

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

UNITED STATES

20 June 1945

Case No: 12-2422-1

vs

Peter Back, a German
civilian of Preist,
Germany.

Tried at: Ahrweiler, Germany

Date of Trial: 16 June 1945

AGE: 37 years

Sentence: To be hanged by the neck
until dead.

(Maximum authorized: Death)

<u>CHARGES</u>	<u>PLEAS</u>	<u>FINDINGS</u>
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Charge: Violation of the
Laws and Usages
of War

NOT GUILTY

GUILTY

Specification: In that
Peter Back, a German
civilian and not a lawful
belligerent, did, at or
near Preist, Germany, on or
about 15 August 1944 violate
the laws and usages of war
by wilfully, deliberately
and feloniously killing an
American airman, name and
rank unknown, a member of
the Allied Forces, who had
parachuted to earth at said
time and place in hostile
territory and was then with-
out any means of defense.

NOT GUILTY

GUILTY

On 16 June 1945, before a Military Commission duly convened and sitting in the Kreishaus, Ahrweiler, Coblenz, Germany, under authority of the Commanding General, Fifteenth U.S. Army and acting under special powers granted by the 12th Army Group in letter (copy of which is included in the record of trial) and special permission granted in radiogram of 12th Army Group (copy included in record of trial), Peter Back, a German civilian was arraigned upon the charge of wilfully killing an unknown American airman on 15 August 1944 near Preist, Reg. Trier, Germany.

The accused was represented by the military defense counsel, appointed by the appointing authority and by one civilian defense counsel of his own choice. The plea was not guilty. No special pleas or motions were heard and accused professed himself, in open court, to be satisfied with the panel of the commission selected to try him. Two interpreters were sworn and used.

1. EVIDENCE.

a. For the Prosecution

Captain Royal L. Branton, AC: testified he was familiar with types of clothes and equipment used by American airmen, identified type of flying suit (Ex "A"), flying boots (Ex "B"), military OD shirt (Ex "C"), and American emergency escape kit (Ex "D"), an empty kit (Ex "E"); stated that American bombing in August 1944 was during the day.

Nicholaus Nospe, 74, scalemaster, Preist, Germany: knew Peter Back, identified him, saw on 15 August 1944 between 12 and 1 midday, while cutting wheat, a parachute descending, went to scene of landing; airman was alive and wearing equipment similar to Ex B, A, C; parachute caught on tree; he and Mrs. Binz and her children arrived first at scene, then 2 soldiers in civilian clothing; flyer was extricating himself; accused arrived on motorcycle several minutes later; Matthias Krein was there before Back; airman unarmed and did not fight; Back parked cycle, walked up to airman and fired at him with pistol, hitting him in throat-flesh wound as he got up; other shot must have entered head; heard no conversation as he was 50 paces away; saw Peter Kohn hit airman with stick and Matthias Gierens beat him with hammer after Back shot him; saw airman dead; witness buried him next morning at 7:30 in church yard at Preist; he was present at grave-yard when photos taken; identifies (Ex "G") photo of skull and Ex "H" as part of body; saw Krein at scene; did not see Weber or Conrad of Speicher; Back was not a member of armed forces.

Apollonie Binz, housewife, Preist: saw parachute descending, airman trying to free himself; saw Krein, Becker, and Grossman at scene before Back arrived; airman did not fight, try to escape, nor was he armed; Back came up on a motorcycle and began firing when about 2 or 3 meters away saying "Shoot him down, beat him down"; at first shot flyer fell, hit in the back of the head, but got back up; second shot followed immediately hitting him in right cheek; she then left scene; did not see Weber or Conrad at scene; the soldiers said to Back: "That's not permissible, he is captured"; Back was not a member of German Wehrmacht.

Matthias Krein, 44, blacksmith, Preist: pointed out Back; saw airman descending, so went to scene to take flyer and safeguard him as member of Landwacht; his duty to guard enemy grounded flyers; had his rifle but no ammunition; Becker and Grossman, both soldiers and a civilian there; airman unarmed, did not try to run, nor resist; Back arrived two or three minutes later on motorcycle; witness demanded airman from soldiers who said "No, he is in our custody"; Back had his Browning in his hand and killed the man; happened so fast couldn't stop him; was 1 1/2 meters from flyer when Back fired; first bullet went into left temple and second in back of head; blood came out; after shots, Kohn and Gierens hit airman; Back said: "Did you not see how the air attack happened in Speicher several days ago and where we had so many dead?"; witness thinks airman would still be alive but for Back; flyer dead when he left scene; Back not in Landwacht or German armed forces at time, Weber of Speicher came after all this had taken place; Conrad came with him and Conrad took overshoes (Ex "D"); Back told Conrad to take the ring and shoes of the flyer; he told Back: "It should not have happened." Soldier Grossman took the papers and articles from the flyer; the soldiers wanted to jump on Back but he had his pistol and fended them off; blood came from the flyer's mouth and drenched his hair in the back.

Johann Jacob, farmer, Preist: drove the dead body over to the cemetery that evening between 7 and 8. It was buried at place marked in Ex "G"; body had flying suit (Ex "A"); in back of head and face there was clotted blood.

Nicholaus Grossman, farmer, Preist: father of soldier Peter Grossman, who delivered to him on 15 August 1944 card, photo and square box in which was food; police picked up paper and parachute; food was thrown out and box kept and identified as Ex "E"; son is now assumed to be prisoner of war.

Doc S Herman Jacobson, Headquarters Fifteenth Army, War Crimes Section, interpreter: acted as interpreter for Captain Dimon in interviewing Back; took written statement and it was transcribed in German and Back signed each page; identified as Ex "F"; no promises or threats made; lived in Germany 30 years and United States 4 years; no weapons on either during interview.

Captain John E. Dimon, Headquarters Fifteenth Army, War Crimes Section; same testimony as Jacobson.

Confession of Peter Back: (See Ex "F") He admits to shooting unresisting, unarmed flyer twice with 7.65 mm pistol from one meter distance away; says Adam Weber of Speichen came to flyer after last shot and said: "It is a pity that I was not the first to find him, otherwise I would have cut open his belly." Weber kicked prone man in chest. Ernest Conrad kicked him in face; claims flyer died from Gieron's blows; member of NSDAP since 1937 and was Blockleiter day of affair; Kreisleiter Meink told him; "you did a good job; next time shoot him between the eyes."

Private First Class William R. Shapiro, (by stipulation his testimony in former trial was read): he was photographer who took pictures at grave and identifies Ex "G", "H" and "I"; no medical examiner was there but a technician from Graves Registration Service supervised and took tooth chart.

(It was stipulated that Preist, Germany was on 15 August 1944 hostile territory as far as American troops were concerned. Prosecution rests).

b. for the Defense

Peter Back, accused, chose to make an unsworn statement in which he was warned he would be cross-examined; Saw the flyer jump down and want to scome on his motorcycle; Krein and two soldiers there, latter helping to unbuckle parachute; Krein had his carbine pointed forward in position from which he could hit the flyer; Krein said: "Now, get away from here, get away;" put motorcycle against tree, walked up and without thinking, fired one shot at pilot; saw it was a flesh wound and he was still standing; didn't remember firing second time; he did not fire with a clear head; he was nervous and excited; fired without thinking it over at all; when he found out they were looking for him he reported to the police; he heard Dr. Goebbels' speech: "The population should take steps in this matter and should judge for itself"; did not think of this speech when firing; he was thinking of a woman in Preist and his own wife who were nearly killed by a low-flying plane; does not know why he fired; cannot explain why he fired; no intention to kill airman; although commended by the District leader, he realized that he had become a murderer and decided never to do it again; his conscience

worried him, his wife and he grieved a lot over it; he did not give Krein, Grossman and Becke orders; except to tell Grossman to take the papers to his father; never heard the flyer say anything.

Mrs. Barbara Jacob, housewife, Preist: knew Peter Back from youth; was good friends with him in school and worked together in church; he tended toward spontaneous actions, sometimes when excited but usually not; she never had any trouble with him; he had a good understanding for peace; sometimes he acts without thinking; he is easily impressed; she always thought "he can't be as bad as they say he is"; he was a sworn national socialist; accepting such dogma without thinking it over.

Ernest Rose, teacher, Preist: knew Back since 1922, had him under him when was 17 or 18 in church choir; became at times ecstatic, pale and shaking; he is of simple nature; he is not able mentally to judge things clearly.

Peter Becker Burg, 63, farmer, Preist: knew Back since birth; couldn't say anything bad about him; was his tailor until Back joined party; feared him as party member; doubted if Back thought over his actions. Defense rested.

2. LEGAL COMMENT

This is the same Military Commission, with added personnel, which tried the case of Peter Kohn, Matthias Gierens and Matthias Krein, previously tried on 1 June 1945 for complicity in this same offense. Three of the former members of the commission of eight were absent and two recused themselves. Only three of the former members sat in this case together with five added members. The accused being in custody of the Fifteenth Army, jurisdiction of the Military Commission is to be inferred from AW 15 and the decision of the Supreme Court in Ex Parte Quirin, 317 U.S. 1. Jurisdiction of such a case is expressly affirmed by the Judge Advocate General. SPJGW 1943/14218, 30 October 1943.

The war crime charged is "murder", defined by Congress as "the unlawful killing of a human being with malice aforethought." USC, Title 18, Sec. 452. The victim was an American airman of the Allied forces. The accused is a German civilian. The American was killed by him August 15, 1944. "The right to kill in war is limited to combatants in contending armies. None but a recognized soldier can exercise it, and only against recognized soldiers in arms. It is homicide for a private citizen to kill a soldier belonging to a hostile army." Hotlz Straf. III, 423, quoted in a footnote to Sec. 334, Vol. 1, Wharton's Criminal Law, 13th Edition.

The homicide is confessed by the accused and corroborated by the testimony of eye witnesses. Subsequent assault by Peter Kohn and by Matthias Gierens, to hasten the death of the American, does not relieve Back of guilt. "Liability for homicide does not depend upon the fact that death is the immediate consequence of the injury inflicted by the accused. One who inflicts an injury is deemed by the law to be guilty of homicide if the injury contributes to the death. If two persons inflict wounds at different times*****(and) if at the moment of death it can be said that both injuries are contributing thereto, the responsibility rests on both actors. In such cases the law does not measure the effects of the several injuries in order to determine which contributes in greater degree to bring about the death."

The accused does not defend his act. "I had suddenly become a murderer", he says in self condemnation. But he does deny any deliberate purpose to kill the American. His able German counsel express the legal opinion that the homicide "was due to the spur of the moment." The Specification of the Charge was that Back deliberately killed, and the Military Commission has so found. This element of deliberation is essential to murder. It is the equivalent of "malice aforethought" in the definition by Congress; and of the word "premeditation" that recurs in the text books. It involves a prior intent. But "it is not necessary that this intention should have been conceived for any particular period of time. It is as much premeditation if it entered into the mind of the guilty agent a moment before the act as if it entered ten years before." Wharton, *supra*, Sec. 507. "A man who wantonly, intentionally and violently kills another shows by that act, not indeed the existence of hatred of long standing, but the existence of deadly hatred, instantly conceived and executed; which is at least as bad, if not worse. This, in the strict sense of the words, is malice aforethought, (though) 'not long aforethought'. Stephen's Digest of Criminal Law, 5th Ed., Art. 244 a, quoted in a footnote to Sec. 507, Wharton *supra*.

Peter Back went to the scene of the parachute landing with a loaded pistol, the safety off. When he had parked his motorcycle, he advanced toward the American flyer, waving his pistol and crying, "Shoot him!" At that moment, if not earlier, he formed a cruel and wicked design. The rapidity with which its execution followed does not reduce the degree of the crime. It was murder.

It follows that the Specification of the Charge was proved. Is the sentence proper? Is Back's execution the wisest disposition to be made of his case? "I am most interested", said Dr. Mehn, "in the psychology of this case." That was a proper concern of the Military Commission, and is important to the Reviewing Authority. Back, individually, is insignificant. It may be granted that he was a misled little man. He professes penitence. But the interest of civilization, of all mankind is involved in the case of this misled little man and his exemplary punishment. In the "psychology" of punishment it is its dissuasion of others than the offender who may meditate crime. Dr. Mehn says: "If a man like Goebbels tells a tailor, 'Nothing will happen to you', then it is just a small step from the words to the action. You also see that by the fact nothing happened to the accused, he thought he was right for the time being. To dissuade a future Goebbels, and his hearers from believing him, the United States should give mankind an example: the fate of the little tailor of Preist.

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

3. COMMENT

On 1 June 1945, a Military Commission convened to deliberate upon the fate of three German civilians who had placed themselves outside the pale of non-belligerent civilians by lynching a lone American flyer who parachuted down on 15 August 1944 from a burning airplane at high noon near the tiny village of Preist in Trier. One had struck the wounded prisoner with a club until he was down; another

had beaten out what little life was left in the hapless young airman's body with a blacksmith's hammer. The third had stood by with his gun, fencing off the crowd from the shameful scene and lending his official sanction to the lynching. After solemn deliberation the Military Commission decided that these three should expiate their cowardly crime by paying the supreme penalty of death by hanging.

One significant actor in that tragedy enacted that mid-August day in war-time Germany was absent. Fleeing before the triumphant American columns as they advanced into his country Peter Back, tailor, Nazi enthusiast and self-appointed executioner of his country's enemies had left his native village. Whipped by the consciousness that there would soon be a law again in Germany, albeit a military one over which an alien flag would fly, and knowing of its traditional reputation for justice, he did not choose to risk an encounter with it.

The trial of the three at Ahrweiler on 1 June was robbed of its leading figure by the absence of Peter Back. His name rang constantly through the little chamber where the burgermeisters of this ancient Kreis had assembled for generations and where a stern Bismark in fierce consternation looked down from the wall upon this strange proceeding. Many asked "Where is Peter Back?" Some avenging fate or inexorable justice that guides the course of a criminal's destiny reached out and before the ink was fairly dry upon the verdict of the Military Commission meting out to Krein, Gierens and Kohn, the justice that the blood of this unknown American airman cried out for from the ground of Preist, Peter Back was captured.

The Military Commission met again on 16 June to complete the task to which it has been set. The same defense counsel, a learned jurist of the accused's native Trier, was here to conduct the defense and acquitted himself in a manner that reflected credit upon himself and the profession that for a time he has been compelled "to follow afar off". One can read beneath his fervent questioning and his classic utterances the rebellion that such right-thinking disciples of true Justice must have felt toward the protracted rule of Fichte's theory that "A Hero nation need respect no law, human or divine".

His argument is learned, but it is the time-old cry of those who would claim that someone else "beguiled them and they did eat". The War Crimes trials of post-World War I heard this whining excuse time after time. May it be answered as emphatically this time in all such trials as it has been in this one.

Adroitly, the able defense counsel, impressive in his black robes and the dignity of his position, injected the issue of mental responsibility. Faintly, but nevertheless it is there. Witness Rose (R 40) testifies:

"Q. Do you think that mentally he (Back) is not able to judge things clearly?"

"A. I think so - yes."

That no question may exist in the minds of students of this case that the Army sent an imbecile to his doom, the examination by a qualified Neuro-psychiatrist is attached to the record, the examination having occurred but a few days before the trial. It held him to be in his right mind. If Peter Back was mad, it was the madness of a people who had taught themselves to believe that the crimes of the citizen were the virtues of the Reich, a perversion to which German philosophy has shackled itself for years.

It is well that the trials of the other three participants took place, perforce, as they did. In their desire to escape the hangman's gibbet, the three others laid the burden of the crime upon the absent Back. Now he tries to claim that Gierens is guilty of the fatal blow. The picture is clear now. The saturnalia of blood there in that simple Rhineland village on that August noon-day takes its place beside the butcheries of Buchenwald and Dachau. There be-medalled and high-ranking over-lords decreed torture and death that Attila would have hesitated to essay. In Preist, ordinary citizens of the Third Reich - a crane-worker, a railroad man, a blacksmith, a tailor - join together in their bloodlust to slay an unresisting, unarmed, trussed-up young American who is their captive. The gory annals of the Comanches have no more brutal sequel. True apostles are they - Back, Krein, Gierens, Kohn - of Frederick the Great who declared that "He is a fool and that nation is a fool, who having the power to strike his enemy unawares does not strike and strike his deadliest".

It is befitting that they who acted together shall be punished together and that, like the false prophets of Kishon "not one of them escaped".

4. CONCLUSIONS

The record is clear of error and no difficult questions rise to perplex the appointing authority. The experience gained in the first trial stood the Military Commission and counsel for both sides in good stead in this one. The case was well handled, expeditiously tried and free from excessive or cumulative testimony. The rulings were fair and equitable.

Dean Edwin D. Dickinson, Dean of the School of Jurisprudence of the University of California, speaking before the American Society of International Law in 1943, suggested that "we limit our projected calendar of war crimes to cases in which evidence is sufficient to establish the violation without serious questions and in which the violation has been of such brutality and ruthlessness, unrelated to the requirements of military necessity, as to make to the satisfaction of all decent and right-minded people a reasonably clear case of violation of the laws and customs of war as they have been known and accepted these many generations."

The record in the case of Peter Back meets his requirements.

5. RECOMMENDATIONS

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

C O N F I D E N T I A L

HEADQUARTERS FIFTEENTH U. S. ARMY
APO 408

MILITARY COMMISSION)
:
ORDERS NO. 2)

23 June 1945

Before a Military Commission which convened at Ahrweiler, Germany, pursuant to Paragraph 1, Special Orders 108, 19 May 1945, as amended by Paragraph 2, Special Orders 133, 13 June 1945, Headquarters Fifteenth U. S. Army, was arraigned and tried:

Peter Back, a German civilian, resident of Preist, Regierungsbezirk Trier, Germany.

CHARGE: Violation of the Laws and Usages of War.

Specification: In that Peter Back, a German civilian and not a lawful belligerent, did, at or near Preist, Germany, on or about 15 August 1944 violate the laws and usages of war by willfully, deliberately and feloniously killing an American airman, name and rank unknown, a member of the Allied Forces, who had parachuted to earth at said time and place in hostile territory and was then without any means of defense.

PLEAS

To the Specification of the Charge: NOT GUILTY
To the Charge: NOT GUILTY

FINDINGS

Of the Specification of the Charge: GUILTY
Of the Charge: GUILTY

SENTENCE

To be hanged by the neck until dead.

The sentence was adjudged on 16 June 1945.

The sentence is approved and confirmed under authority granted by Commanding General, Twelfth Army Group, in Circular Number 14, Headquarters, Twelfth Army Group, dated 2 October 1944, as amended, and the sentence will be duly executed, but the execution of the sentence to be hanged by the neck until dead is hereby stayed pending further orders.

BY COMMAND OF LIEUTENANT GENERAL GEROW:

O. C. WOOD
Colonel, GSC
Chief of Staff

OFFICIAL:

/s/ R. B. Patterson
R. B. PATTERSON
Colonel, A.G.D.
Adjutant General

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