

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
7708 1ST CRIMES GROUP
UNITED STATES FORCES, EUROPEAN THEATER

20 February 1947

UNITED STATES)

vs)

Case No. 12-1080.

Fritz KOIB, Josef KOLB,
Albert LOERCH, and
Adolf FEUERLEIN.)

REVIEW AND RECOMMENDATIONS

1. TRIAL: The accused were tried at Dachau, Germany, on the 21st and 22nd day of November 1946 before an Intermediate Military Government Court appointed by paragraph 22, Special Order No. 296, dated 23 October 1946, as amended by paragraph 1, Special Order No. 312, dated 8 November 1946, Headquarters, United States Forces, European Theater.

2. FINDINGS: The offense involved was:

CHARGE: Violation of the Laws of War.

Particulars: In that Fritz KOLB, Josef KOLB, Albert LOERCH and Adolf FEUERLEIN, German nationals, did, at SOILN-MUNICH, Germany, on or about 19 July 1944, wrongfully encourage, aid, abet and participate in an assault upon Sgt. Richard TRUVERS, a member of the United States Army, who was then an unarmed, wounded and surrendered prisoner of war in the custody of the then German Reich by striking him with their fists and by kicking him.

Josef KOLB. Pleaded Not Guilty and was found Guilty by the Court.
Albert LOERCH. Pleaded Not Guilty and was found Guilty by the Court.
Adolf FEUERLEIN. Pleaded Not Guilty and was found Not Guilty by the Court.
Fritz KOLB. Was Nolle prossed by direction of the appointing authority.

3. SENTENCE: The court by at least a two-thirds vote of the members present at the time the vote was taken concurring sentenced the accused Josef KOLB to be imprisoned for a term of two months commencing the 1st of October 1946 at Camp Dachau or such other place as may be designated by competent military

authority.

The court by at least two-thirds vote of the members present at the time the vote was taken concurring, sentenced the accused Albert LOERCH to be imprisoned for a term of one year commencing the 6th day of March 1946 at Camp Dachau or such other place as may be designated by competent military authority.

The court by at least two-thirds vote of the members present at the time the vote was taken concurring found the accused Adolf FEUERBERG not guilty and acquitted him of the charge and the particulars.

The record indicates that the accused Fritz KOLE is now deceased (R 64).

The record of trial has been forwarded to the Commanding General, United States Forces, European Theater for final action (paragraph 8d, letter, Headquarters, United States Forces, European Theater, file AG-000.5 JAG-AGC, subject: "Trial of War Crimes Cases", dated 14 October 1946.

4. DATA AS TO THE ACCUSED: The accused Josef KOLE is a German National, 63 years of age, civilian, and married.

The accused Albert LOERCH is a German national, 52 years of age, soldier in the Wehrmacht with the rank of Tech Sergeant.

The accused Adolf FEUERBERG, aged 72 years, a German civilian was acquitted of the charge and particulars. It appears that the court was justified in its finding but the evidence with reference to this accused will be briefly reviewed in a subsequent section.

5. RECOMMENDATION: That the findings and sentence as to the accused Josef KOLE and Albert LOERCH and the finding of acquittal as to the accused ADOLF FEUERBERG be approved.

6. EVIDENCE:

a. For the Prosecution: The evidence shows that in

an air raid on the city of Munich on or about the 19th day of July 1944 an American bomber in which Staff Sergeant Richard G. TRAVERS, United States Army Air Corps, ASN 58454576 was on duty, was shot down by anti-aircraft fire and the crew including the said TRAVERS parachuted to earth. TRAVERS landed in the vicinity at which the incidents hereinafter described took place, was captured, taken to a bunker until the end of the air raid and thereafter removed to the local police station by the witness LEICHMAN (Exh. P-1; P 7, 11). In his pre-trial statement TRAVERS states that he and his co-pilot were surrounded by a group of about 15 people, that he was struck with fists and guns and was kicked, that he received a couple of cuts which were not serious and he was rescued by police with fixed bayonets. TRAVERS identified Josef KOLL and Albert LOERCH as two men participating in his beating (Pres. Ex. 1, P 7). The witness LEICHMAN testified on the stand that the accused LOERCH knocked a cigarette from the mouth of TRAVERS (P 14, 15), stating at the time "While others are dead and the houses are burning, this man can still smoke" (P 16), following which he kicked the flyer (P 16). The witness SELDEN testified that LOERCH was dressed in an army uniform (P 22). The witness GUNN testified that LOERCH, in the uniform of a Luft Sergeant (Wehrmacht), struck and kicked the flyer (P 33). In his pre-trial statement (Pres. Ex. 2, P 8) LOERCH admitted knocking the cigarette from the flyer's mouth and pushing him over but that he wanted to kick the flyer but did not get an opportunity. In the pre-trial statement of Adolf FEUERLEIN, Albert LOERCH is identified as one of the men who beat the pilot with his fists (Pres. Ex. 3, P 9).

The witness LEICHMAN testified that Josef KOLL struck the flyer (P 17). The witness SELDEN stated that the accused KOLL

kicked the flyer in the hip as well as beat with his fist (R 32).

The witness STADLER stated that the accused LEUBERLIN was present when the pilot was beaten and said, "That is a pilot. They are paid criminals and they should be destroyed". This remark was first addressed to the witness and later to the crowd (R 23). On cross-examination the witness admitted to a neighborhood difficulty between herself and the accused. She also alleged that he called to the crowd, "Beat him to death" (R 26), but that FEUERLEIN did not strike the pilot (R 27).

The witness Grein did not see LEUBERLIN at all (R 30). The witness SAUTER states that LEUBERLIN did nothing but curse, saying something to the effect "Beat him to death" or "They are all bad murderers" (R 41), that all the people present were making similar statements (R 42). The witness BURR states that the accused FEUERLEIN told her, "These are paid murderers, they are gangsters". She did not know however whether or not the group heard it (R 45).

b. For the Defense: The accused LOEBCH testified that he was a driver in the Wehrmacht in France and Russia and was returned home following three operations for perforated stomach. He admitted kicking the flyer but denied knocking the cigarette from his mouth. He claimed the cigarette was in the flyer's hand and that he hit him twice on the head, which was the extent of his participation in the affray. He claimed that he was greatly excited. He further stated that his oldest sister lost everything in an air raid on the 13th of July 1944 and his youngest sister had a similar misfortune on the 17th of July 1944. Fritz KOLB was yelling and adding to the excitement (R 60). The accused admitted being aware of the Geneva Convention (R 70) and that what he did was wrong (R 71).

The accused KOLB took the stand and testified that some of the witnesses had mistaken him for his brother Fritz KOLB. This accused was present in the mob for a very brief space of time (10 or 15 seconds) (R 64). He also had lost property in air raids and his cousin was uncovered from the debris of a bombed house (R 64). He was able to see the area being bombed. This area included the factory where he was employed and near which his last possessions were located. He admitted striking the flyer and kicking him. However when the flyer looked around he desisted, claiming that his conduct was in the nature of a "reflex action" (R 65). He did not see BEUERLEIN at that time.

The accused BEUERLEIN testified that he did not in any manner touch or molest the flyer and ascribed various reasons why the witness STADLER testified against him dealing with bias, that he did not say that the pilot should be beaten to death, that he only said "That American flyers who made terror attacks on Germany got good pay" (R 66), that he did not see LOERCH and KOLB do some of the beating (R 62).

7. JURISDICTION: The charges and particulars allege a violation of the laws of war committed on the 19th day of July 1944 by enemy nationals against a member of the United States Armed Forces at a time when a state of war existed between Germany and the United States of America. Accordingly the court which was appointed to hear the case had jurisdiction of the persons and the subject matter in accordance with previous decisions of this office in similar cases (See United States vs. Richard DUKUZ, May 1945 and United States vs. Clemens WIEGAND, November 1945).

8. SUFFICIENCY: There is sufficient evidence to sustain the findings of guilty as to Josef KOLB and Albert LOERCH. Not only does the evidence presented by the Prosecution establish

the guilt, but in their testimony the accused themselves admit that they did commit an assault upon the American flyer TRAVERS.

There are no errors or irregularities which affect any of the substantial rights of the accused. The trial was held without partiality and adequate opportunity was given to the accused to present any matters in their defense that they might have desired. There have been no questions raised as to the record which were not decided by the court upon hearing of the evidence presented. Two-thirds of the members of the court present at the time of the findings and sentence concurred therein.

At the conclusion of the Prosecution's case the Defense moved that the finding of not guilty be entered as to the accused LEUBNER. The court overruled the request and denied the motion. Since the record discloses that the court found the accused LEUBNER not guilty it becomes necessary to discuss the point raised by this motion.

9. SENTENCE: An Intermediate Military Court may impose any lawful sentence up to and including imprisonment for 10 years. After the findings and before the announcement of sentence the accused LERCH asked that this state of mind be taken into consideration in mitigation and the accused KOLB asked that his state of health be also considered submitting that he suffered a head injury suspected by the doctor to be a cancerous growth. He claimed that he was under constant medical care and that his health had deteriorated during his detention.

The court imposed a sentence of 2 months upon the accused Josef KOLB commencing on the 1st of October 1946 to be served at Camp Dachau or such other place as may be designated by competent military authority. It is obvious that the court took

into consideration the age and health of the accused KOLE in fixing this sentence.

The court imposed a sentence of 1 year upon Albert LOERCH, said sentence to be served at Camp Dachau or such other place as may be designated by competent military authority and to commence on the 6th day of March 1948 which was the date upon which the accused LOERCH was arrested. The court specifically noted that the date upon which both the accused were confined at first and considered the same in fixing the sentence imposed. It is evident that the court gave full consideration to the plea for mitigation by the accused LOERCH and that the sentences imposed are in no respect excessive.

The accused FEUERHEIM was acquitted. It is evident that the court believed that the statements which he made were made under such circumstances that they did not materially contribute to nor incite or cause the action taken by the mob against the flyer. Also full credence and weight was given to the alleged bias of prosecution witnesses and no doubt the age and health of accused were considered. While a finding of guilty might have been justified on the record, the court was in a position to see the witnesses and judge their credibility and their action in this respect is not considered erroneous.

10. CLEMENCY: No clemency petitions have been received and pleas made before sentence have been mentioned in the preceding section.

11. RECOMMENDATIONS: It is therefore recommended that the findings and sentence as to the accused Josef KOLE and Albert LOERCH be approved by the Theater Judge Advocate under the provisions of paragraph 8d, letter, Headquarters, United States Forces, European Theater, file AG 000.5. JAG-200, subject: "Trial of War Crimes Cases", dated 14 October 1948. Plans of action

designed to carry the foregoing recommendation into effect,
should it meet with approval, are submitted herewith.

DAVID P. HEWLEY
Attorney
Post Trial Section

Having examined the record of trial, I concur:

C. E. STRAIGHT
Colonel, J.GD
Deputy Theater Judge Advocate
for War Crimes