

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

18 December 1945

UNITED STATES

v

Case No. 12-468

Karl Bloch and Karl Neunobel,  
German Nationals.

REVIEW AND RECOMMENDATIONS

1. TRIAL: The accused were tried at Heidelberg, Germany, on 12, 13, and 15 October 1945, before a Military Commission appointed by paragraph 10, Special Orders No. 260, Headquarters, Seventh U.S. Army, Western Military District, 17 September 1945, as amended by paragraph 5, Special Orders No. 275, 3 October 1945, and paragraph 10, Special Orders No. 277, 4 October 1945, same headquarters.

2. FINDINGS: The offense involved was:

|                                              | <u>Pleas</u> | <u>Findings</u> |
|----------------------------------------------|--------------|-----------------|
|                                              | By Bloch     | By Neunobel     |
| <u>CHARGE</u> : Violation of the Laws of War | 0            | 0               |

Specification: In that KARL BLOCH, K. U. NEUNOBEL, German civilians, acting jointly, did, together with other persons whose names are unknown, at or near Belfersheim, Germany, on or about 1 December 1944, wilfully, deliberately and wrongfully encourage, aid, abet, and participate in the killing of THOMAS E. MCULHARR, a member of the United States Army, and three other members of the United States Army, whose names are unknown, each of whom was then unarmed and a prisoner of war in the custody of the then German Reich.

|   |    |   |   |
|---|----|---|---|
| 0 | NO | 0 | 0 |
|---|----|---|---|

Except the words "aid" and "participate". Of the accepted words, NO

3. SENTENCE:

The Commission, by at least a two-thirds vote of the

members present at the time the vote was taken, sentenced the accused Bloch to be hanged by the neck until dead at such time and place as higher authority might direct, and sentenced the accused Neunobel to be imprisoned for a term of ten (10) years at such place as might be designated by competent military authority. The sentence as to accused Bloch was upheld upon review by the Reviewing Authority on 17 November 1945, but the method of execution by shooting was prescribed. The sentence as to accused Neunobel was disapproved by the same Reviewing Authority on the same date. The record of trial has been forwarded to the Commanding General, United States Forces, European Theater, for final action as to accused Bloch (Letter, Headquarters, United States Forces, European Theater, AGO 250.4, 25 August 1945, subject: "Military Commissions").

4. DATA AS TO ACCUSED BLOCH: Bloch is a German civilian, 43 years of age, and a resident of Beltersheim, Kreis Glessen, Germany. He is a farmer by occupation, was block leader of the N.S.V. for Beltersheim, and had been a member of the National Socialist Party since 1 May 1937. He is married and had one son, who was killed by Allied aviators in a strafing attack shortly before the commission by accused of the crime for which he was tried.

5. RECOMMENDATION: That the action of the Commission and of the Reviewing Authority as to accused Bloch be confirmed, but that the method of execution be by hanging, in conformity with the original sentence.

6. EVIDENCE:

(a) Accused Bloch pleaded guilty, and declined to change his plea after an explanation to him in open court of the effect of his plea. The prosecution's evidence against him consisted of a signed confession (Pros. Ex. 2) and of six pages of interrogation of him by a War Crimes Investigator-Examiner (Pros. Ex. 3), both of which were admitted in evidence without

objection (R 7). Consequently, it is deemed necessary to summarize the evidence only in the briefest possible manner.

(b) On the afternoon of 1 December 1944, four American flyers were captured in a woods near Beltersheim by accused Neunobel and one Gustav Weber, who had been hunting rabbits (R 14, 25, 27). The two Germans took the flyers to the village of Beltersheim, and eventually to the house of one Heinrich Erb, who was Ortsgruppenleiter and Bürgermeister for the town (R 17; Pros. Exs. 2, 3, 6). Erb was a tyrant and "the terror of the townspeople" (R 18). Eventually quite a group of Germans gathered at Erb's house. Besides Weber and Neunobel they included Erb, Seip, Schneider, Kuschke, and accused Bloch. At about 2000 or 2030 hours Erb ordered Bloch, Seip, Schneider and Neunobel to help him march the four flyers to the nearby town of Grunberg. They had gone only a very short way when Erb announced that the flyers were to be killed. All the guards had firearms of one sort or another. It was agreed that Erb would raise his pistol, which was to be the signal for the five of them to shoot. They turned off the road into a field; Erb raised his hand, and all except Neunobel, who opposed the commission of the act, fired one shot from their respective weapons. Erb administered a coup de grace to each flyer. Bloch fired only one shot from a 9 mm. revolver, from a distance of 15 to 20 meters. After the flyers were killed the Germans returned to Erb's home, but later in the evening went back to the scene. They carted the bodies away, dug a shallow ditch in a nearby woods, and there buried the victims. They searched the bodies and took from them various articles of clothing and belongings. They then returned to Erb's home, where the loot was distributed among the perpetrators of the crime. Bloch received a wrist-watch and a pair of shoes. The flyers were identified as Americans both by Bloch and as a result of exhumation and autopsy. Bloch admitted that they had at no time tried to es-

caps (Pres. Exs. 2, 3, 8).

Only one of the flyers could be definitely identified. He was Thomas K. Kohlhaas, 2nd Lieutenant, Air Corps (Pres. Exs. 1, 8). The three whose bodies were not so badly decomposed as to prevent proper medical determination of the cause of death, had bullet wounds in head, chest and abdomen, all inflicted from the rear, and all sufficient to cause death (Pres. Ex. 8).

(c) Accused Bloch took the witness stand as a witness on behalf of accused Neunabel, whose sentence has been disapproved by the Reviewing Authority. Accused Bloch did not specifically offer any defense or extenuation insofar as his own crime is concerned. He stated that he was upset because of the recent death of his son and four other young men of the village as the result of Allied strafing attacks, and that Erh was a tyrant whom all the villagers feared (R 17, 18, 31). He once characterized himself to Neunabel as having been "a tool of Erh and Seip" (R 31).

(d) Further detailed evidence will not be set forth here, but the recapitulation contained in the review of the Staff Judge Advocate, Seventh U.S. Army, appended hereto, is adopted in its entirety.

#### 7. JURISDICTION:

(a) The Military Commission which heard this case was properly constituted and had jurisdiction over the subject matter and of the accused. A military commission has jurisdiction over the inhabitants of an occupied enemy country held by the right of conquest (Par. 7, 14 27-10, Rules of Land Warfare; Coleman v. Tennessee (1878), 97 U.S. 509). Military commissions are not restricted in their jurisdiction by territorial limits. (United States v. Hogg, et al (1865), 6 Rebellion Records, Series II, 674, 678; 50 Harv. Law Review, 1059, 1065). Thus, an offense against the laws of war committed in a country prior to its occupation may properly be tried by a military commission

of the victorious army upon occupation. (Memorandum by the Judge Advocate General (SPJGW 1043/17671, subject: Jurisdiction to Punish War Criminals, 13 December 1943; 21c. Op. JAG, 1912, p. 1037; Trial of Henry Wirz (1868), 40th Cong., 2nd Sess., House of Representatives, Ex. Doc. No. 23; see also cases cited on pages 207-216 in Universality of Jurisdiction Over War Crimes (Howies), reprinted from 33 California Law Review (June 1945)). Civilian nationals of a belligerent power are bound to accord to lawful enemy combatants the treatment required under customary and conventional international law (Art. 2 of the Geneva (Prisoners of War) Convention, 27 July 1929; Art. 23, par (c) of the Annex to the Hague Convention No. IV of 18 October 1907, Change I, 15 Nov. 1944, par. 343.1, III 27-10, Rules of Land Warfare (Hague)). Both the United States and Germany were signatory powers to the cited conventions. The killing of the unarmed prisoners of war in the instant case was intrinsically so barbarous and inhumane that it can properly be said to violate not only the written law of nations, but also those implied concepts and standards of decency to which the nationals of every belligerent are bound by the unwritten law of nations. The offense closely approximated common law murder. The jurisdiction of the Commission over the offense and over the accused is beyond question.

#### C. DISCUSSION:

(a) There is no question as to accused's guilt. Not only did he plead guilty in open court and corroborate his plea after an explanation to him of its effect, but also the evidence introduced by the prosecution is complete. While it is impossible to state which of the four flyers was killed by accused, the nature of the Specification was not such as to require this proof. It is clear that the killing of all four was simultaneous on the part of the four Germans. It was a concerted plan in which each was to dispose of one man, with the object of murdering all four. Accused bore a full share of

responsibility for the deaths of all four, and it is immaterial which one his bullet actually killed.

(b) Accused, by his plea of guilty, expressly waived the defense of superior orders which he inferentially interposed in his confessions and testimony, to the effect that Erb was a tyrant and that he (accused) feared Erb. It is significant that Hounshel, who followed the group, but did not fire, had the courage to disobey the order. Accused needed little urging to obey it. As has been repeatedly stated in similar cases, the order was patently illegal, and accused can take no refuge in his obedience to it.

(c) All the evidence introduced at the trial was admissible under the rules of procedure established by the order creating the Commission and, in fact, under the strictest rules of our own civil courts and courts-martial. The essential facts were established by the direct testimony of eye-witnesses and by accused's own voluntary confessions. The Commission was properly constituted, and had jurisdiction over the subject matter and of the accused. It was authorized to impose the death penalty. Both findings and sentence were approved by at least a two-thirds vote of the members of the Commission present. There were no irregularities in the proceedings which prejudiced any substantial rights of the accused. He had explained to him the full legal effect of his plea of guilty, and elected to stand by it. Even without such a plea, the Commission could not have conceivably found otherwise than it did. Accused was represented by German counsel of his own choosing, and by the defense counsel appointed for the Commission. He received a fair trial, consistent with Anglo-Saxon standards of justice, and there is no possible doubt as to his full guilt.

D. CRIMES:

The offense of which accused stands convicted is a war crime. All war crimes are subject to the death penalty,

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although a lesser penalty may be imposed (Per. 357, 17 37-10, Rules of Land Warfare). The offense in this instance was pre-meditated and wanton, and was characterized by a complete lack of mercy. Accused had ample opportunity to withdraw from the undertaking. He actually did not even protest his part in it. This lends little credence to his half-hearted claim that he was afraid of Erb and that he was disturbed by the recent death of his son in a strafing attack. Attached to the record is a plea for clemency by one Wannenschlager, an attorney of Weichenau, Baden, employed by accused's wife, in which accused's fear of Erb and distress over his son's death are again assigned as the causes for his terrible act. The appeal is that the sentence be commuted to a long term of imprisonment. If this man is not to expiate his crime with his own life, then there is no justification for the execution of an war criminal. He offered no mercy and deserves none.

The Reviewing Authority, for reasons not set forth, changed the method of execution to death by shooting. Shooting is a soldier's death, usually imposed for the commission of a military offense. Accused's crime bears no relation to such an offense. It was calculated, brutal murder, and an infamous death should be his punishment. It is therefore suggested that the sentence be confirmed, but that the method of its execution be designated by hanging, in conformity with the sentence of the Commission and the baseness of the crime.

#### 10. CONCLUSION:

It is accordingly believed that the sentence of the Commission should be confirmed, but that the method of its execution should be by hanging. A form of action prepared to accomplish this result is attached hereto.

SAMUEL LOHENFELD  
Captain, JAGD