

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

UNITED STATES

vs

Emil BREITENSTEIN,
 a German National

Case No. 12-1149-1

REVIEW AND RECOMMENDATIONS

1. TRIAL: The accused was tried at Dachau, Germany, on 18 September 1946 before a General Military Government Court appointed by paragraph 2 Special Orders No. 238, Headquarters United States Forces, European Theater, United States Army, APO 757, dated 26 August 1946, as amended by paragraph 24 of Special Orders No. 242, same headquarters, dated 30 August 1946.

2. FINDINGS: The offense involved was:

FIRST CHARGE: Violation of the laws of war.

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Particulars: In that Emil BREITENSTEIN, a German civilian, did, at or near Moosinning, Germany, on or about 20 July 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of Arthur W. MANOCH, a member of the United States Army, who was an unarmed prisoner of war in the custody of the then German Reich.

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SECOND CHARGE: Violation of the laws of war.

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Particulars: In that Emil BREITENSTEIN, a German civilian and Kreisleiter of Kreis Erding, did, at or near Moosinning, Germany, on or about 20 July 1944, wilfully, deliberately and wrongfully give an order to Anton SCHOSSER, a German civilian and Kreisstabsamtsleiter of Kreis Erding, to kill Arthur W. MANOCH, a member of the United States Army, who was an unarmed prisoner of war in the custody of the then German Reich, and as a result of said order, said Arthur W. MANOCH was shot and killed.

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3. FINDINGS: The court, by at least a two-thirds vote of the members present at the time the vote was taken concurring, acquitted the accused of both charges and all particulars.

4. DATA AS TO ACCUSED: Emil BREITENSTEIN is a German national, 47 years and a resident of Erding (R 3). Prior to the end of the war he had been Kreisleiter in Erding, a town located about 25 kilometers northeast of Munich (R 81).

He had first joined the National Socialist Party in 1920, left in 1923 and re-joined in 1928 (Pros. Ex. 3, 3A; R 32). No further personal information is available.

5. RECOMMENDATION: That the court's finding of not guilty be approved.

6. EVIDENCE: On or about 20 July 1944 two captured American flyers were held in custody of the police at Moosinning, Bavaria (R 9). Demand was made on the police sergeant for their delivery to the local party organization by the Assistant Kreisleiter one Anton SCHOSSER (R 10). This was refused and SCHOSSER placed telephone calls to one Lieutenant-Colonel (?) MILLER, commander of the airfield at Erding, and Kreisleiter BREITENSTEIN, the accused (R 11), to try and prevail upon the sergeant to change his mind. According to current directives the local airfield had the authority over any prisoners so taken. BREITENSTEIN was the recipient of the first call and SCHOSSER was unsuccessful in having him interfere. MILLER then grudgingly gave permission to release one prisoner to SCHOSSER, ostensibly for the purpose of having him interrogated by the Kreisleiter (R 11). One prisoner, apparently a negro, was given to SCHOSSER for this purpose (R 11 A). SCHOSSER, accompanied by two party members, WILM and GOLDBRUNNER, left the police station with the prisoner. SCHOSSER took the prisoner to the bridge across a nearby canal and shot him (R 11 A). He was later convicted of this crime and hanged during January 1946 (See case No. 12-1149). The two party members, WILM and GOLDBRUNNER, were also tried but acquitted (See also case No. 12-1149). These accused were charged jointly but a severance was granted and SCHOSSER was tried alone and the other two defendants were tried jointly.

7. JURISDICTION: The particulars allege a violation of the laws and usages of war which was committed prior to 9 May 1945 by enemy nationals against members of the United States Armed Forces or their allies at a time when a state of war existed between the German Reich and the United States of America and their allies. The court which was appointed to hear the case had jurisdiction of the persons and subject matter in accordance with previous decisions of this court in similar cases (See United States vs. Hermann NOACK et al No. 12-472). From discussion of this point will not be attempted but reference is made to the cited where the subject is treated at length.

Attention is directed to General Order 238 and particularly paragraphs 2 and 2 thereof. This order appointed the court. Attention is further directed to the order referring this case to the court for trial dated 19 September 1946. This order referred the case to the court appointed in paragraph 3 supra. Actually the court appointed in paragraph 2 tried it. Both courts were General Military Governments Courts and as such had jurisdiction to try cases of this nature. The error is obviously one of a typographical nature made in the administration of assigning the cause for trial. It certainly cannot be said that the defendant's rights were prejudiced, since he was acquitted. The record itself is further in error since it shows that the court was appointed by paragraph 3 Special Orders No. 250 (R 1). This is patently another mistake of an administrative nature and should have been corrected by some person whose name certifies as to the record's correctness. No prejudicial error can be said to have been caused by the failure to do so.

8. DISCUSSION: No discussion is believed here necessary and none will be attempted. It is needless to state that the court could not have found other than it did. No evidence has been adduced which would tend to show that the accused was responsible in any way in bringing about the murder of the flier.

9. RECOMMENDATIONS: That the findings of the court be approved and that the record of trial, together with this Review, be filed without further action.

DAVID P. HERVEY
Attorney
Post Trial Section

I have examined the record of trial and I concur.

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