

HEADQUARTERS THIRD ARMY
OFFICE OF THE STAFF JUDGE ADVOCATE
WAR CRIMES BRANCH
APO 403 US ARMY

Ludwigsburg Detachment

17 May 1946.

THE UNITED STATES

VS

Karl Neuber,
German national,
Case No. 12-926-1

REVIEW AND RECOMMENDATIONS OF STAFF ADVOCATE

1. TRIAL:

Accused, a German male, civilian, was tried at Ludwigsburg, Germany on 26 April 1946 by a General Military Government Court appointed by Paragraph 1, Special Order No. 100, Headquarters Third United States Army, APO 403, dated 20 April 1946.

2. CHARGE, ALIAS, FINDING AND SENTENCE:

Charge and Particular	Flea	Finding
Charge: Violation of the Laws of War	NO	G
Particular:	NO	G

In that Karl Neuber, a German national, did, at or near Hana, Germany, on or about 17 February 1945, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of three unknown members of the United States Army who were then unarmed, surrendered prisoners of war in the custody of the then German Reich.

Sentence:

The Court in closed session at least two-thirds of the members present at the time the vote was taken concurring therein sentenced the accused to be imprisoned for a term of seven (7) years commencing the 17th day of July 1945 at such place as may be designated by competent military authority.

3. JURISDICTIONAL MATTERS:

- It is settled law that a civilian national of one belligerent nation may be tried and punished by the duly constituted tribunals of another belligerent nation for violations of international laws governing land warfare. When a civilian wrongfully kills enemy persons who have fallen into his hands as prisoners of war or aids, abets or participates in such wrongful killing, it is an offense falling within the scope of this rule. (Par. 345, EM 27-10).

b. This General Military Government Court was duly and legally appointed by the Commanding General of the Third United States Army by Paragraph 1, Special Orders No. 100, Headquarters Third United States Army, dated 20 April 1946. The charge and particular were properly preferred and referred to this court for trial. The required jurisdictional number of five (5) members were present throughout the trial. The charges were served on the accused on 22 April 1946. Accused was properly represented in Court by counsel and announced ready for trial. (R-3) This Court was vested with full power to try the accused for the offense charged. The sentence was legally within the power of this Court to impose. (Article III MG-2)

4. EVIDENCE:

a. For the Prosecution: During the afternoon of 17 February 1945 three American flyers who had parachuted from their disabled plane were picked up at the headquarters of Police District No. 2 in Hanau, Germany and were taken to the main police headquarters in Hanau. (R-5,16,20) These flyers were then taken into the police headquarters and placed in separate rooms for safe keeping. At about 6:00 o'clock p.m. in the evening Chief of Police Fehrle came to the headquarters and after talking with Criminal Commissioner Weger called an interpreter and proceeded to interrogate the three flyers. During the interrogation Fehrle was heard to say in a loud voice: "Murderers - Gangsters" (R-20,21) The accused Neuber was present when the flyers were brought in for interrogation. He also overheard Fehrle say in a loud voice "Murderers." (Fros. Exhibit 1, p.p.2,4) After the interrogation was completed Weger came into the guard room where Neuber and Schulze were standing and told them that the flyers would have to be shot. (R-21,22; Fros. Ex.1, p.5) Later it was decided that the shooting would take place in the second court yard of the headquarters. Accused suggested that the flyers should be transferred to the airdrome in Lanforbach. Guggenburger, who was also present, on hearing this yelled at the accused saying: "Keep your mouth shut. what is the idea?" (R-22, Fros. Ex. 1, p.5) Weger, Schulze, Guggenburger and accused Neuber then proceeded to the court yard in back of the police headquarters. Weger told the accused and Schulze to go and bring in the first flyer. Schulze and the accused proceeded to bring the first flyer into the court yard and as they proceeded into the court yard this flyer was shot in the back of the head by Weger. (R-23; Fros. Ex. 1, p.6) Accused and Schulze then proceeded to get the second flyer and bring him into the court yard. When they walked into the court yard Weger told Schulze that it was his turn whereupon Schulze complained that his gun had jammed and Weger handed him his pistol and immediately thereafter a shot was heard and the flyer fell to the ground. (R-25; Fros. Ex.1, p. 7) Guggenburger, Schulze and accused Neuber then proceeded to bring the third flyer into the court yard. As they entered the court yard Guggenburger was walking behind the flyer. (R-26; Fros. Ex. 1, p. 9) The third flyer was also shot as he walked into the court yard. (R-27; Fros. Ex. 1, p. 9) The bodies of the three flyers were then loaded into a police van by the accused. Guggenburger, Weger and Schulze. (Fros. Ex. 1, p. 10) Schulze, Guggenburger and the accused

then got into the van and directed the driver to take the bodies to the place in the harbour area of Hanau where an American plane had crashed. There the bodies of several other American flyers who had died in the crash. (R-9,10)

- b. . For the accused: Accused by his own testimony and that of Adolph Jeger, who testified on his behalf, admits that he was present and received the order from Jeger that these flyers were to be shot. (R-42,50) He also admitted participating in the killing of the three flyers by loading each of the flyers into the court yard, one at a time, and being present when the actual shootings took place. (R-43,44,52) Accused contends that at the time he received the order to kill the flyers from Jeger, he suggested that the flyers should be taken to the airport. (R-43, 51) Accused also states that he would not have participated in the killings if he had not been ordered to do so by his superior Jeger. He was afraid that if he did not comply with this order, Jeger would report him for such failure and he would be shot and his family sent to a concentration camp. (R-53, 30, 44)
- c. For the Court: The Court on examining the accused brought out the facts that the victims of the shooting were unarmed and had made no attempt to get away. (R-55); that at the time of the shooting accused was armed with a service pistol. (R-54)

5. DISCUSSION:

- a. The facts as presented by the prosecution and admitted by the accused as contained in the evidence adduced before the Court establish that on or about 17 February 1945 accused, a German national (R-2) did at Hanau, Germany; wilfully, deliberately and wrongfully aid, abet and participate in the killing of three unknown members of the United States Army. (R-21, 22, 23, 25, 42, 44, and 52) who were then unarmed, surrendered prisoners of war of the then German Reich. (R-55) The identity of the victims as being American flyers was established. (R-41)

The accused admits participating in the killing of the three American flyers. (R-43, 44, 52) but states that he did so only in carrying out the order given to him by his superior Jeger (R-53) and at the time he was afraid that if he did not carry out this order Jeger would have reported him and he would be killed and his family sent to a concentration camp. (R-30, 44) The fact that an accused commits a crime in violation of the accepted laws and customs of war in response to superior orders is not in itself an absolute defense. (Par 2, Art. IV MCO 2) Such fact could, however, be considered by the Court in determining the culpability of the accused for the offense of which he has been found guilty or in mitigation of the punishment imposed upon an accused for the commission of the offense of which he has been guilty. (Par. 245.1, FM 27-10, 15 November 1944) From a careful consideration of the record it is evident that the Court did consider the fact that the accused acted under the pressure of superior orders when he committed the offense herein

and mitigated his punishment accordingly. (R-53, 30,44)

- c. The evidence herein establishes that the accused participated in the killing of the three American flyers knowing that they were prisoners of war and should have been turned over to the Luftwaffe. (R-22; Pros. Ex. 1, p. 5) Accused had been told that these flyers were to be shot. (R-21, 28; Pros. Ex. 1, p.5) Knowing these facts the accused still proceeded to take part in the killing of the three flyers. (R-43, 44, 52) Following the killing, the accused helped load the bodies into the police van and proceeded with the van to the place where an American plane had crashed in the harbour area of Hanau. Here the bodies were unloaded and placed with those of several flyers who had died in the plane crash. (R-9, 10; Pros. Ex. 1, p.10) These facts establish that accused was an aider and abettor in the offense of killing the three American flyers and as such accused would be liable as principal for the commission of the offense charged. (Sec. 257 Barton's Criminal Law, Chap. 321, Sec. 332, 35 Fed. Statutes 1152)
- d. There is no letter from the Deputy Theater Judge Advocate referring this case to trial included in the record. This accused was originally charged jointly with two other accused, namely, Weger and Schulze. Weger and Schulze were tried last December and found guilty of the offense charged. At the time of that trial this accused was sick in the hospital and could not be brought to trial at that time. The letter referring this case to trial is included in the case of United States vs Weger and Schulze, Case No. 12-926, and is not available to be included with this record.
- e. The sentence imposed by the Court herein was within the authority of the Court imposed. (Article III, MGO 2) After considering all of the facts, the Court imposed a sentence which it felt was adequate to punish the accused for his participation in the offense. In imposing such sentence the Court considered the fact that accused was acting under superior orders. The sentence is adequate to punish the accused for his part in the offense charged, namely, killing three American flyers.
- f. A careful consideration of the entire record discloses no error or irregularity in the proceedings herein which prejudiced the rights of the accused.

6. DATA AS TO ACCUSED:

Accused is 38 years old; he is a German civilian; he is married with one child and his last residence was Hanau Am Main, Germany. (R-2, 52) Accused civilian occupation was that of a driver until 1937 when he became unemployed. From 1937 to 1939 he received state assistance. (R-48, 49) He was drafted into the Gestapo in 1939 as a driver. (R-43, 49) In August of 1944 because of injuries he was given the job of file clerk in the office of Criminal Commissar Weger. (R-44, 48) He has been in confinement continuously since 17 July 1945.

7. PETITION FOR REVIEW:

No petition for review has been filed on behalf of the accused herein.

8. CLEMENCY:

No petition for clemency was filed on behalf of accused.

9. RECOMMENDATION:

It is recommended that the finding and sentence of the Court be approved and the sentence duly executed. The proper order for carrying out his recommendation has been appended for the signature of the reviewing authority.

/s/ M.C. Setzekorn
M.C. SETZEKORN
Civilian
Chief of Trial Section

I concur:

/s/ Charles E. Cheever,
/t/ CHARLES E. CHEEVER,
Col. JAGD
Staff Judge Advocate.