

SECRET

HEADQUARTERS
FIRST UNITED STATES ARMY
APO 230

Office of the Staff Judge Advocate
20 April 1945

SUBJECT: Review of proceedings of Military Commission in the case of
United States v. Hauptmann (Captain) Curt Bruns, 2nd Battalion,
293rd Regiment, 18th Volk's Grenadier Division, German Army.

TO : Commanding General, First United States Army, APO 230.

1. The accused was tried at Duren, Germany on 7 April 1945 before a
Military Commission on the following charge and specification.

CHARGE: Violation of the Laws of War.

Specification: In that Hauptmann (Captain) Curt Bruns, German Army, then
commanding the Second Battalion, Two Hundred Ninety-third Regiment, Eighteenth
Volk's Grenadier Division, did, in the vicinity of Bleialf, Germany, on or about
20 December 1944, in violation of the Laws of War, wrongfully and without legal
justification or excuse order, direct and cause the death by shooting of two
soldiers of the United States Army, identity unknown, the said two soldiers
being at the time prisoners of war who had laid down their arms and surrendered
to the German Forces.

2. **EVIDENCE:**

a. **For the Prosecution:** Between 16 December 1944 and 20 December
1944, the Americans had captured about thirty (30) German soldiers, among
whom was one Corporal Henrich Kauter, of 6th Company, 2nd Battalion (R. 10,
11, 12). Kauter, who was captured on 16 December 1944, remained in the hands
of the American troops until 20 December 1944, a period of four (4) days, and
during this time he and the other German prisoners were interrogated by American
soldiers who spoke German fluently (R. 10-11). The two Americans who inter-
rogated the German prisoners were described by Corporal Kauter as being an
officer and a soldier. The officer he described as black (brunette), with
black eyes, about one meter 68 to one meter 70 tall and who weighed about 150
pounds. He described the soldier as being blond, about the same height as the
officer, but somewhat heavier. Kauter also described the soldier as having
"had three stripes up and two underneath, two if not three" on his arm (R. 11).
According to Kauter, there was a third soldier who spoke German, whom he
described as being black (brunette) (R. 11).

About 300 American prisoners were captured by the 2nd Battalion, 293rd
Regiment, 18th Volk's Grenadier Division, German Army, at about 1000 hours on
the morning of 20 December 1944, and with them the thirty German prisoners,
including Kauter, were retaken (R. 11). The accused, Captain Curt Bruns,
was the Battalion Commander of the 2nd Battalion, which was in operation in
the vicinity of Bleialf, Germany and Schonberg, Belgium (R. 9, 10). The
command post of the 2nd Battalion was located in the customs house on the
Bleialf - Schonberg road, a distance of about 1.9 miles from Bleialf, Germany.
Many of the Americans captured at this time wore the insignia of the 106th
Infantry Division.

The American prisoners were marched immediately after their capture to
the customs house, Corporal Kauter going on ahead of them, arrived at the
customs house about 20 to 30 steps ahead of the Americans. Captain Bruns was
in the street in front of the customs house at the time of the arrival of the
American prisoners there (R. 12-13). Shortly after the arrival of the Americans
at the customs house two of the German soldiers who had been captives of the
Americans went up to Captain Bruns and informed him that there were two

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CLASSIFICATION CANCELLED
by authority of Lt. Hq. U.S.F.E.T.
file AG C00.5 CBI-AGC, 27 June 1946
Joseph W. Crockett, Major, A.C.
A0234592 Chief, Records Center
7708 War Crimes Group, 1 March 1948

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American soldiers from Berlin among the Americans who were Jews and who spoke good German. The captain ordered the two German soldiers to get them immediately. While they were going after the two Captain Bruns made the expression "The Jews have no right to live in Germany". The two Americans were taken from the group and were placed near the wall of the customs house in the custody of Sergeant Hoffmann, Company commander of the 6th Company, 2nd Battalion, 293rd Regiment, 18th Volks Grenadier Division (R. 13, 14). These two men were identified by Kauter as being the identical two who had interrogated him while he was a captive of the Americans (R. 14). The group of Americans were marched off in the direction of Bleialf, Germany, about thirty minutes after their arrival at the customs house but the two Jewish American prisoners were detained in the custody of Sergeant Hoffmann. After the group of American prisoners were out of sight Captain Bruns and Sergeant Hoffmann had a conversation immediately after which Hoffmann, with a detail of five or six men, all of whom were armed, marched the two American soldiers down the road in the direction of Bleialf, where they were shot beside the road within 200 meters of the customs house. Two volleys of fire were heard and the Americans were seen to fall as they were fired upon (R. 15, 16). After the Americans had fallen members from the firing squad walked to where the bodies were and examined them. Captain Bruns remained on the street in front of the customs house in a position where he could observe the entire procedure in the execution of the two Americans (R. 16). All of the American prisoners were dressed in United States Army uniforms. All had laid down their weapons and were prisoners of the German armed forces (R. 16-17-18, 22).

IPW Team No. 154, which was attached to the 106th Infantry Division consisted of the following named and described individuals:

"First Lieutenant Andrew J. Nolte, 01925311; age, between 26 and 28 years; height, approximately 5 feet 9 inches; weight, 150 pounds; color of hair, blond; complexion, light. He wore glasses. Second Lieutenant John W. Seale, 0925858; age 29 years; height 6 feet 2 inches; weight 175 pounds; color of hair, dark brown; fair complexion; He wore glasses. Staff Sergeant Kurt R. Jacobs, 12207399; age, approximately 32 to 34 years; height 5 feet 7 inches; weight 210 pounds; color of hair, black; complexion fair. Staff Sergeant David Epstein; age 25 to 27 years; height 5 feet 5 inches; weight 130 pounds; color of hair, brown; complexion, fair. He wore glasses. Technician Third Grade Albert E. Eisenkraft, 32698676; age 25 years; height 5 feet 7 inches; weight 145 pounds; color of hair, blond; complexion, light. He wore glasses. Technician Fifth Grade Murray Zappler, 32824267; age approximately 21 years; height, 5 feet 8 inches; weight, 155 pounds; color of hair, black; complexion is dark." (R. 7)

Staff Sergeant Kurt R. Jacobs, Staff Sergeant David Epstein, Technician Third Grade Albert E. Eisenkraft and Technician Fifth Grade Murray Zappler were of Jewish extraction.

This team was attached to and worked with the 422nd and 423rd Infantry Regiments of the 106th Infantry Division which was in combat in the area between Bleialf and Schonberg during the period involved in this case (R. 6-7-8). All members of this IPW Team were lost in action and were carried as missing in action according to the records of the 106th Infantry Division (R. 27).

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On 13 February 1945 Technician Fourth Grade John H. Swanson, Service Company, 12th Infantry, found the bodies of two dead American soldiers in a small hole located at a point about 100 yards off of the Schonberg-Bleialf road, about three-quarters to one mile distant from the customs house and about one mile distant from the town of Bleialf. The bodies were lying on their backs. No shrapnel wounds were found on their bodies and blood was clotted around the faces of both men, particularly in their eyes, ears, mouths and noses. These were identified as being the bodies of Staff Sergeant Kurt R. Jacobs and Technician Fifth Grade Murray Zappler. Neither of the bodies had shoes on. There was a field jacket on one body and an overcoat on the other body. Neither one was wearing a helmet. Both men had dark hair, one was average build while the other was of very stocky build. The bodies were lying about eight inches apart. The witness remembered the case specifically because he knew that we had done no fighting in that vicinity and he further knew that the men did not belong to his outfit (Pros. Ex. No. 3).

Captain Robert S. Lowther, Assistant Inspector General, 106th Infantry Division, testified that he was taken to the spot where the bodies of Jacobs and Zappler were found by Technician Fourth Grade John H. Swanson. An examination of the place where the bodies had been picked up revealed an overcoat which upon examination was found to have an identification mark therein which was cut out of the coat by Captain Lowther and retained as evidence, the identification mark being a stencilled letter with four numerals, viz. (Z-4267) (R. 24-25, Pros. Ex. No. 4).

The prosecution offered in evidence the sworn statement made by Margarethe Meiters to Lieutenant Colonel Jesse E. Bishop, Inspector General for the 106th Infantry Division in which she relates that she lived at the customs house during the period 17 December 1944 to 20 December 1944 and that she knew Captain Bruns and Lieutenant Oppermann, adjutant to Captain Bruns. She states that while American prisoners were marching by Captain Bruns she heard the Captain say, "If they don't hold their hands up, I'll shoot them." On 20 December 1944 Lieutenant Oppermann told her "Today we have captured a large number of Americans again. In Germany there isn't room for captured Negroes or Jews. Today we shot two Jews. Didn't you hear it or see it? They were shot because the captured German prisoners identified them as two who had questioned them." The Lieutenant pointed down in the meadow, across the street from the customs house, as the place where they were killed. (Pros. Ex. No. 5)

Anton Korn, a German prisoner of war called by the prosecution, testified that some time during the month of February 1945 he was placed in a separate cell with Captain Bruns for the purpose of ascertaining what Captain Bruns had to do with the shooting of American prisoners of war. He related that the captain told him that on one day his battalion had taken about 700 American soldiers and about 15 American officers as prisoners and among them were two Jewish officers. The two Jewish officers were separated from the rest and he had them sent back to "I-C" to "squeeze them out" which expression was explained as meaning "to get the last drop out of something", after which they were "to lay them down". The captain related that he himself had sworn a holy oath if the war for Germany was won or lost he was going to shoot every Jew in Germany. However, Captain Bruns related to him that before the two Americans were sent back the Regimental Commander, Lieutenant Colonel Witte, came and ordered that the two be shot. Therefore, the Americans were never taken back to "I-C" which was explained as being military intelligence office of division level. The witness further stated that Captain Bruns was placing

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the blame for the deaths of the two soldiers on the Regimental Commander because he, the regimental commander, was back in Berlin and could not be reached by the Americans (R. 27-28-29-30).

The sworn testimony given by Captain Curt Bruns before Lieutenant Colonel Jesse E. Bishop, Inspector General, 106th Infantry Division, was introduced by the prosecution. In such testimony the accused testified substantially as follows. He is a German national, has been an officer in the German Army since 1939 and has been a captain since September 1943. He was acting as Battalion Commander, 2nd Battalion, during the month of December 1944 and was formally made the Battalion Commander thereof on 12 January 1945. The accused admitted being in command of the Battalion during the period 16 December 1944 to 20 December 1944, inclusive, when this unit was in battle against the Americans in the vicinity of Bleialf, Germany and Schonberg, Belgium. The Battalion command post was located at the Customs House on 17 December 1944 and for several days thereafter, including the date of 20 December 1944.

Between 17 December and 20 December the accused's battalion took about 30 American prisoners. On 20 December 1944 in the morning between 0830 and 1000 hours the battalion captured approximately 700 Americans, among them approximately 15 officers, including an air corps officer. Most of these prisoners wore a patch identified by Captain Bruns as being that of the 106th Infantry Division.

The accused admitted knowing that two of the American prisoners could speak German fluently. He described them as officers but further identified one of them as having worn chevrons on his arms with three stripes above and two under those stripes. The other one he claims had either three or two stripes on the arm. Neither of these men wore a helmet, one had dark hair but the other he did not notice. One had brown eyes, the other dark eyes. Neither had shaved for two or three days. He approximated the ages of the two men at 28 and 19 years, respectively. One of them had features like a German. These two men were questioned by him on the street. One of them told him he had studied law in Berlin.

The two Americans were pointed out to him by the German prisoners as the ones who had questioned German prisoners. In sending out the American prisoners he had them sent out in "two" groups, "First the men, then the officers, and then these two men". Captain Bruns states that he first heard of these two men being shot by virtue of a telephone call from the regimental adjutant to the Battalion adjutant. The second time he heard of it was in the afternoon of 20 December at about 1400 hours when a runner, Nuerge, returned and claimed to have talked to the men who had been guarding the prisoners in the morning. He denied ordering that the two men be shot, claiming that "they were shot by the orders of the regimental commanding officer, Lieutenant Colonel Witte". In this regard, he stated in part, "the regimental adjutant told my battalion adjutant that the regimental commanding officer had encountered the column on the road between the custom house and Bleialf and had then and there given the order that two men were to be shot". While he could not say exactly where they were shot, he stated, "I can say it was approximately 500 to 600 meters away from the custom house which is a stretch that can be marched in five minutes" (Pros. Ex. #6).

b. For the Defense. The accused, after having had his rights explained to him, elected to be sworn and testify in his own behalf. He testified that about 700 American soldiers and about 15 American officers were taken prisoner by his battalion on 20 December 1944. They were marched to the customs house in two groups of about 350 men each. He took the officers out of the column. He kept the two German speaking officers back to question them. When the group of American prisoners were put in a column to be marched away the column was arranged so that when they turned right the two German speaking officers were in the back of the column. He heard at two o'clock that day, what had happened

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to the two German speaking soldiers and claims that his commander must have given the order for them to be shot. On cross examination he admitted that the two German speaking officers he had mentioned in his direct testimony were in fact non-commissioned officers--and when questioned as to the number of stripes on their sleeves he replied "One had two and the other had three stripes at the top and one at the bottom". He placed the time of the shooting at about 20 minutes past ten at which time he was at his battalion command post. He claimed in his testimony that he first heard of the incident through the runner, Nuerge, which contradicts his testimony before the Inspector General, since he stated to the Inspector General that he first heard of the shooting by virtue of a telephone call from the Regimental Adjutant to his battalion adjutant. He stated that the one who told him that he had studied law in Berlin was the one with the three stripes above and one below. The accused denied telling Anton Korn anything about the incident but admits Korn having occupied a cell with him for parts of two days and testified that Korn's testimony was not true (R. 31-36).

3. OPINION:

There are no errors that tend to prejudice the substantial rights of the accused. As was stated in the order appointing the commission and as announced by the President at the commencement of the trial, the procedure followed was in general the same as that prescribed for General Courts-Martial. The only material variation consisted of the introduction of evidence hereinafter considered, of the failure to permit peremptory challenges, and of the number of members present who concurred in the findings and the sentence. The positive language of Circular Number 14, Headquarters, Twelfth Army Group, 1 October 1944, entitled "Military Commission Regulations", under the provisions of which the present trial was conducted, render it unnecessary to consider the effect of the failure to permit peremptory challenges or of the failure of more than two-thirds of the members of the court present to concur in the voting. It is there provided that peremptory challenges shall not be allowed (Par. 5) and that the concurrence of at least two-thirds of the members of the commission present at the time of the voting shall be necessary for a conviction or sentence (Par. 10).

Evidence was offered without objection by defense consisting of affidavits of Tec 4 John H. Swanson, Service Company, 12th Infantry (Prox. Ex. 3) and of Margarethe Meiters, Bleialf, Germany (Pros. Ex. 5). Neither of these witnesses were present for cross examination by counsel for defense. It is a fact that neither were available, although the trial judge advocate did not show this in the record. In my opinion, these affidavits were properly received. A military commission is not bound by technical rules but may admit such evidence as would have probative value to a reasonable man. In Fairman, *The Law of Martial Rule*, Second Edition, at pages 276, 277, the rule is stated as follows:

"Unless superior authority directs otherwise, a military commission may make its own rules for the conduct of its proceedings. It may admit such evidence as would have probative value to a reasonable man. The rule which the Circuit Court of Appeals for the Second Circuit laid down for an administrative tribunal may properly be followed by a military commission: 'We are of the opinion that evidence or testimony, even though legally incompetent, if of the kind that usually affects fair-minded men in the conduct of their daily and more important affairs, should be received and considered; but it should be fairly done.' John Bene and Sons v. Federal Trade Commission (1924) 299 Fed. 468, 471."

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Corporal Heinrich Kauter testified that after having been captured by American forces and held for four days during which time he was interrogated by American soldiers, he was retaken by the Germans. At the same time many American soldiers were captured, including the two who had interrogated witness. These prisoners of war were marched to the command post of the accused located at a customs house near Bleialf, Germany. One of the liberated German soldiers told accused, in witness' presence, that among the prisoners were two Jews from Berlin. Ordering that they be brought before him immediately, the accused stated that "The Jews have no right to live in Germany". These two American prisoners, identified by Kauter as being the same persons who had interrogated him, were placed by accused against the wall of the custom house. After the rest of the prisoners were marched away, accused spoke to Sergeant Hoffmann who immediately selected a firing squad of five or six non-commissioned officers. The two Americans were marched to a point near a forest about 200 meters from the customs house and were shot, after which members of the firing squad examined the victims. Kauter stated that he was present at all times except for a short interval while the large group of American prisoners were marched away. He further stated that accused was standing in front of the customs house during the whole period, including the instant in which the two Americans were executed.

No reason appears in the record and none is known why Kauter should testify falsely, nor is the subject of his testimony a matter about which he could be unintentionally in error. With the exception of his denial on the stand that he actually heard accused order Sergeant Hoffman to have the prisoners shot, Kauter has been entirely consistent during each of the many pre-trial examinations to which he was subjected. The history of the case discloses that he was captured and had given his statement before the bodies were recovered or Captain Bruns was apprehended. In fact, it was the testimony of Kauter which instigated the search for accused. Just as the finding of the bodies tended to corroborate Kauter's statement, so did the subsequent admissions of accused. He admitted that he was at the customs house when the prisoners were brought there; that he called two Jewish American prisoners from the group and interrogated them to some extent, and that they were slain shortly thereafter. His description of these two soldiers closely resembles those whose bodies were found. Accused corroborated the testimony of Kauter in every substantial particular except in his denial of responsibility and in his statement of where the execution occurred. He stated that after all the prisoners had been marched from the customs house towards Bleialf, the regimental commander met them along the road, picked out the two Jews and had them shot. In view of accused's admission that the regimental commander arrived at the customs house from Bleialf ten minutes after the prisoners had been marched away, it is difficult to understand how the latter could have had time to learn of the presence of these two soldiers among the large group of prisoners and to have given the order for their execution.

The evidence of Kauter is further corroborated by evidence independent of accused's admissions and of the finding of the bodies of two members of the prisoner of war interrogation team. Margarethe Meiters testified under oath before the Inspector General, 106th Infantry Division, that while at the customs house on 20 December 1945 Lieutenant Oppermann, accused's adjutant, informed her that they had just shot two captured Jews whom German prisoners had identified as being the persons who had questioned them. The officer placed the scene of the killing at the same point as had Kauter. There was evidence that six members of the prisoner of war interrogation team attached to the 106th Infantry Division, whose insignia Kauter identified, are missing as a result of enemy action during this period.

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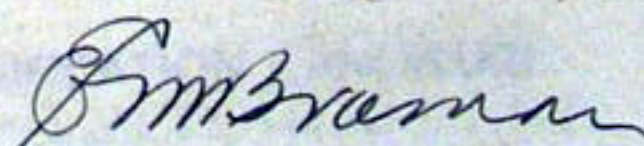
Admittedly, there are some inconsistencies in the testimony. Kauter described one of the men whom he saw executed as being an officer. While two officers of the team are missing, the bodies of those who were found were identified as enlisted men. Accused testified that upon the order of the regimental commander two prisoners were killed at a point in the immediate vicinity of the place where the bodies were found. His description of these men is more accurate than is that of Kauter, since he stated in effect that one was a staff sergeant and one a corporal. I regard these features of the case as matters determined by the findings of the court. The specification alleges merely that accused caused the murder of two unidentified American prisoners of war. It is immaterial whether the bodies found and identified are not those of the soldiers whom accused caused to be killed. Evidence of the finding of the bodies is just another circumstance to be considered in connection with the other testimony offered by the prosecution.

Accepting the testimony of the prosecution, there is no direct evidence that the men whom Kauter saw executed were American citizens or were actually killed. In my opinion, the circumstantial evidence in reference to both of these facts is sufficient. It was affirmatively shown that the soldiers wore the American uniform. They had surrendered as prisoners of war and were accepted as such. Moreover, following the trial, information has been received from the War Department that the four Jewish Americans of the prisoner of war interrogation team were American citizens. In reference to proof of their death, I believe the commission as reasonable men can take cognizance of the effects which a firing squad followed by a personal examination by the members thereof has upon its victims. In my opinion, the evidence is legally sufficient to support the findings of guilty.

4. RECOMMENDATION:

All war crimes may be punished with death. In a case of this character involving deliberate and unlawful murder, such a sentence is appropriate.

Authority to appoint Military Commissions for the trial of such cases was delegated to the Commanding General, First United States Army by the Commanding General, Twelfth Army Group, by letter dated 27 November 1944; telegram to Commanding General, First United States Army, from Commanding General, Twelfth Army Group, dated 3 March 1945, granting authority in this particular case; and paragraph 3b, Secret Letters, Headquarters, Twelfth Army Group, dated 13 February 1945, subject: War Criminals. By delegation from the Commanding General, Twelfth Army Group, dated 22 December 1944, the Commanding General, First United States Army was authorized to take final action except where confirmation is expressly required in a particular case by the Army Group Commander or by the Theater Commander. No such confirmation has been required in this case. Therefore, I recommend that the sentence be approved and ordered executed. Herewith is a form of action designed to carry out this recommendation.



E. M. BRANNON
Colonel, JAGD
Staff Judge Advocate