

HEADQUARTERS  
THIRD UNITED STATES ARMY  
Office of the Judge Advocate

APO 403  
18 March 1946.

SUBJECT: Review of Proceedings of Intermediate Military Court in the Case of the United States versus Bernhardt Engelbrecht and Paul Eckert and Wilhelm Bork.

Case No: 12-1752

TO : Commanding General, Third United States Army, APO 403,  
U. S. Army.

1. THE TRIAL:

The accused, Bernhardt Engelbrecht, Paul Eckert, and Wilhelm Bork were tried before an Intermediate Military Court at Dachau, Germany, on 14 February 1946, on the following Charge and Particulars:

Charge: Violation of the Laws of War.

Particulars: In that Bernhard Engelbrecht, Paul Eckert and Wilhelm Bork, German nationals, did at or near Rothenbach, Germany, on or about 20 February 1945, wilfully, deliberately and wrongfully encourage, aid, abet and participate in committing assaults upon Lieutenant Donald J. Lehmkuhl, Staff Sergeant Gilbert E. Hyatt, and Sergeant Henry Kay, members of the United States Army, who were then unarmed, surrendered prisoners of war in the custody of the then German Reich.

2. FINDINGS:

The accused were found not guilty of the charge and the particulars.

3. EVIDENCE FOR THE PROSECUTION:

On 20 February 1945, an American plane was shot down and exploded in the air in the vicinity of Rothenbach, Germany (R 6, 14). Three American fliers landed alive, these being Lieutenant Donald J. Lehmkuhl, Staff Sergeant Gilbert E. Hyatt and Sergeant Henry Kay (R 68). One of the fliers, identified as Hyatt, in coming down in his parachute, wounded himself on the wiring system and injured his mouth and his face (R 6, 7, 24, 37). A large crowd assembled around Hyatt and everyone became excited and tried to attack him (R 12, 20, 28). Almost immediately, the accused Bernhard Engelbrecht and Doctor Wilhelm Bork came along (R 7, 8).

The accused Bork picked up the flier by the back of the neck and kicked him twice (R 8). The accused Engelbrecht kicked him twice and struck him twice with his carbine but not bad enough to injure the American (R 8, 10, 15). The flier was then taken to the police station where he was searched and found to be unarmed (R 10). At the police station Engelbrecht shoved and kicked the flier three times (R 10).



Franz Walz stated that he saw hundreds of people in the crowd and that the accused, as members of the police, were trying to force the people back from the fliers (R 10, 31, 43). He didn't think the flier was being mistreated but didn't believe he was receiving treatment that should have been accorded to a prisoner of war (R 17, 18, 20). The whole incident occurred very quickly, ten minutes elapsing from the time the crowd assembled to the arrival at the police station seventy-five meters away (R 17, 18).

Franz Schmid saw the plane crash and saw the crowd milling around two American fliers, one of whom they were threatening with shouts of "Beat him to death" (R 21, 28). Schmid took charge and the accused Bork berrated him for doing so, whereupon Schmid departed (R 24, 25, 41, 57, 71). Schmid saw Engelbrecht shove one flier with his foot but he did not see him strike anybody with his carbine (R 25, 27). When a second flier was found alive on the autobahn, Schmid saw the accused Doctor Eckert hit him in the face and side with his hand and fist (R 25). Schmid was no more than ten paces away and didn't see the flier resisting while being searched (R 34, 36). Schmid admitted that he had fear of Bork because the latter was a member of the party (R 33).

Peter Pierner was a member of the police who went to the scene of the crash (R 36, 37). He saw Bork push one of the fliers with his foot and was present when Bork and Engelbrecht took the American to the station where both of these accused shoved him with their feet although not severely (R 38, 39). He never saw Engelbrecht use his rifle (R 40). Three fliers were brought to the station and Pierner saw that two of them were in pain, one limping very badly and the other having blood on his face (R 41, 46, 56). No one gave first-aid to the fliers in the presence of Pierner (R 41, 54, 59). Later, the three fliers were forced to bury the bodies of the other victims of the crash (R 41, 42).

Johann Steinberger was the policeman who was at the station at about noon on the day of the incident when the three fliers were brought in (R 55, 56). All the fliers were unarmed (R 56). In the station the fliers were elapped but not by any of the accused although Doctor Eckert called their names (R 57). The knee of the flier who limped was examined by Doctor Bork who said "It is not bad" (R 60, 66).

George Schmitt, one of the policemen, was fifteen meters away from Hyatt, Lieutenant Lehskuhl and Kay at the station where two of them indicated they were in pain (R 70, 72). They were bandaged up by a German medic named Strobl (R 73). Schmitt saw no one mistreated at the station although he heard varying versions on this point later (R 76, 79, 83).

#### 4. EVIDENCE FOR THE DEFENSE:

Margarete Stoffel saw a plane come down on the afternoon of 20 February 1945 almost in front of her house (R 85). However, it exploded before it landed (R 86). People thereupon assembled from all directions (R 87). She only saw one flier at the scene and noticed that the whole left side of his face was bleeding (R 87). The crowd was very noisy and she stated that it was a good thing that the police came or the people might have killed the flier in the excitement (R 88, 89). Miss Stoffel was six to eight meters away from the flier when the accused Engelbrecht and Bork came along (R 87). She saw no mistreatment of the American by them up to the time that the flier was led away to the station (R 88). She could not state whether or not the flier was mistreated while he was still on the ground since she



could not see over the crowd (R 89, 90, 91). However, she did not hear anyone else say that the flier had been mistreated.

#### 5. EVIDENCE FOR THE COURT:

Upon preliminary examination, the accused, Engelbrecht, stated that he was a German civilian, 41 years of age. The accused Eckert declared that he was 39 years of age and a German civilian. The accused Doctor Bork testified he was 57 years of age and was a member of the Wehrmacht on 20 February 1945 (R 2, 3).

#### 6. PROCEEDINGS:

In letter, Deputy Theater Judge Advocate, War Crimes Branch, USFET, subject: "Case of the United States versus Bernard Engelbrecht, Paul Eckert and Wilhelm Bork," dated 19 January 1946, the present case was transmitted for reference to trial by an Intermediate Military Court and the proceedings thereof were in compliance with the provisions of letter, Headquarters USFET, subject: "Trial of War Crimes and Related Cases", dated 16 July 1945 and pertinent military government directives and instructions. The charge sheet indicates that this case was referred to the present court. The accused were represented by a First Lieutenant who was a lawyer. A fair and impartial trial was had. An individual interpreter who was sworn was provided for the accused, and challenges for cause were permitted.

#### 7. JURISDICTION:

In letter, Headquarters USFET, Subject: "Trial of War Crimes and Related Cases", dated 16 July 1945, it was stated that as a matter of policy, cases involving offenses against the laws and usages of war or the laws of the occupied territory or any part thereof, commonly known as "war crimes", committed prior to 9 May 1945, shall be tried before specially appointed military government courts. The particulars alleged a violation of the laws and usages of war committed before 9 May 1945 by enemy national or persons working with enemy nationals against members of the United States Army Air Forces while an actual state of war existed. Accordingly, the court which was specially appointed to hear the present case had jurisdiction over the persons and subject matter.

#### 8. PROCEDURE:

Early in the present trial, it became obvious that the interpretation by the court interpreter was not adequate. Interpretation in this type of proceedings is all important since it is the only means of conveying to the accused what is going on before the court and thus it can be the entire basis for whatever defense he may have to offer. It is therefore entirely incumbent upon the court to see to it that the interpretation is clearly made and that the court interpreter is qualified to present it properly. When the inadequacy of the interpretation becomes evident in a trial, the proceedings should be halted and not be continued until an adequate interpretation can be supplied.

In acquitting the accused after the prosecution had rested its case and the defense had presented the testimony of one witness, the court was relying on the provisions of Military Government Technical Manual, Second Edition, Page 36, paragraph 10 (2), which read in pertinent part as follows: "after the close of the case for the prosecution, the court may acquit the accused on any charge if it



decides that there is not sufficient evidence to support the charge". The court construed this to mean that the acquittal can be granted on its own motion at any time after the prosecution has rested its case. This, of course, is directly contrary to accepted procedure before Anglo-American and Continental courts. The "Outline of Procedure for Trial of Certain War Criminals" furnished by the office of the Theater Judge Advocate and based on the said manual states that any motion for a finding of not guilty is to be made at the time the prosecution rests, and this is but a restatement of the aforementioned well-defined practice. The reason for such a rule is obvious since once the defense is permitted to offer its evidence, issues are raised thereby which the prosecution should have a chance to answer and, in such a case, the proceedings can never be said to have ended until both sides have completed the presentation of their case. It follows, therefore, that a finding of not guilty could rightly have been made after both sides had rested were it not granted at the time the prosecution had finished presenting its own case.

9. SUFFICIENCY:

In the case at bar, a Prima Facie case had been sufficiently made out against each of the accused on the particulars since there was sufficient evidence offered by the prosecution that Engelbrecht, Eckert and Berk had at one time or another laid hands on the fliers. In other words, even had a motion for a Finding of Not Guilty been made at the time the prosecution rested its case, the court might well have denied such a motion on what had been offered before it. It is, of course, unnecessary to consider whether or not an acquittal would have been proper had the case been permitted to go forward to its end since one cannot speculate what further defenses the accused might have had to offer.

10. RECOMMENDATIONS:

It is my opinion that the court had jurisdiction of the persons and the offenses involved and that the acquittal of the accused is legal.

/s/ Charles E. Cheever  
CHARLES E. CHEEVER,  
Colonel, J.A.G.D.,  
Staff Judge Advocate.