs. The causes of death were adequately established by the medical examiner to be, in three instances, both skull fractures and bullet wounds in the skulls; in two instances, skull fractures; and in one instance, a bullet wound in the skull (142, 143, 144, 145) (It is noted, in this connection, that the review of the Staff Judge Advocate, Seventh U. S. Army, hereinafter incorporated in this review by reference, erroneously states that bullet holes were observed in the skulls of only three, instead of four, of the victims.) The following are summaries of the evidence pertaining to the five accused whose records of trial have been forwarded for confirmation. The substance of the unsworn testimony of each accused is contained in a separate paragraph under each summary:

(1.) JOSEF HARTGEN: The accused HARTGEN, a Nazi party official and propaganda chief of Russelsheim, took a leading part in the murders. The testimony establishes that he fired a revolver toward the American soldiers as they were walking (21), and that he beat several of them repeatedly with a stick resembling the handle of a pitchfork or hoe (7), which he wielded with both hands (118). He encouraged the mob to beat the flyers (103, 104) and told one bystander, who protested against the assaults, to keep quiet or the same thing would happen to him (70). At the conclusion of the beatings HARTGEN shot four of the victims as they lay in a heap against a wall (103, 109, 110).

HARTGEN testified that on the morning in question, while riding a bicycle on the streets, he saw a crowd of approximately 200 people approaching. He talked to a German sergeant in charge of the prisoners who told him that he had orders to lead the prisoners through the town (291). HARTGEN hit one of the flyers

in the back with his fist. He then told the sergeant to get the prisoners out of town and explained the route he should follow (291, 292). HARTGEN then left the scene but returned about half an hour later. He observed the flyers being beaten with clubs and other objects (293). He remonstrated with the sergeant and told the women and children in the crowd to leave the street. He saw the flyers being herded along a wall and observed people in the crowd beating them with iron tools (295). HARTGEN, after some of the crowd had left, examined the flyers who were lying against the wall. He determined that they were all dead (295). He straightened out the bodies and observed that the skulls on most of them were beaten apart (296). He obtained a cart, helped load the bodies into it, and ordered it taken to the cemetery (296). HARTGEN fired no shots, nor heard any shots fired (297). He noticed no bullet holes in the victims (305). He did not take any part in the beatings, other than striking the one blow and did not go to the cemetery later on the same day (303).

(2.) FRIEDRICH WUST: The accused WUST, by his own admission, leaned over a wall as the captured flyers passed by, and struck one of the flyers one or two blows with a hammer (Pros. Ex. 4). WUST then went over the wall and forcibly struck the victims with a "piece of wood" or "big stick" (98, 100). According to another eye-witness, WUST was "beating in all directions" with what the witness assumed was a hammer. WUST was later seen by another accused kneeling on the ground and beating the head of a prostrate flyer with a hammer (310, 322, Pros Ex. 6).

WUST testified that he was in his apartment when he heard the shouting and saw a large crowd. He left his apartment, went to the wall and tried unsuccessfully to beat the flyers with a hammer as they walked along on the other side (280, 283). He pushed one flyer in an effort to get him in position so that he could better hit him with the hammer (287). Someone then took the hammer from him and beat with it until the head of the hammer came

off (280). People were shouting "Beat, beat them". MUST went over the wall and saw all the flyers on the ground. He testified that at that time he may have beaten them (281).

(3.) JOHANNES SEIPEL: The accused SEIPEL was seen to kick an injured fireman twice in the throat and chin as the fireman sat on the curb. This injured fireman had a piece of slate or stone protruding from his skull, and his right shoulder and upper right part of his chest were badly injured (76). Shortly after the assault, SEIPEL told one person that he had kicked someone with his feet (49), and told another person that he "also beat at them" (93). He appeared to be "glad" that he had done so (49).

SEIPEL testified that, as he met the crowd, he was struck in the face by a stone and on the head with a "big beam". He was dizzy from the blow on the head and may have kicked at someone in the crowd, but did not think it was a flyer (261). SEIPEL admitted seeing a flyer sitting on the curb, but was unable to state whether or not he had kicked him (261). He denied telling others at the scene that he had kicked and beaten the flyers (262).

(4.) JOHANN OPPER: The accused OPPER, when he saw the crowd approaching, went toward the flyers with a broom held high over his head in position to strike (55, 58), and beat two of the flyers (64). He struck with such force that the head of the broom broke off from the handle (64). Another witness for the prosecution testified that OPPER "participated very little; he just had a little stick and beat only several times" (117). OPPER was observed in the forefront of the crowd, inciting and encouraging others to attack the flyers (104, 105). Later, he boasted of his participation, saying: "We beat them on the head" (78, 79).

OPPER testified that he was sweeping the street in front of his home when he saw a large crowd approaching. He walked toward the crowd, and then, as the flyers and the crowd passed, he went back to his house carrying the broom over his shoulder. He

put the broom down in the yard and then followed the crowd down the street. He saw people beating the flyers but did not participate (253). He did not encourage or incite the crowd or say later that he had participated (255).

(5.) PHILIPP GUTLICH: The accused GUTLICH was seen following the flyers and beating them over their backs with a stick three feet long and two inches in diameter which he wielded with both hands (31, 43, 44). He was shouting "Beat them to pieces" (41, 42). Later, as he returned from the scene, he stopped in front of the window of a spectator and said: "My hands hurt so from the beating". (65)

GUTLICH testified that when he saw the crowd and the foreign visitors he went closer to obtain a better view. He was excited, his home having been damaged in the bombing the night before. One of the flyers made a face at him. Thinking that the flyer was trying to make fun of him, GUTLICH slapped him once with the flat of his hand (247). He did not strike any of the flyers with a club or say "Beat them to pieces" (248).

(6) Further detailed evidence will not be set forth here, but the recapitulation contained in the Review of the Staff Judge Advocate, Seventh U. S. Army, and appended hereto, except as hereinbefore altered, is adopted in its entirety.

7. JURISDICTION:

a. The Military Commission which heard this case was properly constituted and had jurisdiction over the subject matter and of the accused. A military commission has jurisdiction over the inhabitants of an occupied enemy country held by the right of conquest (Par. 7, WD FM 27-10; Coleman v. Tennessee (1878), 97 U.S. 509). Military commissions are not restricted in their jurisdiction by territorial limits (United States v. Hogg, et al (1865), 3 Rebellion Records, Series II, 674, 678; 56 Harv. Law Review, 1859, 1065). Thus an offense against the laws of war committed in a country prior to its occupation may properly be tried by a military

commission of the victorious army upon occupation. (Memorandum
by The Judge Advocate General (SPJGW 1943/17671) subject: Juris-
diction to Punish War Criminals, 13 December 1943; Dig Op. JAG,
1912, p 1067; Trial of Henry Wirz (1868), 40th Cong. 2nd Sess.
House of Representatives, Ex. Doc. No. 23; see also cases cited
on pages 207-216 in Universality of Jurisdiction Over War Crimes,
reprinted from 33 California Law Review (June 1945)). Civilian
nationals of a belligerent power are bound to recognize lawful
enemy combatants and accord them the treatment required under
customary and conventional international law (Art. 2 of the Geneva
(Prisoners of War) Convention, 29 July 1929; Art. 23, par (c) of
the Annex to the Hague Convention No. IV of 18 October 1907; Ch.
I, 15 Nov. 1944, par. 345.1, FM 27-10). Both the United States
and Germany were signatory powers to the cited conventions. The
killing of the unarmed prisoners of war in the instant case was
intrinsicly so barbarous and inhumane that it can properly be
said to violate not only the written law of nations, but also
these implied concepts and standards of decency to which every
belligerent is bound by the unwritten law of nations. The offense
closely approximated common law murder. Jurisdiction of the Com-
mission over the offense and over the accused is beyond question.

b. The accused were represented by able military counsel
and, in addition thereto, four of the five accused were represented
by German civilian counsel of their own choosing.

8. DISCUSSION:

a. All the elements of proof of the alleged offense
necessary to establish the guilt of the five accused whose cases
are under consideration were properly adduced in evidence. These
accused, in conjunction with others, were jointly charged with
aiding, abetting, encouraging and participating in the wrongful
killing of six unarmed members of the United States Army, who were
then prisoners of war. The record of trial contains convincing and
abundant evidence that each of the five accused played a leading role

-- in the commission of the offense. The identification of the accused and all the damning testimony against each, came from German neighbors and acquaintances. Each accused physically participated in the slayings. HARTGEN, the ring-leader, incited and urged the crowd to beat the flyers. He, himself, reportedly beat them with a stick, and finally fired bullets into the heads of four of the victims. WUST beat the aviators with a hammer as they passed. He then followed them and actually knelt beside a fallen flyer in order to beat him further. His assaults with the hammer undoubtedly directly caused at least one and probably more of the large depressed skull fractures discovered on five of the victims. OPPEL incited and encouraged the crowd and himself beat the victims with a broom with such force that the head of the broom broke off. Such blows, although not necessarily lethal, may well have caused skull fractures. SEIPERL kicked a badly injured flyer in the neck and chin as the flyer sat on the sidewalk with a piece of stone or slate protruding from his skull. SEIPERL later boasted of his participation in the atrocities. GUTLICH beat the flyers with a stick three feet long and two inches in diameter, which he wielded with both hands. GUTLICH said later that his hands hurt from the beatings he had administered. Such evidence establishes conclusively that each of the five accused herein considered actively contributed to the death of the airmen. They were motivated by a common design and legally are all principals in the perpetration of the murders. It matters not that some assumed more brutal roles than others, or that the injuries inflicted by some were more severe than those inflicted by the others. "All who join in a common design to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are responsible for a homicide committed by one of them while acting in pursuance of or in furtherance of the common design, although not specifically contemplated by the parties, or even forbidden by

defendant, or although the actual perpetrator is not identified." (29 Corpus Juris, Sec 46, p. 1073). The findings of guilty are sustained, and the sentences justified, by the evidence.

b. The proceedings in this case satisfied all the requisites of a fair trial under international law. There is not the slightest doubt whatsoever as to the guilt of the accused. Although the Commission was authorized to make such rules for the conduct of its proceedings as deemed necessary for a full and fair trial of the accused and to admit any evidence having probative value to a reasonable man, actually there were only slight departures from the classical Anglo-Saxon rules of evidence and procedure. These slight deviations did not impair the fairness or impartiality of the trial. Counsel for the accused, for instance, contended that the accused must be convicted beyond a reasonable doubt. It is concluded from a reading of the record that the Commission, although not required to do so, did, in fact, adhere to this principle of American jurisprudence. In any case, there could be no reasonable doubt, under the evidence adduced, as to the guilt of these five accused.

c. German counsel contended in the closing argument that they were not fully advised prior to trial of the evidence to be presented by the prosecution. Such a right is an inherent part of neither American criminal jurisprudence nor of a criminal trial under international law. Moreover, no objection was made to the Commission prior to or during the trial as to this point by defense counsel. The almost unlimited right of cross-examination exercised by counsel for the accused would tend to correct any resultant harmful error, and the evidence of overwhelming guilt adduced against the accused negatives any suggestion that material here was caused the accused.

d. It is noted also that the Commission deviated from the customary rules governing courts-martial and common law criminal procedure in requiring the accused to testify either under oath or

in the form of an unsworn statement. Counsel for the prosecution was given full and complete right of cross-examination of the accused. After six of the eleven accused had testified the Commission modified the previous ruling by advising the accused that they were required to "take the stand", but not required to testify and could decline to answer any specific question. The Commission was authorized to make such a rule, if deemed necessary for a full and fair trial of the accused. A careful reading of the record fails to disclose that any accused was prejudiced by the original rule or its subsequent modification. There was, moreover, sufficient competent testimony against each accused to sustain the findings of guilt independently of any testimony thus adduced. Cross-examinations of the accused were uniformly fair, relevant to the issue and, in general, within the scope of matters referred to on direct examination.

e. The procedure far exceeded minimum requirements of a fair hearing. The right of confrontation was adhered to; challenges for cause were allowed; military counsel was provided and civilian counsel permitted; competent interpreters were used to keep the accused and counsel informed of what was said and done; objections to testimony were permitted; and a two-thirds vote of the members of the court present was required for both conviction and sentence. Certainly all evidence considered by the Commission met the test of admissibility, i.e., that it should have probative value to a reasonable man. At the conclusion of the trial one German civilian defense counsel told the Commission that "The accused as well as their defense counsel, had all the rights which were possible". It is concluded that the trial accorded with natural justice and with the general principles of law recognized by Western civilization as principles proper to be applied in the trial of such cases.

9. CLEMENCY:

a. Pleas for clemency have been received and considered

on behalf of the following accused:

(1.) JOHANN SEIPEL, age 57. His brother pleads for mercy on the grounds of a prior clean record and present senility. There was medical testimony at the trial by a qualified German physician that SEIPEL is very senile and not fully responsible for his acts, but able to differentiate between right and wrong (174, 175).

(2.) JOHANN OPPER, age 60. His wife petitions for pardon on the grounds that he was not one of the main perpetrators. The petition states that he succumbed to the influence of the excited crowd; that he had lead a blameless life and enjoys the esteem of fellow citizens.

(3.) PHILIPP GUTLICH. His wife petitions for clemency on the grounds that he participated in the ill-treatment of the victims only during the early stages and left because he no longer approved; that he succumbed to the influence of the incited crowd; that he was a past good record and was not a member of the Nazi party. He has four minor children, the youngest eight months old. The Mayor and Chief of Police of Russelsheim affirm that GUTLICH bears a good reputation in the community.

(4.) JOSEF HARTGEN, age 41. His wife petitions for clemency for the sake of his three children, ages from two to seven years. She states that HARTGEN "was regrettably carried away by his passion and attacked one of the airmen." The former mayor of Russelsheim states that HARTGEN enjoyed a good reputation in Russelsheim, and an official of the Adams Opel Company certifies that HARTGEN has been employed by the company since 1928 and was an industrious and independent worker.

The above petitions for clemency have been appended to the record. It is believed that no valid reasons are contained therein for the extension of clemency to any of the accused. Although many persons may have participated in the atrocities committed that day, these five accused were certainly among the ring-leaders.

They were the central figures in six barbarous and ruthless murders. All war crimes are subject to the death penalty, although a lesser penalty may be imposed (Per. 357, FM 27-10). The offenses for which the accused were convicted closely approximated common law murder, for which the usual penalty among civilized people is life imprisonment or death. There are no extenuating circumstances in the instant case to warrant changing the penalty of death imposed by the Commission.

10. CONCLUSION:

It is accordingly recommended that the sentence of the Commission as to each accused, whose cases are here for confirmation, that is, PHILIPP GUTLICH, JOHANN OPPER, JOHANNES BEIPEL, FRIEDRICH WUST and JOSEF HARTGEN, be confirmed. Forms of action prepared to accomplish this result are attached hereto.

/s/ James D Murphy
JAMES D. MURPHY,
1st Lt., JAGD.

2 October 1945

I concur.

/s/ C B Mickelwait
Col. JAGD
Deputy Theater Judge Advocate

HEADQUARTERS SEVENTH ARMY
Office of the Staff Judge Advocate
APO 758 US Army

23 August 1945

REVIEW OF THE STAFF JUDGE ADVOCATE

UNITED STATES

V. . .

Joseph Hertgen,
Friedrich Wust,
Margarete Witzler,
Kathe Reinhardt,
August Wolf,
Johannes Seipel,
Heinrich Barthel,
Georg Daum,
Johann Oppper,
Karl Fugmann,
Philipp Gutlich

all of whom are German civilians residing in Russelsheim, Germany.

1. The above named accused were tried at a joint trial by a military commission appointed by the Commanding General, Seventh United States Army, at Darmstadt, Germany, on 25 July 1945.

a. They were all tried on the following charge and specification:

CHARGE: Violation of the Laws of War

SPECIFICATION: In that JOSEF HERTGEN, FRIEDRICH WUST, MARGARETE WITZLER, KATHE REINHARDT, AUGUST WOLF, JOHANNES SEIPEL, HEINRICH BARTHEL, GEORG DAUM, JOHANN OPPER, KARL FUGMANN, and PHILIPP GUTLICH, German civilians, acting jointly, did, together with other persons whose names are unknown, at Russelsheim, Germany, on or about 26 August 1944 wilfully, deliberately and wrongfully encourage, aid, abet, and participate in the killing of JOHN N. SEKUL, WILLIAM A. DUMONT, THOMAS D. WILLIAMS, and ELMORE L. AUSTIN, members of the United States Army, and two other members of the United States Army whose names are unknown, each of whom was then unarmed and a prisoner of war in the custody of the then German Reich.

b. Each of the accused pleaded not guilty to the Charge and not guilty to the Specification.

2. Comments Upon Jurisdiction

a. Authority to appoint the military commission was delegated by the Commanding General, 12th Army Group, by a letter dated 21 May 1945. The power thus delegated included power to appoint a military commission of not less than three officers of the United States Army, for the trial of persons subject to the jurisdiction of such a commission and who are charged with espionage or with such violation of the laws of war as threaten or impair the security of their forces, or the effectiveness of such forces or members thereof. The propriety of trials by military commissions for violations of the laws of war has been long established, the most recent confirmation thereof being Ex Parte Quirin, 85 L. Ed. 1; 63 Sup Ct. R.2, wherein it was said:

"From the very beginning of its history this court has recognized and applied the law of war as including that part of the law of nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations as well as enemy individuals. By the Articles of War, and especially Article 15, Congress has explicitly provided, so far as it may constitutionally do so, that military tribunals shall have jurisdiction to try offenders or offenses against the laws of war in appropriate cases. Congress, in addition to make rules for the government of our Armed Forces, has thus exercised its authority to define and punish offenses against the law of nations by sanctioning, within constitutional limitations, the jurisdiction of military commissions to try persons and offenses which, according to the rules and precepts of the law of nations, and more particularly the law of war, are cognizable by such tribunals".

b. That the act charged against these accused constitutes an offense against the laws of war is plain. It is provided in Chapter 6, Article 2, of the Geneva Conventions of 1929, that "Prisoners of War are in the power of the enemy power, but not of the individuals or bodies of troops who capture them. They must at all times be treated with humanity and protected particularly against acts of violence...." Also, in Article 23 of the Annex to the Hague Convention of 18 October 1907, it is provided that "In addition to the prohibitions provided by special conventions, it is expressly forbidden.....(c) To kill or wound an enemy who, having laid down his arms, or having no longer any means of defense, has surrendered at discretion." To both of these Conventions, Germany is a signatory.

c. The specification clearly and in appropriate terms defines the killing of named and unnamed prisoners of war, by the several accused persons, in violation of "the Laws of War". "The Laws of War are binding upon belligerents under all circumstances and conditions" (Oppenheim's International Law, Vol II, p. 183), and as in the concept of modern warfare, all inhabitants of each belligerent state are mutually in combat, German civilians are bound to observe the laws of war. To quote again from Oppenheim, "all the members of both nations are authorized to commit hostilities against all the members of the other, in every case and under every circumstance permitted by the general laws of war". Being thus bound by the laws of war, it follows that a civilian can violate them, and in particular, that the present crimes were properly charged as violations of the laws of war.

d. The commission was properly constituted of the correct number of competent members. Military counsel was provided for the accused, who were also represented by vigorous and capable civilian counsel.

3. Summary of Evidence

a. For the Prosecution

On the night of 25 August 1944, the town of Russelsheim, Germany, was subjected to a fifty-nine minute air raid by Allied planes. Bombs struck the Opel works near the town, and much of the town, destroying many civilian homes. The citizens of the town spent most of the night either in the air raid shelter or fighting fires in their homes. This raid was the longest and most destructive raid the people of Russelsheim had experienced. They were still in an excited condition the following morning, 26 August 1944, when, between 0900 and 1000 hours, six unarmed American fliers, prisoners of war, walked through the town with two German soldier guards. These fliers had been shot down and were being taken from Osnabruck to Ober Ursel. As the group proceeded west down Frankfurterstrasse a crowd of German civilians began to gather around them.

Mrs. Margarete Witzler and her sister, Mrs. Kathe Reinhardt, saw the fliers and began shouting "beat them to pieces. Beat them to death. They are the ones, they are the ones who were here last night. They are the terrorizers of last night. Kill the dogs. We cannot have pity on them." (12, 24, 31, 78, 83). They continued these shouts as the group passed along Frankfurterstrasse. Mrs. Reinhardt threw a brick from the debris, hitting one of the fliers on the head (12, 16) and also struck one of them with her fist (25). Mrs. Witzler also threw a brick at the fliers (33).

Joseph Hartgen, a party official and the Propaganda Chief of Russelsheim, was present in the crowd. At this point he fired a revolver one time (13, 20). Both women continued shouting, and picked up stones and threw them at the fliers (35, 38). Later other people throw stones (36). A crowd of between twenty and two hundred people had gathered and were following the fliers down Frankfurterstrasse. Philipp Gutlich, who was in the crowd, beat the fliers with a stick three feet long and two inches in diameter. He held the stick in both hands and beat several times (31, 43, 44).

Several of the fliers were bleeding, and one was being carried on the back of another. The crowd was angry and the fliers moved swiftly down Frankfurterstrasse, turning right into Taunusstrasse and proceeding toward Grabenstrasse. As the fliers passed down Taunusstrasse past Wilhelmstrasse they were bleeding and some were limping. Philipp Gutlich was shouting, "Beat them to pieces." (41, 42). George Daum, who was shoveling debris in the rear of his home on Taunusstrasse, ran out into the street and after the fliers, and beat them with his shovel (47, 48, 89, 90, 91). Seeing the crowd approaching, Johannes Oppen went toward it with a broom held high above his head. He struck twice (55, 58, 64, 69, 71). Joseph Hartgen, with a stick similar to a hoe handle, wildly beat the fliers (70, 73). The fliers were bleeding. One flier was so badly beaten by the time they neared the end of Taunusstrasse that he sat on the sidewalk three or four houses away from Grabenstrasse. His right shoulder and the upper part of the right side of his chest were battered. A piece of stone was sticking in his skull. Johannes Seipel went over to him and kicked him on the neck and chin (76).

When the fliers reached Grabenstrasse one was bleeding badly at the throat. They turned right and proceeded down Grabenstrasse toward Bahnhofstrasse. They crossed Grabenstrasse and proceeded along the wall which separates Grabenstrasse from the railroad tracks. The crowd continued to follow and swarm around them. August Wolf was on a pile of wood behind the wall and near the tracks. He and Karl Fugmann threw stones at the fliers (Pros Ex 4). Wolf had what appeared to be the handle of a hammer in his hand. He tried to beat the fliers, but did not succeed (97, Pros Ex 8). Friedrich Wust leaned over the wall and hit one of the fliers one or two cracks (Pros Ex 4). He then went over the wall and into Grabenstrasse with a piece of wood in his hands. He struck the Americans forcefully several times (98). The fliers stumbled on. One was limping badly, and the entire street was crowded and noisy. After the fliers passed Geiersbühl all but two collapsed and fell to the ground next to the wall. The other two could just drag themselves along, and soon fell to the pavement. They crept together to protect each other. Wust started hitting them with a hammer, beating to and fro (113, 115, 116, Pros Ex 6). Joseph Hartgen asked all of the people to beat them. Johann Oppen was inciting and "needling" the crowd (104), and himself beat the fliers several times (117, 119). Joseph Hartgen beat them repeatedly (118). He then shot the Americans (103, 109, 110), who, by this time, lay in a heap against the wall.

After the incident was over Johannes Seipel met Rie Bastien, whom he told he had kicked someone with his feet (49). He later approached a boyhood friend and stated "I also beat them" (93). The Taunusstrasse was empty of the crowd when Johann Oppen returned to it. He met Ludwig Willnow, whom he told "We beat them on the head" (78, 79). George Daum told Margarete Burck he took his shovel and put it upside down (85)

and beat them (87, Pros Ex 2). As Philipp Gutlich returned from the scene he stopped in front of Wilhelmine Biendel's window and told her "my hands hurt so from the beating". (65)

Between 1100 and 1200 hours the same day the bodies of the American prisoners were placed in a farmer's carriage drawn by Hitler Youth, and were taken to the cemetery near Russelsheim. They were placed in the cart one on top of the other, and some were still alive at the time. An SA man, Stoltz, accompanied the cart. First it was taken to the chapel where it was left. Later in the afternoon it was moved further into the cemetery. Joseph Hartgen went to the cemetery late in the afternoon, fully attired in his SA uniform. The following day the Americans were buried (137).

On 28 June 1945 six bodies of American soldiers were disinterred at the cemetery in Russelsheim, Germany. They were clothed in American Air Corps uniforms, and four wore dog tags. These bore the names of John N. Sekul, William A. Dumont, Thomas D. Williams, and Elmore L. Austin (140). All of the bodies except one had a fractured skull, which injuries were obviously caused by being struck with heavy, blunt instruments. The one whose skull had not been fractured had two bullet holes in the skull. Two others had bullet holes in the skulls. No other bones were broken.

b. For the Defense

Various witnesses were called by the defense. A 76 year old Anti-Fascist who had been driven from the scene of the occurrence in Grabenstrasse by the accused Oppper stated that the accused Fugmann left the crowd and did not participate in the beatings. Character witnesses were introduced for the accused Fugmann, Wolf, Witzler, Reinhardt, Gutlich, Seipel, Oppper, Deum, and Hartgen. The assistant Chief of the Public Health Office at Darmstadt, who was also the prison doctor, testified that the accused Seipel was a very senile person. Mrs. Deum and another woman who lived in the Deum household stated that to their knowledge the accused Deum did not follow the crowd and did not beat the fliers. Other witnesses testified that they did not hear or see the accused Witzler, Reinhardt and Berthel in the crowd and molesting the fliers.

Each accused, after having been duly advised of his rights, elected to take the stand and to make either sworn statement or an unsworn statement in regard to the incident which occurred in Russelsheim on 26 August 1944, in which six American fliers met their death at the hands of an unruly mob of German civilians.

The accused Deum, age 50 years, in a sworn statement stated that he saw the prisoners pass his home in a crowd of people. He swore that he did not join the crowd, and did not in any manner use his shovel on them.

The accused Berthel in a sworn statement admitted having been in the crowd which surrounded the prisoners on Grabenstrasse, but denied striking one of them on the rectum with a piece of wood. He saw the accused August Wolf and Johann Oppper in the crowd, but did not see what they were doing. He saw the fliers being beaten by members of the crowd, and saw three or four of them collapse near the wall on Grabenstrasse, but he took no part in the beating.

The accused Gutlich, in an unsworn statement, also admitted being present in the crowd on the day in question. He had never seen foreign fliers before, and wanted to get a close look at them. He was excited, having lost much in the bombing the night before. One of the fliers "made some kind of a face" at him, and he slapped the flier with the flat of his hand. He denied striking any of the prisoners with a club.

The accused Oppen, in an unsworn statement, stated he saw an enormous crowd beating foreign fliers in the Grabenstrasse, and later saw their bodies being taken away in a cart. He admitted having a broom when he first saw the crowd in Taunusstrasse, but put it aside when he joined the crowd. He vehemently denied the accusations of his fellow townspeople.

The accused Seipel, in an unsworn statement, admitted being in the middle of the crowd on Taunusstrasse. He stated that he was hit in the face with a stone and was hit over the head with a big beam. He admitted seeing a flier sitting on the curb near Grabenstrasse, but as he was dizzy from the blows he received he was unable to state whether or not he kicked this flier. He denied making damaging statements after the incident.

The accused Reinhardt in an unsworn statement, admitted being on the corner of Bahnhofstrasse and Frankfurterstrasse on the morning in question. She saw a crowd of people following a group of fliers who had been shot down. There was much excitement, and lots of yelling. She admitted that in the excitement she yelled "beat them" twice. She saw the anti-aircraft soldier beat the fliers. There was a large crowd and much noise, and she heard no shooting. Two days later she learned the fliers had been murdered.

The accused Witzler, in an unsworn statement, admitted seeing the crowd and being very excited, but denied participating, shouting and throwing stones. Though she followed the crowd down Frankfurterstrasse and Taunusstrasse to Waldstrasse, she did it purely out of curiosity. She had never seen foreign fliers before. She could not see very well because of the crowd, and did not see any blows struck or stones thrown. She did not hear her sister, Mrs. Reinhardt, shouting. Two days later she learned that on that morning the fliers had been beaten to death.

The accused Wust in an unsworn statement, stated that he heard the noise and saw the large crowd coming into Grabenstrasse from Taunusstrasse. He ran to the wall on Grabenstrasse, took a hammer from his pocket and tried to beat the fliers, but did not succeed. Sticks and stones were flying "like machine gun fire". Someone in the crowd took the hammer from him and beat with it until the head of the hammer came off. He saw Wolf and Fugmann throwing stones or wood at the fliers, and later admitted striking the fliers himself after they lay on the ground.

The accused Joseph Hartgen, in an unsworn statement, stated he was Nazi Propaganda leader in the town of Russelsheim. On the morning in question he was standing on the corner of Bahnhofstrasse and Frankfurterstrasse and saw a crowd approaching. Asking what was happening, he was told that they were fliers who had been over the night before. The fliers were guarded by a sergeant who told him his orders were to lead the fliers through the town. Hartgen was excited, as a result of his experiences during the raid the night before. He struck one of the fliers with the back of his hand. The crowd was excited and menacing. He heard shouts of "beat them, they are the ones of last night". He told the sergeant to get the prisoners out of town. At this point he left the crowd, and later went to the corner of Taunusstrasse and Kurbisstrasse. He saw the crowd turn from Taunusstrasse into Grabenstrasse. He followed, and saw the crowd beating the fliers. When they

were on the ground a soldier beat them. After the crowd dispersed he examined the bodies, straightened them out, and saw that their skulls had been battered. He noticed no bullet holes. None of them groaned. He obtained a cart and got some people to help load the fliers' bodies in it. He then ordered the cart taken to the cemetery. He denied hearing any shots fired, or taking part in the beatings.

The accused Wolf made a sworn statement to the court. He stated that he heard the noise of the crowd and left his home to investigate. He went to the corner of Grabenstrasse and Teunusstrasse, and jumped over the wall. He heard shouts and cries of "beat them to death, beat them to pieces", and was told that they were the fliers who had been there the night before. He saw the fliers being beaten by a flek-soldier, but did not see anyone else beating, at that time. The accused Wolf did not throw anything at them, but he did see the accused Must kneeling on the ground and beating a flier's head with a hammer. Wolf himself claimed to be only an innocent bystander.

The accused Karl Fugmann, in a sworn statement, stated that he too was attracted to Grabenstrasse by the great noise of the crowd. He jumped over the wall which separates Grabenstrasse from the railroad tracks, and saw there were American fliers in the crowd. He walked with the crowd toward Geiersbuhl, and then left. At no time did he have anything in his hand, and he did not strike the fliers in any way. He heard shots fired, but did not know who fired them.

The accused Berthel, recalled by the court, stated he saw the accused Wolf next to the wall with a stick in his hand, but did not see him strike anyone.

4. DISCUSSION

a. The accused Fugmann was acquitted by the Commission. One witness stated that Fugmann threw stones at the fliers, and he himself admitted jumping over the wall and walking with the crowd along Grabenstrasse. In his sworn testimony, Fugmann denied striking the fliers in any way. A mere bystander in a concerted action of this nature is not guilty of participation. Whether or not Fugmann participated was a question of fact for the commission which cannot justly be criticized for determining it in favor of the accused.

b. The remaining accused are charged jointly with aiding, abetting, encouraging and participating in the death of four identified and two unidentified American aviators, who were then prisoners of war. All elements are established and although not with the preciseness required of evidence produced before courts-martial, still with clarity and convincingness. The evidence portrays a blood-hungry, brutal mob, incensed by the damage done to their village during the preceding night's raid, determined to exact its revenge from the helpless aviators in its clutches. Even the old, the feeble, and the women participated, and among the crowd of vicious civilians, the accused were clearly seen and identified. That they beat the aviators is plain. Witnesses whose testimony was not discredited nor refuted saw the convicted accused plying their homely but deadly weapons and heard them shouting their inflammatory phrases, heard the shots that put an end to suffering, that punctuated the ending of this episode of horror. Witnesses saw the bodies carted to the cemetery where they were buried, there to remain until exhumed to become mute witnesses against their murderers. Undoubtedly, others besides these accused were involved; possibly other hands than theirs dealt the blows that were finally fatal, but the conclusion is firm and inescapable that these accused played an active part and that the crimes of all are attributable to each. The findings of guilty are sustained by the evidence.

c. As the commission was authorized to formulate its own rules of procedure and to accept in evidence any testimony having probative value to a reasonable man, the only test of the propriety of its actions and decisions is the impact thereof upon such rights as are accorded the accused by principles of justice, fairness, and humanity. While neither the accused nor the nation of which they are citizens has demonstrated any inclination to observe these principles, they are among those for which the war was prosecuted, and to ignore them here would be, in a large sense, to negate our victory. Viewed in this light, the hearing was eminently just, fair, and humane. The commission was diligent in its guardianship of the rights of the accused, and was in fact praised by each of the German civilian counsel. Civilian counsel could criticize only the weight given to pre-trial sworn statements executed by the accused. These statements are clearly entitled to consideration as falling within the type of evidence having probative value to reasonable men. The hearing was conducted in an impressive and dignified manner, for which much credit is due the President thereof. No harmful errors appear.

d. Wolf and Barthel were each sentenced to be imprisoned for 15 years, while Daum was sentenced to 25 years' imprisonment. All the others were sentenced to be hanged by the neck until dead. Obviously in a crime of this nature, there may be different degrees of responsibility appropriately deserving of varying degrees of punishment. The court was not limited in its punitive power, which includes power to impose a death sentence. The mode of execution prescribed is appropriate to the heinous crime of murder.

Pleas for clemency have been received and considered on behalf of the following accused:

1. Johann Seipel, age 67. His brother pleads for mercy on the grounds of prior clean record and present senility. Despite his age, Seipel was seen to kick a recumbent aviator, already desperately wounded by a piece of stone sticking in his head. What acts of brutality Seipel would have committed had he been in his prime need not be imagined here. Suffice it to say that the act he did contributed to the death of the persons named.

2. Johann Opper, age 60. His wife petitions for pardon or commutation on the grounds that he did not have a weapon in his hand and that he succumbed to the influence of the crowd. His past record is unblemished. The testimony of the witnesses belies his innocence. He was seen with a broom held high in his hands; he was seen to strike twice. In itself, old age is not an excuse for even a mitigating factor. On the contrary, a mature man could be expected to exert a restraining influence, to extend the wisdom of his experience.

3. Philipp Gutlich. His wife asks for commutation on the grounds that he was a part of the mob only during the early stages and on the grounds of his past good record. He has four minor children, the youngest eight months old. The Mayor of Russelsheim points out the good family background and the diligence of the accused, and the fairness with which Gutlich treated prisoners and foreign workers on his farm. The Chief of Police testifies to his blameless record and his industry.

4. Margerete Witzler and Katherine Reinhardt. A petition is presented by Jean Witzler, the husband of Margerete Witzler and brother-in-law of Katherine Reinhardt. He points out that their only offense was screaming against the pilots, and that no one pays attention to screaming wives. Their past record is blameless. During the air-raid of 26 August 1944, they carried their old mother in a small carriage to a shelter, and when they returned after the raid, witnessed the burning houses and the dying people. Both women have children. Their honesty and popularity as managers of a retail tobacco shop was described by four other persons.

5. Josef Hartgen. His wife presents an appeal for the sake of his three children, ages from 2 to 7 years. She believes he was carried away by passion. The late burgemeister states that the past record and reputation of the accused have been good, and some one signing for "Adm Opol, Aktiengesellschaft" certifies to his industry and independence as foreman in the Adm Opol plant.

The above petitions have been appended to the record and may be regarded as recommendations for clemency. In my opinion, none of the facts therein presented constitute adequate reason for the extension of clemency. The crime of which these persons were convicted was brutal, vicious, and unfeeling, and while American sympathy may be aroused at the prospect of hanging women and old men, it must always be remembered that half-way measures will never impress upon the people of Germany that their actions have been unlawful and degenerate. The deterrent effect of punishment must be great enough to prevent forever crimes that are an abomination in the eyes of men and blasphemy in the sight of God.

6. RECOMMENDATIONS

a. I recommend that as to the accused Wolf, Berthel and Drum the sentences be approved and ordered executed.

b. I recommend that as to the accused Hartgen, Wust, Witzler, Reinhardt, Seipel, Oppen and Gutlich, the sentences be approved and the record forwarded for confirmation of the sentences.

c. Appropriate forms of action are included herewith for your signature if you approve.

/s/ C Robert Bard
C. ROBERT BARD
Colonel, JAGD.
Staff Judge Advocate

HEADQUARTERS SEVENTH ARMY
APO 758 US Army

6 Sep 1945

ACTION OF THE REVIEWING AUTHORITY

In the foregoing case of JOSEPH HARTGEN, a German civilian residing in Russelsheim, Germany, the sentence is approved but the order directing the execution thereof is withheld pending action by the confirming authority.

In the foregoing case of FRIEDRICH WUST, a German civilian residing in Russelsheim, Germany, the sentence is approved but the order directing the execution thereof is withheld pending action by the confirming authority.

In the foregoing case of JOHANNES SEIPER, a German civilian residing in Russelsheim, Germany, the sentence is approved but the order directing the execution is withheld pending action by the confirming authority.

In the foregoing case of PHILIPP GUTLICH, a German civilian residing in Russelsheim, Germany, the sentence is approved but the order directing the execution thereof is withheld pending action by the confirming authority.

In the foregoing case of JOHANN OPPER, a German civilian residing in Russelsheim, Germany, the sentence is approved but the order directing the execution thereof is withheld pending action by the confirming authority.

/s/ Geoffrey Keyes
GEOFFREY KEYES
Lieutenant General, U S A
Commanding

HEADQUARTERS
UNITED STATES FORCES
EUROPEAN THEATER
Office of the Theater Judge Advocate

9 October 1945

UNITED STATES

v

Josef Hartgen, Friedrich Wust,
Johann Oppen, Johannes Seipel,
Philipp Gutlich, all of whom
are German Nationals.

RECOMMENDATION

of

THE THEATER JUDGE ADVOCATE

I have examined the record of trial, and I concur
in the review of the Deputy Theater Judge Advocate and in
his recommendation that the sentence as to each of the
accused be confirmed.

/s/ Ed C Betts
ED. C. BETTS,
Brigadier General, U.S.A.,
Theater Judge Advocate

I concur:

/s/ U R Bull
Deputy Chief of Staff.

I concur:

/s/ W B Smith
Chief of Staff.

HEADQUARTERS
UNITED STATES FORCES, EUROPEAN THEATER

23 October 1945

In the foregoing case of JOSEF HARTGEN, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

/s/ Dwight D. Eisenhower
DWIGHT D. EISENHOWER
Commanding General, U.S. Forces
European Theater

HEADQUARTERS
UNITED STATES FORCES, EUROPEAN THEATER

23 October 1945

In the foregoing case of FRIEDRICH WUST, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

/s/ Dwight D Eisenhower
DWIGHT D. EISENHOWER
Commanding General, U.S. Forces,
European Theater

HEADQUARTERS
UNITED STATES FORCES, EUROPEAN THEATER

23 October 1945

In the foregoing case of JOHANN OPPER, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

/s/ Dwight D. Eisenhower
DWIGHT D. EISENHOWER
Commanding General, U.S. Forces,
European Theater.

HEADQUARTERS
UNITED STATES FORCES, EUROPEAN THEATER

23 October 1945

In the foregoing case of JOHANNES SEIPEL, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

Is/ Dwight D Eisenhower
DWIGHT D. EISENHOWER
Commanding General, US Forces,
European Theater

HEADQUARTERS
UNITED STATES FORCES, EUROPEAN THEATER

23 October 1945

In the foregoing case of PHILIPP GUTLICH, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

/s/ Dwight D Eisenhower
DWIGHT D. EISENHOWER
Commanding General, U.S. Forces,
European Theater

War Crimes Trial Report No.13.

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
WAR CRIMES BRANCH
UNITED STATES FORCES, EUROPEAN THEATER

UNITED STATES

v

29 September 1945

Josef Hartgen, Friedrich Wust,
Margarete Witzler, Katho
Reinhardt, August Wolf, Johannes
Seipel, Heinrich Barthel, Georg
Daum, Johann Oppen, Karl Fug-
mann, Philipp Gutlich, all of
whom are German Civilians.

REVIEWS AND RECOMMENDATIONS OF
THE DEPUTY THEATER JUDGE ADVOCATE

1. TRIAL: Accused were tried at a joint trial at Darmstadt,
Germany, from 25 to 31 July 1945, by a Military Commission ap-
pointed by paragraph 1, Special Orders No. 196, Headquarters,
Seventh U. S. Army, 15 July 1945.

2. FINDINGS: The offense involved was:

CHARGE: Violation of the Laws of War

Pleas (as to each accused)	Findings (as to each accused except Fugmann)
NG	G

Specification: In that JOSEF HARTGEN, FRIEDRICH
WUST, MARGARETE WITZLER, KATHE REINHARDT, AUGUST
WOLF, JOHANNES SEIPEL, HEINRICH BARTHEL, GEORG
DAUM, JOHANN OPPER, KARL FUGMANN, and PHILIPP
GUTLICH, German civilians, acting jointly, did,
together with other persons whose names are un-
known, at RUSSELSHEIM, Germany, on or about 26
August 1944 wilfully, deliberately and wrong-
fully encourage, aid, abet and participate in the
killing of JOHN N. SERUL, WILLIAM A. DUMONT,
THOMAS D. WILLIAMS, and ELMORE L. AUSTIN, members
of the United States Army, and two other members
of the United States Army whose names are unknown,
each of whom was then unarmed and a prisoner of
war in the custody of the then German Reich

NG

G

Accused FUGMANN was found not guilty as to both charge and speci-
fication.

3. SENTENCES:

The Commission sentenced DAUM to confinement at hard labor
for 25 years; BARTHEL, confinement at hard labor for 15 years; WOLF,
confinement at hard labor for 15 years. Said sentences were approved
by the Reviewing Authority. The Commission sentenced Mrs. REINHARDT

and Mrs. WITZLER to be hanged by the neck until dead, which sentences were commuted by the Reviewing Authority to confinement for 30 years. Accused GUTLICH, OPPEN, SEIPER, WIST and HARTGEN, were sentenced by the Commission to be hanged by the neck until dead and such sentences were approved by the Reviewing Authority.

The record of trial has been forwarded to the Commanding General, U. S. Forces, European Theater, for final action as to those cases involving the death penalty as approved by the Reviewing Authority (Letter, Headquarters, U. S. Forces, European Theater, AG 250.4 JAG-AGO, 25 August 1945, subject: "Military Commissions").

4. DATA AS TO ACCUSED: All accused are German civilians. Additional personal data are set forth in paragraph 9 in connection with the discussion of clemency.

5. RECOMMENDATIONS: That the action of the Commission and of the Reviewing Authority, as to those sentences imposing the death penalty, be confirmed.

6. EVIDENCE:

a. On the morning of 26 August 1944, eight unarmed American flyers, prisoners of war, were being escorted through the town of Russelsheim, Germany, by two German soldier guards. The flyers were set upon by a large crowd of German civilians and struck with rocks, clubs, and other objects until they lay bleeding and prostrate upon the ground. Numerous persons, allegedly excited and inflamed by the results of a severe air-raid upon the town during the preceding night, participated in the attacks. At the conclusion of the merciless beatings, four of the victims were shot through the head by the accused HARTGEN (103, 109, 110). Five of the eight victims, including three of the four who were thus shot, had received fractures of the skull sufficient to cause death (143, 144, 145). The eight victims, some of whom were still alive, were then loaded into a farmer's cart and taken to a cemetery near Russelsheim. It has been learned subsequent to the trial that two of the group escaped while the cart was left unattended (see copy of

letter from Sergeants William M. Adams and Sidney B. Brown to Brigadier General Davidson, appended to record of trial). The following day the bodies of the six remaining victims were buried (137). These bodies were exhumed on 28 June 1945 and four of the victims identified by means of identification discs. The causes of death were adequately established by the medical examiner to be, in three instances, both skull fractures and bullet wounds in the skulls; in two instances, skull fractures; and in one instance, a bullet wound in the skull (142, 143, 144, 145) (It is noted, in this connection, that the review of the Staff Judge Advocate, Seventh U. S. Army, hereinafter incorporated in this review by reference, erroneously states that bullet holes were observed in the skulls of only three, instead of four, of the victims.) The following are summaries of the evidence pertaining to the five accused whose records of trial have been forwarded for confirmation. The substance of the unsworn testimony of each accused is contained in a separate paragraph under each summary:

(1) JOSEF HARTGEN: The accused HARTGEN, a Nazi party official and propaganda chief of Russelsheim, took a leading part in the murders. The testimony establishes that he fired a revolver toward the American soldiers as they were walking (21), and that he beat several of them repeatedly with a stick resembling the handle of a pitchfork or hoe (70), which he wielded with both hands (118). He encouraged the mob to beat the flyers (103, 104) and told one bystander, who protested against the assaults, to keep quiet or the same thing would happen to him (70). At the conclusion of the beatings HARTGEN shot four of the victims as they lay in a heap against a wall (103, 109, 110).

HARTGEN testified that on the morning in question, while riding a bicycle on the streets, he saw a crowd of approximately 200 people approaching. He talked to a German sergeant in charge of the prisoners who told him that he had orders to lead the prisoners through the town (291). HARTGEN hit one of the flyers

in the back with his fist. He then told the sergeant to get the prisoners out of town and explained the route he should follow (291, 292). HARTGEN then left the scene but returned about half an hour later. He observed the flyers being beaten with clubs and other objects (293). He remonstrated with the sergeant and told the women and children in the crowd to leave the street. He saw the flyers being herded along a wall and observed people in the crowd beating them with iron tools (295). HARTGEN, after some of the crowd had left, examined the flyers who were lying against the wall. He determined that they were all dead (295). He straightened out the bodies and observed that the skulls on most of them were beaten apart (296). He obtained a cart, helped load the bodies into it, and ordered it taken to the cemetery (296). HARTGEN fired no shots, nor heard any shots fired (297). He noticed no bullet holes in the victims (305). He did not take any part in the beatings, other than striking the one blow and did not go to the cemetery later on the same day (303).

(2) FRIEDRICH WUST: The accused WUST, by his own admission, leaned over a wall as the captured flyers passed by, and struck one of the flyers one or two blows with a hammer (Proc. Ex. 4). WUST then went over the wall and forcibly struck the victims with a "piece of wood" or "big stick" (98, 100). According to another eye-witness, WUST was "beating in all directions" with what the witness assumed was a hammer. WUST was later seen by another accused kneeling on the ground and beating the head of a prostrate flyer with a hammer (310, 322, Proc. Ex. 6).

WUST testified that he was in his apartment when he heard the shouting and saw a large crowd. He left his apartment, went to the wall and tried unsuccessfully to beat the flyers with a hammer as they walked along on the other side (280, 283). He pushed one flyer in an effort to get him in position so that he could better hit him with the hammer (287). Someone then took the hammer from him and beat with it until the head of the hammer came

off (280). People were shouting "beat, beat them". MUST went over the wall and saw all the flyers on the ground. He testified that at that time he may have beaten them (281).

(3.) JOHANNES SEIPEL: The accused SEIPEL was seen to kick an injured airman twice in the throat and chin as the airman sat on the curb. This injured airman had a piece of slate or stone protruding from his skull, and his right shoulder and upper right part of his chest were badly injured (78). Shortly after the assault, SEIPEL told one person that he had kicked someone with his feet (49), and told another person that he "also beat at them" (93). He appeared to be "glad" that he had done so (49).

SEIPEL testified that, as he met the crowd, he was struck in the face by a stone and on the head with a "big beam". He was dizzy from the blow on the head and may have kicked at someone in the crowd, but did not think it was a flyer (261). SEIPEL admitted seeing a flyer sitting on the curb, but was unable to state whether or not he had kicked him (261). He denied telling others at the scene that he had kicked and beaten the flyers (262).

(4.) JOHANN OPPER: The accused OPPER, when he saw the crowd approaching, went toward the flyers with a broom held high over his head in position to strike (55, 58), and beat two of the flyers (64). He struck with such force that the head of the broom broke off from the handle (64). Another witness for the prosecution testified that OPPER "participated very little; he just had a little stick and beat only several times" (117). OPPER was observed in the forefront of the crowd, inciting and encouraging others to attack the flyers (104, 105). Later, he boasted of his participation, saying: "We beat them on the head" (78, 79).

OPPER testified that he was sweeping the street in front of his home when he saw a large crowd approaching. He walked toward the crowd, and then, as the flyers and the crowd passed, he went back to his house carrying the broom over his shoulder. He

put the broom down in the yard and then followed the crowd down the street. He saw people beating the flyers but did not participate (253). He did not encourage or incite the crowd or say later that he had participated (255).

(5) PHILIPP GUTLICH: The accused GUTLICH was seen following the flyers and beating them over their backs with a stick three feet long and two inches in diameter which he wielded with both hands (31, 43, 44). He was shouting "Beat them to pieces" (41, 42). Later, as he returned from the scene, he stopped in front of the window of a spectator and said: "My hands hurt so from the beating". (65)

GUTLICH testified that when he saw the crowd and the foreign aviators he went closer to obtain a better view. He was excited, his home having been damaged in the bombing the night before. One of the flyers made a face at him. Thinking that the flyer was trying to make fun of him, GUTLICH slapped him once with the flat of his hand (247). He did not strike any of the flyers with a club or say "Beat them to pieces" (246).

(6) Further detailed evidence will not be set forth here, but the recapitulation contained in the Review of the Staff Judge Advocate, Seventh U. S. Army, and appended hereto, except as hereinbefore altered, is adopted in its entirety.

7. JURISDICTION:

a. The Military Commission which heard this case was properly constituted and had jurisdiction over the subject matter and of the accused. A military commission has jurisdiction over the inhabitants of an occupied enemy country held by the right of conquest (Par. 7, WD FM 27-10; Coleman v. Tennessee (1878), 97 U.S. 509). Military commissions are not restricted in their jurisdiction by territorial limits (United States v. Hogg, et al (1865), 6 Rebellion Records, Series II, 674, 678; 56 Harv. Law Review, 1059, 1065). Thus an offense against the laws of war committed in a country prior to its occupation may properly be tried by a military

commission of the victorious army upon occupation. (Memorandum by The Judge Advocate General (STJGS 1943/17671) subject: Jurisdiction to Punish War Criminals, 13 December 1943; Dig. Op. JAG, 1912, p 1067; Trial of Henry Wars (1868), 40th Cong. 2nd Sess. House of Representatives, Ex. Doc. No. 23; see also cases cited on pages 207-216 in Universality of Jurisdiction Over War Crimes, reprinted from 33 California Law Review (June 1945)). Civilian nationals of a belligerent power are bound to recognize lawful enemy combatants and accord them the treatment required under customary and conventional international law (Art. 2 of the Geneva (Prisoners of War) Convention, 29 July 1929; Art. 23, par (c) of the Annex to the Hague Convention No. IV of 18 October 1907; Ch. 1, 15 Nov. 1944, par. 345.1, FM 27-10). Both the United States and Germany were signatory powers to the cited conventions. The killing of the unarmed prisoners of war in the instant case was intrinsically so barbarous and inhumane that it can properly be said to violate not only the written law of nations, but also those implied concepts and standards of decency to which every belligerent is bound by ^{an} unwritten law of nations. The offense closely approximated common law murder. Jurisdiction of the Commission over the offense and over the accused is beyond question.

b. The accused were represented by able military counsel and, in addition thereto, four of the five accused were represented by German civilian counsel of their own choosing.

8. DISCUSSION:

a. All the elements of proof of the alleged offense necessary to establish the guilt of the five accused whose cases are under consideration were properly adduced in evidence. These accused, in conjunction with others, were jointly charged with aiding, abetting, encouraging and participating in the wrongful killing of six unarmed members of the United States Army, who were then prisoners of war. The record of trial contains convincing and abundant evidence that each of the five accused played a leading role

in the commission of the offense. The identification of the accused and all the damning testimony against each, came from German neighbors and acquaintances. Each accused physically participated in the slayings. HARTGEN, the ring-leader, incited and urged the crowd to beat the flyers. He, himself, repeatedly beat them with a stick, and finally fired bullets into the heads of four of the victims. WUST beat the aviators with a hammer as they passed. He then followed them and actually knelt beside a fallen flyer in order to beat him further. His assaults with the hammer undoubtedly directly caused at least one and probably more of the large depressed skull fractures discovered on five of the victims. OPPER incited and encouraged the crowd and himself beat the victims with a broom with such force that the head of the broom broke off. Such blows, although not necessarily lethal, may well have caused skull fractures. SEIPEL kicked a badly injured flyer in the neck and chin as the flyer sat on the sidewalk with a piece of stone or slate protruding from his skull. SEIPEL later boasted of his participation in the atrocities. GUTLICH beat the flyers with a stick three feet long and two inches in diameter, which he wielded with both hands. GUTLICH said later that his hands hurt from the beatings he had administered. Such evidence establishes conclusively that each of the five accused herein considered actively contributed to the death of the airmen. They were motivated by a common design and legally are all principals in the perpetration of the murders. It matters not that some assumed more brutal roles than others, or that the injuries inflicted by some were more severe than those inflicted by the others. "All who join in a common design to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are responsible for a homicide committed by one of them while acting in pursuance of or in furtherance of the common design, although not specifically contemplated by the parties, or even forbidden by

defendant, or although the actual perpetrator is not identified." (29 Corpus Juris, Sec 46, p. 1073). The findings of guilty are sustained, and the sentences justified, by the evidence.

b. The proceedings in this case satisfied all the requisites of a fair trial under international law. There is not the slightest doubt whatsoever as to the guilt of the accused. Although the Commission was authorized to make such rules for the conduct of its proceedings as deemed necessary for a full and fair trial of the accused and to admit any evidence having probative value to a reasonable man, actually there were only slight departures from the classical Anglo-Saxon rules of evidence and procedure. These slight deviations did not impair the fairness or impartiality of the trial. Counsel for the accused, for instance, contended that the accused must be convicted beyond a reasonable doubt. It is concluded from a reading of the record that the Commission, although not required to do so, did, in fact, adhere to this principle of American jurisprudence. In any case, there could be no reasonable doubt, under the evidence adduced, as to the guilt of these five accused.

c. German counsel contended in the closing argument that they were not fully advised prior to trial of the evidence to be presented by the prosecution. Such a right is an inherent part of neither American criminal jurisprudence nor of a criminal trial under international law. Moreover, no objection was made to the Commission prior to or during the trial as to this point by defense counsel. The almost unlimited right of cross-examination exercised by counsel for the accused would tend to correct any resultant harmful error, and the evidence of overwhelming guilt adduced against the accused negatives any suggestion that material harm was caused the accused.

d. It is noted also that the Commission deviated from the customary rules governing courts-martial and common law criminal procedure in requiring the accused to testify either under oath or

in the form of an unsworn statement. Counsel for the prosecution was given full and complete right of cross-examination of the accused. After six of the eleven accused had testified the Commission modified the previous ruling by advising the accused that they were required to "take the stand", but not required to testify and could decline to answer any specific question. The Commission was authorized to make such a rule, if deemed necessary for a full and fair trial of the accused. A careful reading of the record fails to disclose that any accused was prejudiced by the original rule or its subsequent modification. There was, moreover, sufficient competent testimony against each accused to sustain the findings of guilt independently of any testimony thus adduced. Cross-examinations of the accused were uniformly fair, relevant to the issue and, in general, within the scope of matters referred to on direct examination.

e. The procedure far exceeded minimum requirements of a fair hearing. The right of confrontation was adhered to; challenges for cause were allowed; military counsel was provided and civilian counsel permitted; competent interpreters were used to keep the accused and counsel informed of what was said and done; objections to testimony were permitted; and a two-thirds vote of the members of the court present was required for both conviction and sentence. Certainly all evidence considered by the Commission met the test of admissibility, i.e., that it should have probative value to a reasonable man. At the conclusion of the trial one German civilian defense counsel told the Commission that "The accused as well as their defense counsel, had all the rights which were possible". It is concluded that the trial accorded with natural justice and with the general principles of law recognized by Western civilization as principles proper to be applied in the trial of such cases.

9. CLEMENCY:

a. Pleas for clemency have been received and considered

on behalf of the following accused:

(1.) JOHANN SEIPER, age 57. His brother pleads for mercy on the grounds of a prior clean record and present senility. There was medical testimony at the trial by a qualified German physician that SEIPER is very senile and not fully responsible for his acts, but able to differentiate between right and wrong (174, 175).

(2.) JOHANN OPPER, age 60. His wife petitions for pardon on the grounds that he was not one of the main perpetrators. The petition states that he succumbed to the influence of the excited crowd; that he had lead a blameless life and enjoys the esteem of fellow citizens.

(3.) PHILIPP GUTLICH. His wife petitions for clemency on the grounds that he participated in the ill-treatment of the victims only during the early stages and left because he no longer approved; that he succumbed to the influence of the incited crowd; that he has a past good record and was not a member of the Nazi party. He has four minor children, the youngest eight months old. The Mayor and Chief of Police of Russelsheim affirm that GUTLICH bears a good reputation in the community.

(4.) JOSEF HARTGEN, age 41. His wife petitions for clemency for the sake of his three children, ages from two to seven years. She states that HARTGEN "was regrettably carried away by his passion and attacked one of the airmen." The former mayor of Russelsheim states that HARTGEN enjoyed a good reputation in Russelsheim, and an official of the Adams Opel Company certifies that HARTGEN has been employed by the company since 1928 and was an industrious and independant worker.


The above petitions for clemency have been appended to the record. It is believed that no valid reasons are contained therein for the extension of clemency to any of the accused. Although many persons may have participated in the atrocities committed that day, these five accused were certainly among the ring-leaders.

They were the central figures in six barbarous and ruthless murders. All war crimes are subject to the death penalty, although a lesser penalty may be imposed (Par. 357, FM 27-10).

The offenses for which the accused were convicted closely approximated common law murder, for which the usual penalty among civilized people is life imprisonment or death. There are no extenuating circumstances in the instant case to warrant changing the penalty of death imposed by the Commission.

10. CONCLUSION:

It is accordingly recommended that the sentence of the Commission as to each accused, whose cases are here for confirmation, that is, PHILIPP GUTLICH, JOHANN OPPER, JOHANNES SEIMEL, FRIEDRICH WUST and JOSEF HARTGEN, be confirmed. Forms of action prepared to accomplish this result are attached hereto.


JAMES D. MURPHY,
1st Lt., JAGD.

HEADQUARTERS
UNITED STATES FORCES, EUROPEAN THEATER

_____ October 1945.

In the foregoing case of JOHANNES SEIPEL, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

DWIGHT D. EISENHOWER
COMMANDING GENERAL, U.S. FORCES
European Theater.

HEADQUARTERS
UNITED STATES FORCES, EUROPEAN THEATER

October 1945

In the foregoing case of JOSEF HARTGEN, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

DWIGHT D. EISENHOWER
Commanding General, U.S. Forces
European Theater

**HEADQUARTERS
UNITED STATES FORCES, EUROPEAN THEATER**

_____ October 1945

In the foregoing case of FRIEDRICH WUST, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

DWIGHT D. EISENHOWER
Commanding General, U.S. Forces,
European Theater

HEADQUARTERS
United States Forces, European Theater

_____ October 1945

In the foregoing case of JOHAN OPPER, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

DWIGHT D. EISENHOWER
Commanding General, U.S. Forces,
European Theater

HEADQUARTERS
UNITED STATES FORCES, EUROPEAN THEATER

_____ October 1945

In the foregoing case of PHILIPP GUTLICH, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

DWIGHT D. EISENHOWER
Commanding General, U.S. Forces,
European Theater

HEADQUARTERS SEVENTH ARMY
Office of the Staff Judge Advocate
APO 758 US Army

23 August 1945

REVIEW OF THE STAFF JUDGE ADVOCATE

UNITED STATES

V.

Joseph Hartgen,
Friedrich Wust,
Margarete Witzler,
Kathe Reinhardt,
August Wolf,
Johannes Seipel,
Heinrich Barthel,
George Daum,
Johann Oppen,
Karl Fugmann,
Philipp Gutlich

all of whom are German civilians residing in Russelsheim, Germany.

1. The above named accused were tried at a joint trial by a military commission appointed by the Commanding General, Seventh United States Army, at Darmstadt, Germany, on 25 July 1945.

a. They were all tried on the following charge and specification:

CHARGE: Violation of the Laws of War

SPECIFICATION: In that JOSEF HARTGEN, FRIEDRICH WUST, MARGARETE WITZLER, KATHE REINHARDT, AUGUST WOLF, JOHANNED SEIPEL, HEINRICH BARTHEL, GEORG DAUM, JOHANN OPPER, KARL FUGMANN, and PHILIPP GUTLICH, German civilians, acting jointly, did, together with other persons whose names are unknown, at Russelsheim, Germany, on or about 26 August 1944 wilfully, deliberately and wrongfully encourage, aid, abet, and participate in the killing of JOHN N. SEKUL, WILLIAM A. DUMONT, THOMAS D. WILLIAMS, and ELMORE L. AUSTIN, members of the United States Army, and two other members of the United States Army whose names are unknown, each of whom was then unarmed and a prisoner of war in the custody of the then German Reich.

b. Each of the accused pleaded not guilty to the Charge and not guilty to the Specification.

2. Comments Upon Jurisdiction

a. Authority to appoint the military commission was delegated by the Commanding General, 12th Army Group, by a letter dated 21 May 1945. The power thus delegated included power to appoint a military commission of not less than three officers of the United States Army, for the trial of persons subject to the jurisdiction of such a commission and who are charged with espionage or with such violation of the laws of war as threaten or impair the security of their forces, or the effectiveness of such forces or members thereof. The propriety of trials by military commissions for violations of the laws of war has been long established, the most recent confirmation thereof being Ex Parte Quirin, 85 L. Ed. 1; 63 Sup Ct. R.2, wherein it was said:

"From the very beginning of its history this court has recognized and applied the law of war as including that part of the law of nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations as well as enemy individuals. By the Articles of war, and especially Article 15, Congress has explicitly provided, so far as it may constitutionally do so, that military tribunals shall have jurisdiction to try offenders or offenses against the laws of war in appropriate cases. Congress, in addition to make rules for the government of our Armed Forces, has thus exercised its authority to define and punish offenses against the law of nations by sanctioning, within constitutional limitations, the jurisdiction of military commission to try persons and offenses which, according to the rules and precepts of the law of nations, and more particularly the law of war, are cognizable by such tribunals".

b. That the act charged against these accused constitutes an offense against the laws of war is plain. It is provided in Chapter 6, Article 2, of the Geneva Conventions of 1929, that "Prisoners of War are in the power of the enemy power, but not of the individuals or bodies of troops who capture them. They must at all times be treated with humanity and protected particularly against acts of violence...." Also, in Article 23 of the Annex to the Hague Convention of 18 October 1907, it is provided that "In addition to the prohibitions provided by special conventions, it is expressly forbidden.....(c) To kill or wound an enemy who, having laid down his arms, or having no longer any means of defense, has surrendered at discretion." To both of these Conventions, Germany is a signatory.

c. The specification clearly and in appropriate terms defines the killing of named and unnamed prisoners of war, by the several accused persons, in violation of "the Laws of War". "The Laws of War are binding upon belligerents under all circumstances and conditions" (Oppenheim's International Law, Vol II, p. 183), and as in the concept of modern warfare, all inhabitants of each belligerent state are mutually in combat, German civilians are bound to observe the laws of war. To quote again from Oppenheim, "all the members of both nations are authorized to commit hostilities against all the members of the other, in every case and under every circumstance permitted by the general laws of war". Being thus bound by the laws of war, it follows that a civilian can violate them, and in particular, that the present crimes were properly charged as violations of the laws of war.

d. The commission was properly constituted of the correct number of competent members. Military counsel was provided for the accused, who were also represented by vigorous and capable civilian counsel.

3. Summary of Evidence

a. For the Prosecution

On the night of 25 August 1944, the town of Russelsheim, Germany, was subjected to a fifty-nine minute air raid by allied planes. Bombs struck the Opel works near the town, and much of the town, destroying many civilian homes. The citizens of the town spent most of the night either in the air raid shelter or fighting fires in their homes. This raid was the longest and most destructive raid the people of Russelsheim had experienced. They were still in an excited condition the following morning, 26 August 1944, when, between 0900 and 1000 hours, six unarmed American fliers, prisoners of war, walked through the town with two German soldier guards. These fliers had been shot down and were being taken from Osnabruck to Ober Ursel. As the group proceeded west down Frankfurterstrasse a crowd of German civilians began to gather around them.

Mrs. Margarete Witzler and her sister, Mrs. Kathe Reinhardt, saw the fliers and began shouting "beat them to pieces. Beat them to death. They are the ones, they are the ones who were here last night. They are the terrorizers of last night. Kill the dogs. We cannot have pity on them." (12, 24, 31, 78, 83). They continued these shouts as the group passed along Frankfurterstrasse. Mrs. Reinhardt threw a brick from the debris, hitting one of the fliers on the head (12, 16) and also struck one of them with her fist (25). Mrs. Witzler also threw a brick at the fliers (33).

Joseph Hartgen, a party official and the Propoganda Chief of Russelsheim, was present in the crowd. At this point he fired a revolver one time (13, 20). Both women continued shouting, and picked up stones and threw them at the fliers (35, 38). Later other people threw stones (36). A crowd of between twenty and two hundred people had gathered and were following the fliers down Frankfurterstrasse. Philipp Gutlich, who was in the crowd, beat the fliers with a stick three feet long and two inches in diameter. He held the stick in both hands and beat several times (31, 43, 44).

Several of the fliers were bleeding, and one was being carried on the back of another. The crowd was angry and the fliers moved swiftly down Frankfurterstrasse, turning right into Taunusstrasse and proceeding toward Grabonstrasse. As the fliers passed down Taunusstrasse past Wilhelminenstrasse they were bleeding and some were limping. Philipp Gutlich was shouting, "Beat them to pieces." (41, 42). George Daum, who was shoveling debris in the rear of his home on Taunusstrasse, ran out into the street and after the fliers, and beat them with his shovel (47, 48, 89, 90, 91). Seeing the crowd approaching, Johannes Oppen went toward it with a broom held high above his head. He struck twice (55, 58, 64, 69, 71). Joseph Hartgen, with a stick similar to a hoe handle, wildly beat the fliers (70, 73). The fliers were bleeding. One flier was so badly beaten by the time they neared the end of Taunusstrasse that he sat on the sidewalk three or four houses away from Grabonstrasse. His right shoulder and the upper part of the right side of his chest were battered. A piece of stone was sticking in his skull. Johannes Siepel went over to him and kicked him on the neck and chin (76).

When the fliers reached Grabonstrasse one was bleeding badly at the throat. They turned right and proceeded down Grabonstrasse toward Hahnhofstrasse. They crossed Grabonstrasse and proceeded along the wall which separates Grabonstrasse from the railroad tracks. The crowd continued to follow and swarm around them. August Wolf was on a pile of wood behind the wall and near the tracks. He and Karl Fugmann threw stones at the fliers (Pros Ex 4). Wolf had what appeared to be the handle of a hammer in his hand. He tried to beat the fliers, but did not succeed (97, Pros Ex 8). Friedrich Wust leaned over the wall and hit one of the fliers one or two cracks (Pros Ex 4). He then went over the wall and into Grabonstrasse with a piece of wood in his hands. He struck the Americans forcefully several times (98). The fliers stumbled on. One was limping badly, and the entire street was crowded and noisy. After the fliers passed Gedersbuhl all but two collapsed and fell to the ground next to the wall. The other two could just drag themselves along, and soon fell to the pavement. They crept together to protect each other. Wust started hitting them with a hammer, beating to and fro (113, 115, 116, Pros Ex 6). Joseph Hartgen asked all of the people to beat them. Johann Oppen was inciting and "needling" the crowd (104), and himself beat the fliers several times (117, 119). Joseph Hartgen beat them repeatedly (118). He then shot the Americans (103, 109, 110), who, by this time, lay in a heap against the wall.

After the incident was over Johannes Siepel met Ria Bastian, whom he told he had kicked someone with his feet (49). He later approached a boyhood friend and stated "I also beat them" (93). The Taunusstrasse was empty of the crowd when Johann Oppen returned to it. He met Ludwig Willms, whom he told "We beat them on the head" (78, 79). George Daum told

Margarete Burck he took his shovel and put it upside down (85) and beat them (87, Pros Ex 2). As Philipp Gutlich returned from the scene he stopped in front of Wilhelmina Biendel's window and told her "my hands hurt so from the beating". (65)

Between 1100 and 1200 hours the same day the bodies of the American prisoners were placed in a farmer's carriage drawn by Hitler Youth, and were taken to the cemetery near Russelsheim. They were placed in the cart one on top of the other, and some were still alive at the time. An SA man, Stolts, accompanied the cart. First it was taken to the chapel where it was left. Later in the afternoon it was moved further into the cemetery. Joseph Hartgen went to the cemetery late in the afternoon, fully attired in his SA uniform. The following day the Americans were buried (137).

On 28 June 1945 six bodies of American soldiers were disinterred at the cemetery in Russelsheim, Germany. They were clothed in American Air Corps uniforms, and four wore dog tags. These bore the names of John N. Sekul, William A. Dumont, Thomas D. Williams, and Elmore L. Austin (140). All of the bodies except one had a fractured skull, which injuries were obviously caused by being struck with heavy, blunt instruments. The one whose skull had not been fractured had two bullet holes in the skull. Two others had bullet holes in the skulls. No other bones were broken.

b. For the Defense

Various witnesses were called by the defense. A 76 year old Anti-Fascist who had been driven from the scene of the occurrence in Grabonstrasse by the accused Oppper stated that the accused Fugmann left the crowd and did not participate in the beatings. Character witnesses were introduced for the accused Fugmann, Wolf, Witzler, Reinhardt, Gutlich, Siepel, Oppper, Daum, and Hartgen. The Assistant Chief of the Public Health Office at Darmstadt, who was also the prison doctor, testified that the accused Seipel was a very senile person. Mrs. paum and another woman who lived in the paum household stated that to their knowledge the accused Daum did not follow the crowd and did not beat the fliers. Other witnesses testified that they did not hear or see the accused Witzler, Reinhardt and Barthel in the crowd and molesting the fliers.

Each accused, after having been duly advised of his rights, elected to take the stand and to make either a sworn statement or an unsworn statement in regard to the incident which occurred in Russelsheim on 26 August 1944, in which six American fliers met their death at the hands of an unruly mob of German civilians.

The accused Daum, age 50 years, in a sworn statement stated that he saw the prisoners pass his home in a crowd of people. He swore that he did not join the crowd, and did not in any manner use his shovel on them.

The accused Barthel in a sworn statement admitted having been in the crowd which surrounded the prisoners on Grabonstrasse, but denied striking one of them on the rectum with a piece of wood. He saw the accused August Wolf and Johann Oppper in the crowd, but did not see what they were doing. He saw the fliers being beaten by members of the crowd, and saw three or four of them collapse near the wall on Grabonstrasse, but he took no part in the beating.

The accused Gutlich, in an unsworn statement, also admitted being present in the crowd on the day in question. He had never seen foreign fliers before, and wanted to get a close look at them. He was excited, having lost much in the bombing the night before. One of the fliers "made some kind of a face" at him, and he slapped the flier with the flat of his hand. He denied striking any of the prisoners with a club.

The accused Oppel, in an unsworn statement, stated he saw an enormous crowd beating foreign fliers in the Grabenstrasse, and later saw their bodies being taken away in a cart. He admitted having a broom when he first saw the crowd in Taunusstrasse, but put it aside when he joined the crowd. He vehemently denied the accusations of his fellow townspeople.

The accused Seipel, in an unsworn statement, admitted being in the middle of the crowd on Taunusstrasse. He stated that he was hit in the face with a stone and was hit over the head with a big beam. He admitted seeing a flier sitting on the curb near Grabenstrasse, but as he was dizzy from the blows he received he was unable to state whether or not he kicked this flier. He denied making damaging statements after the incident.

The accused Reinhardt in an unsworn statement, admitted being on the corner of Bahnhofstrasse and Frankfurterstrasse on the morning in question. She saw a crowd of people following a group of fliers who had been shot down. There was much excitement, and lots of yelling. She admitted that in the excitement she yelled "beat them" twice. She saw the anti-aircraft soldier beat the fliers. There was a large crowd and much noise, and she heard no shooting. Two days later she learned the fliers had been murdered.

The accused Witzler, in an unsworn statement, admitted seeing the crowd and being very excited, but denied participating, shouting and throwing stones. Though she followed the crowd down Frankfurterstrasse and Taunusstrasse to Waldstrasse, she did it purely out of curiosity. She had never seen foreign fliers before. She could not see very well because of the crowd, and did not see any blows struck or stones thrown. She did not hear her sister, Mrs. Reinhardt, shouting. Two days later she learned that on that morning the fliers had been beaten to death.

The accused Wust in an unsworn statement, stated that he heard the noise and saw the large crowd coming into Grabenstrasse from Taunusstrasse. He ran to the wall on Grabenstrasse, took a hammer from his pocket and tried to beat the fliers, but did not succeed. Sticks and stones were flying "like machine gun fire". Someone in the crowd took the hammer from him and beat with it until the head of the hammer came off. He saw Wolf and Fugmann throwing stones or wood at the fliers, and later admitted striking the fliers himself after they lay on the ground.

The accused Joseph Hartgen, in an unsworn statement, stated he was Nazi Propaganda leader in the town of Russelsheim. On the morning in question he was standing on the corner of Bahnhofstrasse and Frankfurterstrasse and saw a crowd approaching. Asking what was happening, he was told that they were fliers who had been over the night before. The fliers were guarded by a sergeant who told him his orders were to lead the fliers through the town. Hartgen was excited, as a result of his experiences during the raid the night before. He struck one of the fliers with the back of his hand. The crowd was excited and menacing. He heard shouts of "beat them, they are the ones of last night". He told the sergeant to get the prisoners out of town. At this point he left the crowd, and later went to the corner of Taunusstrasse and Kurbinstrasse. He saw the crowd turn from Taunusstrasse into Grabenstrasse. He followed, and saw the crowd beating the fliers. When they

were on the ground a soldier beat them. After the crowd dispersed he examined the bodies, straightened them out, and saw that their skulls had been battered. He noticed no bullet holes. None of them groaned. He obtained a cart and got some people to help load the fliers' bodies in it. He then ordered the cart taken to the cemetery. He denied hearing any shots fired, or taking part in the beatings.

The accused Wolf made a sworn statement to the court. He stated that he heard the noise of the crowd and left his home to investigate. He went to the corner of Grabenstrasse and Taunusstrasse, and jumped over the wall. He heard shouts and cried of "beat them to death, beat them to pieces", and was told that they were the fliers who had been there the night before. He saw the fliers being beaten by a flak-soldier, but did not see anyone else beating, at that time. The accused Wolf did not throw anything at them, but he did see the accused Wust kneeling on the ground and beating a flier's head with a hammer. Wolf himself claimed to be only an innocent bystander.

The accused Karl Fugmann, in a sworn statement, stated that he too was attracted to Grabenstrasse by the great noise of the crowd. He jumped over the wall which separates Grabenstrasse from the railroad tracks, and saw there were American fliers in the crowd. He walked with the crowd toward Geiersbuhl, and then left. At no time did he have anything in his hand, and he did not strike the fliers in any way. He heard shots fired, but did not know who fired them.

The accused Barthel, recalled by the court, stated he saw the accused Wolf next to the wall with a stick in his hand, but did not see him strike anyone.

4. DISCUSSION

a. The accused Fugmann was acquitted by the Commission. One witness stated that Fugmann threw stones at the fliers, and he himself admitted jumping over the wall and walking with the crowd along Grabenstrasse. In his sworn testimony, Fugmann denied striking the fliers in any way. A mere bystander in a concerted action of this nature is not guilty of participation. Whether or not Fugmann participated was a question of fact for the commission which cannot justly be criticized for determining it in favor of the accused.

b. The remaining accused are charged jointly with aiding, abetting, encouraging and participating in the death of four identified and two unidentified American aviators, who were then prisoners of war. All elements are established and although not with the preciseness required of evidence produced before courts-martial, still with clarity and convincingness. The evidence portrays a blood-hungry, brutal mob, incensed by the damage done to their village during the preceding night's raid, determined to exact its revenge from the helpless aviators in its clutches. Even the old, the feeble, and the women participated, and among the crowd of vicious civilians, the accused were clearly seen and identified. That they beat the aviators is plain. Witnesses whose testimony was not discredited nor refuted saw the convicted accused plying their homely but deadly weapons and heard them shouting their inflammatory phrases, heard the shots that put an end to suffering, that punctuated the ending of this episode of horror. Witnesses saw the bodies carted to the cemetery where they were buried, there to remain until exhumed to become mute witnesses against their murderers. Undoubtedly, others besides these accused were involved; possibly other hands than theirs dealt the blows that were finally fatal, but the conclusion is firm and inescapable that these accused played an active part and that the crimes of all are attributable to each. The findings of guilty are sustained by the evidence.

c. As the commission was authorized to formulate its own rules of procedure and to accept in evidence any testimony having probative value to a reasonable man, the only test of the propriety of its actions and decisions is the impact thereof upon such rights as are accorded the accused by principles of justice, fairness, and humanity. While neither the accused nor the nation of which they are citizens has demonstrated any inclination to observe these principles, they are among those for which the war was prosecuted, and to ignore them here would be, in a large sense, to negative our victory. Viewed in this light, the hearing was eminently just, fair, and humane. The commission was diligent in its guardianship of the rights of the accused, and was in fact praised by each of the German civilian counsel. Civilian counsel could criticize only the weight given to pre-trial sworn statements executed by the accused. These statements are clearly entitled to consideration as falling within the type of evidence having probative value to reasonable men. The hearing was conducted in an impressive and dignified manner, for which much credit is due the President thereof. No harmful errors appear.

d. Wolf and Seipel were each sentenced to be imprisoned for 15 years, while Daum was sentenced to 25 years' imprisonment. All the others were sentenced to be hanged by the neck until dead. Obviously in a crime of this nature, there may be different degrees of responsibility appropriately deserving of varying degrees of punishment. The court was not limited in its punitive power, which includes power to impose a death sentence. The mode of execution prescribed is appropriate to the heinous crime of murder.

Pleas for clemency have been received and considered on behalf of the following accused:

1. Johann Seipel, age 67. His brother pleads for mercy on the grounds of prior clean record and present senility. Despite his age, Seipel was seen to kick a recumbent aviator, already desperately wounded by a piece of stone sticking in his head. What acts of brutality Seipel would have committed had he been in his prime need not be imagined here. Suffice it to say that the act he did contributed to the death of the persons named.

2. Johann Oppen, age 60. His wife petitions for pardon or commutation on the grounds that he did not have a weapon in his hand and that he succumbed to the influence of the crowd. His past record is unblemished. The testimony of the witnesses belies his innocence. He was seen with a broom held high in his hands; he was seen to strike twice. In itself, old age is not an excuse nor even a mitigating factor. On the contrary, a mature man could be expected to exert a restraining influence, to extend the wisdom of his experience.

3. Philipp Gutlich. His wife asks for commutation on the grounds that he was a part of the mob only during the early stages and on the grounds of his past good record. He has four minor children, the youngest eight months old. The Mayor of Russelsheim points out the good family background and the diligence of the accused, and the fairness with which Gutlich treated prisoners and foreign workers on his farm. The Chief of Police testifies to his blameless record and his industry.

4. Margarete Witzler and Katharine Reinhardt. A petition is presented by Jean Witzler, the husband of Margarete Witzler and brother-in-law of Katharine Reinhardt. He points out that their only offense was screaming against the pilots, and that no one pays attention to screaming wives. Their past record is blameless. During the air-raid of 26 August 1944, they carried their old mother in a small carriage to a shelter, and when they returned after the raid, witnessed the burning houses and the dying people. Both women have children. Their honesty and popularity as managers of a retail tobacco shop was described by four other persons.

5. Josef Hartgen. His wife presents an appeal for the sake of his three children, ages ^{from} 2 to 7 years. She believes he was carried away by passion. The late burgomeister states that the past record and reputation of the accused have been good, and some one signing for "Adam Opal, Aktiengesellschaft" certifies to his industry and independence as foreman in the Adam Opal plant.

The above petitions have been appended to the record and may be regarded as recommendations for clemency. In my opinion, none of the facts therein presented constitute adequate reason for the extension of clemency. The crime of which these persons were convicted was brutal, vicious, and unfeeling, and while American sympathy may be aroused at the prospect of hanging women and old men, it must always be remembered that half-way measures will never impress upon the people of Germany that their actions have been unlawful and degenerate. The deterrent effect of punishment must be great enough to prevent forever crimes that are an abomination in the eyes of men and a blasphemy in the sight of God.

6. RECOMMENDATIONS

a. I recommend that as to the accused Wolf, Barthel and Daum the sentences be approved and ordered executed.

b. I recommend that as to the accused Hartgen, Wust, Witzler, Reinhardt, Seipel, Oppen and Gutlich, the sentences be approved and the record forwarded for confirmation of the sentence.

c. Appropriate forms of action are included herewith for your signature if you approve.

/s/ C. Robert Bard

C. ROBERT BARD
Colonel, JAGD
Staff Judge Advocate

HEADQUARTERS SEVENTH ARMY
APO 758 6.Sep.1945US Army

ACTION OF THE REVIEWING AUTHORITY

In the foregoing case of JOSEPH HARTGEN, a German civilian residing in Russelsheim, Germany, the sentence is approved but the order directing the execution thereof is withheld pending action by the confirming authority

GEOFFREY KEYES
Lieutenant General, U S A
Commanding

HEADQUARTERS SEVENTH ARMY
APO 758 US Army

6.Sep1945

ACTION OF THE REVIEWING AUTHORITY

In the foregoing case of JOHANNES SEIPEL, a German civilian residing in Russelsheim, Germany, the sentence is approved but the order directing the execution is withheld pending action by the confirming authority.

GEOFFREY KEYES
Lieutenant General, USA
Commanding

HEADQUARTERS SEVENTH ARMY
APO 758 6.Sep.1945US Army

ACTION OF THE REVIEWING AUTHORITY

In the foregoing case of AUGUST WOLF, a German civilian residing in Russelsheim, Germany, the sentence is approved and will be duly executed. Burchsal Prison, Burchsal, Germany, or such other place as may be subsequently designated by competent authority, is designated as the place of confinement.

GEOFFREY KEYES
Lieutenant General U S A
Commanding

HEADQUARTERS SEVENTH ARMY
APO 758 6.Sep.1945US Army

ACTION OF THE REVIEWING AUTHORITY

In the foregoing case of JOHANN OPPER, a German civilian residing in Russelsheim, Germany, the sentence is approved but the order directing the execution thereof is withheld pending action by the confirming authority.

GEOFFREY KEYES
Lieutenant General, U S A
Commanding

HEADQUARTERS SEVENTH ARMY
APO 758 6.Sep.1945 US Army

ACTION OF THE REVIEWING AUTHORITY

In the foregoing case of Philipp Gutlich, a German civilian residing in Russelsheim, Germany, the sentence is approved but the order directing the execution thereof is withheld pending action by the confirming authority.

GEOFFREY KEYES
Lieutenant General, U S A
Commanding

HEADQUARTERS SEVENTH ARMY
APO 758 6.Sep.1945US Army

ACTION OF THE REVIEWING AUTHORITY

In the foregoing case of GEORG DAUM, a german civilian residing in Russelsheim, Germany, the sentence is approved and will be duly executed. Burchsal Prison, Burchsal, Germany, or such other place as may be subsequently designated by competent authority, is designated as the place of confinement.

GEOFFREY KEYES
Lieutenant General USA
Commanding

HEADQUARTERS SEVENTH ARMY
APO 758 6.Sep.1945US Army

ACTION OF THE REVIEWING AUTHORITY

In the foregoing case of FRIEDRICH WUST, a German civilian residing in Russelsheim, Germany, the sentence is approved but the order directing the execution thereof is withheld pending action by the confirming authority.

GEOFFREY KEYES
Lieutenant General, USA
Commanding

HEADQUARTERS SEVENTH ARMY
APO 758 US Army

6.Sep.1945

ACTION OF THE REVIEWING AUTHORITY

In the foregoing case of HEINRICH BARTHEL, a German civilian residing in Russelsheim, Germany, the sentence is approved and will be duly executed. Burchsal prison, Burchsal, Germany, or such other place as may be subsequently designated by competent authority, is designated as the place of confinement.

GEOFFREY KEYES
Lieutenant General, USA
Commanding

HEADQUARTERS SEVENTH ARMY
WESTERN MILITARY DISTRICT
Office of the Commanding General
APO 758 6.Sep.1945US Army

ACTION OF THE REVIEWING AUTHORITY

In the foregoing case of MARGARETE WITZLER, a German civilian residing in Russelsheim, Germany, the sentence is approved but is commuted to imprisonment at hard labor for a period of thirty (30) years. As thus modified the sentence will be duly executed. Schloss-Defingis Prison, Mannheim, Germany, is designated as the place of confinement.

GEOFFREY KEYES
Lieutenant General, U S Army
Commanding

HEADQUARTERS SEVENTH ARMY
WESTERN MILITARY DISTRICT
Office of the Commanding General
APO 758 6.Sep.1945US Army

ACTION OF THE REVIEWING AUTHORITY

In the foregoing case of KATHE REINHARDT, a German civilian residing in Russelsheim, Germany, the sentence is approved but is commuted to imprisonment at hard labor for a period of thirty (30) years. As thus modified the sentence will be duly executed. Schloss-Defingis Prison, Mannheim, Germany, is designated as the place of confinement.

GEOFFREY KEYES
Lieutenant General, U S Army
Commanding