

HEADQUARTERS FIFTEENTH U. S. ARMY  
Office of the Army Judge Advocate  
APO 408

UNITED STATES	:	Case No: 12-2422
	:	
VS	:	5 June 1945
	:	
Peter Kohn, Matthias Gierens and Matthias Krein, all German civilians of Freist, Germany.	:	Tried at: Ahrweiler, Germany
	:	Date of Trial: 1 - 2 June 1945
	:	
Present Age:	:	Sentence: To be hanged by the neck until dead.
	:	
Peter Kohn - 33 years	:	(Maximum authorized: Death)
Matthias Gierens - 37 years	:	
Matthias Krein - 45 years	:	

CHARGES	PLEAS (of each)	FINDINGS (of each)
Charge: Violation of the Laws and Usages of War	NOT GUILTY	GUILTY

Specification: In that on or about 15 August 1944 at or near Freist, Germany, Peter Kohn and Matthias Gierens not being then lawful belligerents but German civilians, did feloniously assault, and with one Peter Back did wilfully kill an American airman, name and rank unknown, a member of the Allied Forces, who had come to land at said time and place and was then without means of defense; Matthias Krein being an accessory to the unlawful acts of Peter Kohn, Matthias Gierens and Peter Back, herein charged; in that he, being then and there a member of the German Landwacht, charged with the duty and having the means to capture the American airman and protect him from violence, nevertheless stood by consenting to his death.

(of each)  
NOT GUILTY

(of each)  
GUILTY

On 1 June 1945, before a Military Commission duly convened under authority of The Commanding General, 15th U.S. Army, and acting under the special powers granted by 13th Army Group in letter (copy of which is included in the record of trial), three German civilians, Peter Kohn, Matthias Gierens and Matthias Krein, of Freist, Reg. Trier, Germany were arraigned on the charge of violation of the laws and usages of war in that Kohn and Gierens, not being lawful belligerents but German civilians, did, along with one Peter Back, wilfully kill an unknown American airman and that Krein was an accessory to the act, in that he was charged with the duty, as a member of the German Landwacht, to protect the said airman from violence, nevertheless, stood by consenting to his death.

The accused, represented by two military and one civilian defense counsel (the latter of their own choice) plead not guilty. No special pleas or motions were entered at the commencement of the trial. Two interpreters were sworn and used.

1. EVIDENCE:

a. For the Prosecution

Captain Royal L. Branton, U.S. Air Corps officer, testified: he was familiar with American planes and paraphernalia; he identified a flying suit, identification tags, AGO identification card, emergency escape kit, OD military shirt, American Flying boots habitually worn by American flying personnel; he explained that the 9th U.S. Air Force was tactical and the 8th U.S. Air Force was doing strategical bombardment in August 1944 and that American bombing missions were during the day.

Nicholas Noenas, 74. old age pensioner, Preist testified: On 15 August 1944 he saw a parachute descending near Preist, Germany, about noon; he was cutting wheat; parachute caught in a tree and while airman was trying to extricate himself a crowd gathered in which were the 3 accused; the airman wore a flying suit, flying boots and OD shirt similar to those exhibited to the witness and identified as worn by American air force personnel; none of 3 accused were in German Armed forces; Peter Back arrived at the scene on a motorcycle and there were about 20 people there then; he saw no weapon on the airman nor was he attempting to escape; Back ran up and fired two shots one hitting the airman in the head; the airman fell to the ground but got back up; Kohn had a stick about 3 feet long and about 5 to 7 centimeters thick but witness only heard the "beats"; Gierens had a hammer; later he saw the airman dead with head full of clotted blood; he buried the body the next day with the aid of a furloughed soldier but no coffin was used; no Church service held nor marker placed over the grave; he saw Kohn and Gierens strike the airman but Krein did not take part; Kohn beat the airman on the top of the head after the two shots were fired; Gierens struck the airman and Back fired the two shots; Back gave orders to kill the airman; there were 2 German soldiers in uniform at the scene of the crime who were on furlough and they tried to help the airman but there was much confusion; he does not know where Peter Back is today although a search has been made; he was present when the airman's body was exhumed and photos taken a few days ago..

Pfc. Wm R. Shapiro, Signal Corps photographer identified the pictures taken at the cemetery in Preist as the body that was exhumed on 16 May 1945; they were views of the grave scene and of the skull of the airman.

Johann Jacob, farmer, Preist testified: he is the local Mayor, knows accused. he saw the parachute descending on 15 August 1944; he did not go to the scene because a German plane landed about that time and he investigated it; an aerial battle was going on at the time overhead; he aided Noenas in burying the airman who came down; he was American or an Irish wearing a one-piece flying suit similar to the American suit shown him; the airman was not buried in a coffin or with benefit of clergy BECAUSE THE NAZI PARTY PROHIBITED IT; he was leader of the Landwacht (rural police) as was Krein; it was the duty of the Landwacht to look out for crashed-down planes, take down markings, turn the pilot over to the nearest police and protect any airman who came down; in back of airman's head was a blood spot; he turned in the airman's suit to the local mayor Wilhelm LeGrand at that time; the soldiers were at the scene accidentally; they were very young and excited; a bullet punctured the airman's right cheek; there were hammer wounds over the forehead; he did not tell Krein that he was acting improperly but he was not doing his duty as a Landwacht member; Police Chief Schwanbeck took the airman's papers; he buried the body in the cemetery for Christian reasons;

he does not know where Beck is now; the body was covered with straw when he arrived on the scene.

Peter Heidt, farmer, Preist, on 15 August 1944 saw four-motored American bombers over Preist and an American plane crashed, three parachutists came down; he ran to scene and an American pilot was standing up and bleeding on one side of his face; Peter Beck was there when he arrived; he saw Kohn jump on parachutist and begin hitting him with a stick (one meter long and 3 or 4 centimeters thick); Kohn hit the airman several times with the stick; he saw Gierens hit the airman several times with a hammer on the back of the head while he was still alive; the hammer was of iron used for crushing rocks; Krein said "move away because we want to shoot him"; Krein wanted the crowd away; he identified the airman's uniform as similar to one exhibited; as well as the boots; the airman had no weapon and did not try to run away; Krein had a carbine; when Kohn hit airman first time he was standing; when Gierens hit him he was lying on ground but not dead; he never heard any of the shots.

Jacob Jacob, electrician, Preist, brother of previous witness, Johann Jacob; saw the parachutist descending after watching him jump from a 4 motored bomber; ran to scene and saw Kohn and Gierens beat airman; Kohn struck him two or three times with a stick while he was standing; Gierens struck him with a hammer (30 or 40 centimeters long), made of steel or iron; when Kohn and Gierens struck airman he was still alive; the airman did not offer to fight; airman was standing when Kohn hit him and lying down when Gierens hit him.

Christopher Schmitz, switchman, Preist saw the parachutist standing and bleeding; Beck was there and Kohn was beating airman with a stick in the face; the two soldiers were present and searching the airman but did not harm him; Beck arrived on a motorcycle; after fourth blow from Kohn's stick airman turned and fell flat on his face, after which Kohn hit him 3 or 4 times more; he saw Gierens take hold of the airman's head and hit him 4 or 5 times with a hammer while the airman was still alive, heavy blows; the flyer was alive and shaking; Krein said "It serves him right"; it happened in a hurry; it was not done this way in the last war; the townspeople disliked the affair.

Appolonia Binz, housewife, Preist saw airman descending; she and her 3 children and Hoepes, her uncle were watching. Krein arrived first at the scene, then the 2 soldiers, later Peter Beck came, later Belgians and Police came; airman was unbuckling his parachute, was unarmed; saw Beck shoot airman twice saying "Shoot him to pieces and beat him to pieces"; the 2 soldiers who were in civilian clothes did not injure the airman; when shot the airman fell but got back up; Beck fired again; doesn't know if he fell second time but he got back up if he did.

Nicholaus Grossman, farmer, Preist was father of one of the young soldiers and local mayor at the time; saw parachutist descending and went to scene; his son gave him identification papers; he turned them over to police from Speicher, all but the "ration" in a case which he identified as the Escape Kit (Ex "J"); identified Peter Beck's picture in Nazi uniform; the police gave the order "no coffin" for the airman; he looked at the papers but can not recall the name of the airman.

Wilhelm LeGrand, Chief registrar at the office at Speicher since 1911, sent policeman Schwenbeck to Preist to bring back identification papers of the crashed flier, he identified the "dog-tag" and AG card of the airman as similar to the exhibits; by his best recollection the name could have been Lester Rouss, but he is not certain; it was the order in 1942 to register any enemy flier who "lives one minute on German soil" but the law was repealed; he knew this airman died through force; he entered the Nazi party on 1 May 1933.

Leonard Heidt, farmer, Freist saw the parachutist descending, saw Peter Kohn and Gierons where the airman came down; saw Kohn beating the airman and he protested; veteran of last war; because of his protests Beck jumped at him and told him to remember Goebbel's speech. For this he was imprisoned by the State Police (Gestapo) and local council; such a thing did not happen in World War I.

Lt Col Gladstone Kohlose, War Crimes Branch, 15th Army JA Section testified that he had made a thorough search for Peter Beck, naming several towns; that a "wanted request" had been circulated through Germany among civil and Military Police but he had not been found.

Staff Sergeant Clyde E Bird, 30-7 Graves Registration Co was present at exhuming of body of airman, testified that body was badly decomposed but that a tooth-chart was made of the airman, which was placed in evidence; that the back of the skull had been broken by a heavy club; a place in the skull looked like a shot wound.

Major Elmer Brenton, Hq 15 Army, investigator, War Crimes Branch testified that he showed each of the accused a map of area around Freist and asked them to mark the spot where the plane crashed, they did and he went there and picked up several parts from the plane from which the dead airman parachuted; these were put in evidence.

M Sgt Robert Matola, 158 Liaison Squadron, who has worked with aircraft for 4 1/2 years, identified the airplane parts as being from an American airplane (B-24) heavy bomber 4 motored.

Lt Col Ford E Toone, Hq 15th Army, War Crimes Branch, JA Section testified that he and his interpreter Pfc Wm Romlinger swore each accused and took a statement from each.

Pfc Wm Romlinger, Hq 15th Army, interpreter, testified that he acted as such for Col Toone, swore the witnesses in German, took their statements in English, read to the accused in German and their respective statements were signed; that no threats, force or coercion was used on accused; that accused were not told that they were to be tried; the three statements were offered, accepted in evidence and read to the Commission (See Ex N, O, P).

Major T. K. Irwin, JAGC, Hq 15th Army, testified that he was TIA in this case, that he made investigation at various places including Hq 8th Airforce, London, taking tooth-chart of disinterred body; that he examined many charts; that he found one of a missing American aviator, missing about 15 August 1944, which corresponded except for a few discrepancies with that of 2d Lt Lester E. Reuss. He also identified the "See-po Rit" in evidence as the one Nikolaus Grossman gave him at Freist.

b. For the Defense:

Johann Dalgee, priest, AWM, near Trier testified that he had known Gierons' family for 15 years; that a sister died in insane asylum in March; that a brother died in insane asylum; that Gierons was refused a marital credit because the family was inheritively ill; that Gierons is a melancholy, should be under observation of a doctor, not responsible for his actions; that the first time he came to this conclusion was at the time of trial; he stated that he believed Gierons capable of distinguishing right from wrong; that he is without control.

Peter Kohn, accused made an unsworn statement: steam shovel operator and railroad worker, came to scene shortly after airman landed; Beck had a pistol; he heard 2 shots before he arrived at scene; airman had 2 head wounds; saw Krein and two German soldiers; Beck yelled and cursed a

Back he forgot himself, became excited started beating the flyer with stick picked up 30 to 40 meters away from scene; hit him on arms and shoulder; became "completely out of control"; the pilot was standing on a ditch, tried to go back down and evade beating and fell down lifting his right hand; saw Gierens jump in ditch, kneel down and beat flyer with a hammer; when Gierens stopped beating the airman was dead; he was afraid of Back; he remembered Goebbel's speech about foreign fliers; "The one who kills them and the one who brings them off this world will not suffer any punishment"; the airman would have died from the shots; would not say that the shots alone or the beatings alone would have killed the airman; Gierens hit the harder blows; Krein was standing there with a carbine; Krein was there when he got there; the airman had no weapon; witness served 2 winters in the Russian camp ign as an infantry soldier, was wounded badly at Orel in 1943 and discharged; has wife (pregnant) and 3 children.

Matthias Krein, accused made an unsworn statement; he is a blacksmith, heard of flyer landing, went to get rifle but did not get ammunition; 3 soldiers had taken airman into arrest; soldiers were searching him and disengaging him from parachute; Back ran up with pistol and fired, hitting airman in the head and back twice; he told Back "You are not permitted to do that"; others ran up; witness "pushed them back and told them they did not have to come so close"; he wanted to fence them off; he was afraid Back would shoot him; Kohn and Gierens came running up - Kohn first; flyer was still standing when Kohn arrived; Kohn beat flyer while witness was "trying to fence off people on the side"; when Gierens arrived the pilot fell over "it is possible" from the beatings of Kohn; he was alive when Gierens started beating him; during beating witness was still "fencing people off"; knew his duty to police district of Prast for flyers forced down; got the rifle to arrest the parachutist; he fenced people off "because not everybody has to see that"; he thought the soldiers had the airman in protective custody; he felt that the ward leader (his superior in the Nazi Party) Peter Back was present and in charge.

## 2. LEGAL COMMENT

Appointment of the Military Commission being regular, there is no substantial question of jurisdiction. It is a settled doctrine of international law that apprehended war criminals may be punished judicially by the belligerent power against whom the crime was done. Ex Parte Quirin, 317 U.S. 1. By Art 15 there was express recognition of Congress that offenders and offenses against the law of War are triable by military commissions.

Hostile acts against a lawful belligerent by enemy civilians transgress the law of war. Ex Parte Quirin, supra; FM 27-10, Rules of Land Warfare, Par. 351; Reston's International Law, p. 171. The accused were German civilians. The record leaves no reason to doubt the victim in this case was a lawful belligerent of the American forces. He descended from an American bomber at noonday. His uniform and identification tags were American. Each of the accused recognized him for an American flyer. There is circumstantial evidence for his identification as 2d Lt. Lester E. Rouse, 1st Replacement and Training Squadron, ASN 0720010.

The specification of the charge against Kohn and Gierens is that they assaulted the defenseless American airman; that he was killed by means of their violence and that of Peter Back. That those two accused did assault the flyer while he still lived - Kohn with a club, Gierens with a hammer - is admitted by both and proved by a procession of witnesses. The only defense suggested for Kohn is the circumstance that made his act especially brutal: the American was already dying from gunshot wounds inflicted by Peter Back. But "one is not relieved from guilt of homicide by reason of the fact that the person killed

previously been mortally wounded by another, if the act of the accused actually caused or accelerated death. \*\*\*If any life at all is left in a human body, the extinguishment of it is as much homicide as the killing of the most vital being." American Jurisprudence, Criminal Law, Homicide, Par. 49, page 192.

Is there reason to doubt that Kohn's vicious beating of the wounded airman hastened his death? It was estimated, Kohn's club, 3 feet long, was 2 inches thick. Against a man's head, used with force, it was a deadly weapon. The forehead was blue from this beating when the body was buried. Could it be doubted that blows from such a bludgeon, producing the effect that was observed upon this dead body, hastened the separation of the soul? Kohn is a self-confessed murderer, and his confession corroborated abundantly.

The act of Gierens was the most brutal proved in the case. When the flyer had fallen, during the beating by Kohn, Gierens lifted the American's head from the earth and struck with a heavy hammer at the back of the skull. When the body was exhumed there was a hole in the region of this blow from the hammer. The defense for Gierens is insanity. The German defense counsel, Dr. Mohn - whose conduct in this trial deserves praise - asked whether American law allows the conviction of one insane. Of course, the answer is no. One accused in our courts is presumed to be sane. But once the issue of sanity at the time of the offense is made by competent evidence, the burden is cast upon the government to prove it; by preponderance of the evidence according to the weight of American authority; beyond a reasonable doubt, it has been held by our Supreme Court. Davis vs. U.S., 160 U.S. 469; Hotels vs. U.S., 186 U.S. 413. Nor may one be tried for crime while insane. American Jurisprudence, Criminal Law, Sec. 44.

The prosecution in this case has only the legal presumption of sanity. That does not stand before attack. There was no evidence Gierens is sane or was at the time of the murder. The nature of his act suggests aberration. There was evidence of his abnormality. A brother and sister died insane, and a living sister is said to be likewise unfortunate. This was enough to raise the issue. Wharton's Criminal Evidence, Vol. 1, p. 431.

Defense Counsel asked that Gierens be examined by a psychiatrist of the Commission's choice. It is believed this, or examination by a board should be ordered. If Gierens be found sane at the time of the offense and of the trial, no reason will remain to doubt his guilt or defer punishment. (Such an examination has been made by a neuropsychiatrist subsequent to the trial, accused has been found sane and his report is attached to the record and marked Exhibit "R".

It is argued that those accused were without malice. Malice in the law of murder means that condition of mind which prompts one to take the life of another without just cause or provocation. Black's Law Dictionary, page 1187. What just cause had these men? Or what provocation, except the reminder of Goebbels' incitement to assassination of captured enemy airman?

Krein's is a different case from that of the other accused. He is charged as an accessory only. He was a member of the Landwacht, a rural auxiliary police force, whose duties included the capture of bailed-out enemy aircraft crews, and their delivery to the authorities as prisoners of war. Of course, it would become his duty, as representative of the German state, to protect the captive from unlawful violence. He is criminal only if his disregard of duty in this case contributed to the commission of the crime. Wharton's Criminal Law, Vol. 1, Sec. 246, p. 329. We are bound to disregard the testimony of Peter Heidt that Krein said, "Stand back, we are going to shoot him now", for when re-

called by the defense Heidt was not certain that statement was not Beck's, rather than Krein's.

But guilt as an accessory was proved, nevertheless. Krein was first to arrive at the place where the airman had descended. He did not seek to disarm Beck when the latter came soon afterward. The two soldiers who were assisting the airman advanced upon Beck angrily, and protesting, when he shot the prisoner. But Krein offered only the tender reproof, "You shouldn't have done that, Peter." He made no effort to restrain the brutality of Kohn and Gierons. He had a gun that he claims was not loaded. But the mere threat of the gun, or its use as a club, would have deterred the other accused from their crime. Instead he concerned himself with the sensibilities of the assembly, that they should not witness the expiring agonies of the American under the blows of stick and hammer. Granting that he could not have interfered effectively to prevent the shooting by Beck, yet the failure to restrain Kohn and Gierons hastened the death of the flyer as surely as their blows.

There was objection to the confessions of the accused. The objection that they should have been transcribed in German before translation into English is without merit. Accuracy of interpretation was shown. More serious is the suggestion that the confessions were not voluntary: that the accused supposed themselves called as witnesses against Beck, hence put under oath; it being forbidden in Germany to swear one accused; that the accused were bidden to answer certain questions yes or no, and took this as an order to answer, or duress. However, Kohn and Krein made statements at the trial of like tenor with their confessions. Their cross examination upon these unsworn statements does not accord with the practice in courts martial, but is consonant with the German practice. Aside from the confessions, the other evidence established guilt beyond a reasonable doubt.

(The foregoing is the result of research and expression of legal opinion by Captain Ernest May, Asst Army Judge Advocate and is adopted as part of this review).

### 3. GENERAL COMMENTS

As to Peter Beck: Athwart this entire case falls the shadow of Peter Beck. That he was the moving genius, the motivating impulse, the whip-master urging his weaker colleagues to follow their savage instincts is not denied. It is unfortunate that he can not be found at this time. Even as his diabolical Fuehrer has been swallowed up by an uncertain oblivion, so has the disciple. Crippled in body from infantile paralysis, but sadistically ruthless in his contorted mind, he finds a helpless victim to torture and kill in this American airman and he adds to his country's ignominy and shame another instance of shocking crime against the rules and usages of war. The search will go on for him, unrelenting and thorough. Whether he hides for a time in some mountain fastness like a predatory beast who fears contact with the avengers of his victim, or whether he cowers in some hidden wine-cellar with other creatures of darkness to avoid detection matters little. Sooner or later, he will be taken and the pages of this record will be useful in bringing to ultimate justice this typical prototype of Hitler's "Master Race" and Nietzsche's "Superman", bent only upon ruthless domination of those weaker than he in spirit. It is to be regretted that he may not lead the procession of murderers at this time to the gibbet that is the fitting end to their bacchanalia of blood on 15 August 1944.

As to Peter Kohn: In this character we have a mobster type as old as Caliph's judgment-seat and as recent as a creek-bottom lynching-bee. Guided by no greater morality of a Beck or the morbidity of a Gierons, Peter Kohn, a railroad worker, joins the quickly gathering mob about the defenseless aviator who has already surrendered, and adds his force

balances the wounded airman who is still standing. The American tries to ward off the blows, but falls to the ground from which he never rose again. Kohn's excuse is the age-hoary one: Beck urged me, Goebbels' speech bewitched me, I became excited, I was "out of control". He testifies that he can not say "that the shots alone or the beatings alone would have killed the airman". Who can tell whose blow caused this death of this young American 2d Lieutenant there that fateful August day? As we try to reconstruct the event, as we calculate upon the effect of Beck's shots, Kohn's bludgeon-blows, on the possible coup de grace by Gierens' iron hammer, we yield to the law that says that each must share the guilt of ultimate death. There are mute evidences on the corpse of many venereal wounds.

"Look! in this place ran Cassius' dagger through;  
See what a rent the envious Casca made;  
Through this the well-beloved Brutus stabbed,  
And, as he pluck'd his cursed steel away,  
Mark how the blood of Caesar followed it."

Peter Kohn has had his day in court, he has been given a chance to tell his story. It is more than he gave the American lad who stepped out of that burning bomber and came safely to earth, only to fall into the hands of ruthless ruffians who slew him, stripped him of his raiment and departed leaving his lifeless body by the wayside, without benefit of decent burial or the meagre sanctuary of a covering of charitable earth. "The aviator", says Kohn in his signed statement, which he does not repudiate in his testimony, "when I left the scene of the crime, was dead."

As to Matthias Gierens: Here we have the morbid embodiment of all that the Nazi philosophy exemplifies. He does not testify, for defense counsel have sought to ascribe his actions to "madness". If he testifies he fears it will dispel the suspicion raised by the testimony of the priest as to members of his family having been insane. It was but a red herring drawn across the trail. Even the priest testifies that he has only thought of Gierens' insanity when it was conjured up to become a handy tool for the defense to use in order to jangle the harmony of demanding evidence against this accused. The churchman admits that Gierens "can distinguish right from wrong", the very ultimate test of our military code as to sanity.

But we have the certificate in this record of a neuropsychiatrist that Gierens is sane, was at the time of the commission of the offense and was at the time of trial. The execution of the law is fully met.

Gierens comes from his ordinary life as a railway employe into this particular situation. He is a man of 37 and has lived a usual life there in the community of Preist until 15 August 1944 when he rushes to the scene where this airman is descending. Already a lethal blow has been struck; shots have been fired into the body of this unarmed Lieutenant. Kohn has beaten him unmercifully with a club and he is down. But a little spark of life remains. All is not accomplished. The completion of the macabre design, formulated by Dr. Goebbels and his degenerate Nazi associates and extending into the very lowest stratum of German national life, even down to Gierens in the tiny Trier village of Preist, is not yet realized. By his own testimony (Ex F) he says:

"Then I reached the aviator I hit him over the head with a hammer, as he was not dead when I arrived there. \*\*\*\* I saw that the aviator was in a deadly state and hit him with a hammer to relieve him of his pain".

Does one need more than to read Gierens' own statement to decide as to his guilt or his deserved punishment? The philosophy of his reasoning demonstrates the morbid predominance of organic sensations



that have enveloped German thinking since 1933 and of which this is but a by-product. His instilled, insatiable hatred was, as Spinoza said of Averice, "a species of madness, although not enumerated among diseases".

As to Matthias Krein: Here we have the case of one who did not strike a blow, who did not beat or shoot or hammer, but whose shame is as flagrant and whose crime is as dastardly as those who did. A peace officer's duty is to save his prisoner from the fury of the mob. His duty lies in venturing his own life and safety that the law of the court may be applied and not the will of the mob. If he goes along with the lynching party, stands by while it vents its unrighteous spleen upon the helpless victim, makes no effort to stop the violence of the mobsters is he not as guilty as they? And if he keeps back the crowd with his menacing gun to prevent others from aiding the victim, if he himself encourages the murderers, shall he not share with them the blame? If Kohn, the club-wielder is guilty, if Gierens the hammer-murderer is to be punished, then the peace-officer who "fenced" back the Poles and other foreign nationals who might have interfered, likewise must face the penalty of the lawless mob. He knew it was his duty to protect captured enemy airmen, he was the first on the scene, he admits he was "the only member of the home-guard present at the scene" (Ex O) and he made "no attempt to stop the shooting or clubbing of the men by Beck, Kohn or Gierens."

It is hard to differentiate between the mobster who clubs, who hammers, who shoots and the peace-officer who uses his gun and his authority to aid and abet those who are doing to the death the man that the peace officer is charged by law with shielding and protecting against just such a death.

Even if Beck's pistol shots were sudden and unretreatable, yet the airmen still stood up and there might have been a chance to save his life. Did Krein act to do so? No, he stood by "fencing off" the crowd while Kohn beat and wounded men to the ground and Gierens hammered the little life he has left out in the most brutal manner imaginable. Truly, Krein was another Saul "consenting unto his death", not merely "standing by" and "keeping the raiment of them that slew him", but lending his sanction to this deed by holding back any possible interference with his gun.

When it is over, when the last breath of life is extinct, Klein, the Landwacht policeman says: "It served him right" (R 43). Who shall say that he did not by his official cooperation make as potent a contribution to this lynching as did Kohn who felled the Lieutenant to the ground or Gierens who wrote "finis" to the sordid undertaking with his hammer?

#### 4. CONCLUSION:

This review has been necessarily long. It is the first trial of a German civilian within the confines of the once German Reich by a Military Commission for crime denounced by the conventions and treaties solemnly entered into by the two warring nations and recognized as sacred and binding.

The case was well prepared by both sides. It was capably handled and fairly tried. The Trial Judge Advocate prosecuted without bitterness or venom, the defense was both dignified and thorough. The efforts of Dr. Franz Mehn of Trier as special defense counsel were outstanding. He was diligent to the highest extent and adhered to the finest standards of an advocate at any bar. One may review this acquaintance with him with the hope that there still lives in Germany, and the Allied

law may be rebuilt.

The commissions conduct was in keeping with that of the highest tribunals sitting upon the guilt of an offender in any land. The rulings were fair and equitable and the adherence to the rights of the individual, although enemy nationals, was certainly "as the shadow of a great rock in this weedy land" of dictator rule.

5. RECOMMENDATION

I recommend that the findings and sentence of the Military Commission be approved and ordered executed but that the execution of the sentence be stayed pending further orders. Form of approval to carry out this recommendation is submitted herewith.

/s/ Julian C. Hyer,  
/t/ JULIEN C. HYER,  
Colonel, JAGD  
Army Judge Advocate

OFFICIAL:

/s/ Emory W. Coffield  
/t/ EMORY W. COFFIELD,  
Lt Col, A.G.D.,  
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