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War Crimes Case File 144555

Case # 12-1104

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HEADQUARTERS  
EUROPEAN COMMAND  
Office of the Judge Advocate

Case No. 12-1104  
U.S. vs. Gard Beck et al.

6 June 1951

Accused: Otto WEINREICH

REVIEW OF THE WAR CRIMES BRANCH  
JUDGE ADVOCATE DIVISION, HEADQUARTERS  
EUROPEAN COMMAND, APO, 403, U.S. ARMY

TO: THE WAR CRIMES MODIFICATION BOARD, EUROPEAN COMMAND, APO 403, U. S. ARMY

1. THE RECORD OF TRIAL BY GENERAL MILITARY GOVERNMENT COURT, LEGALLY CONSTITUTED FOR TRIAL OF WAR CRIMES CASES, of the following named accused, together with all petitions and supporting documents, filed by and behalf of said accused subsequent to the trial, having been examined and reviewed by me as to whether or not any modification of the sentence of said accused as heretofore approved should be made, I submit herewith my review summary, as specially authorized in War Crimes cases.

2. SYNOPSIS OF THE RECORD

a. Personal Data:

<u>WEINREICH*</u>	<u>Otto</u>	<u>German</u>	<u>Male</u>
(Last Name)	(First Name)	(Nationality)	(Sex)

Tried at Ludwigsburg, Germany, on 7 - 14 May 1946. Date of original confinement under charges: 27 April 1945. Present Age: 50. Married: Yes. Children: One, over 18 years. Other dependents: Father. Employment record: Mechanic. Education: Unknown. Religion: Unknown. Prior Convictions: None. Reputation in home community: Good. Military Record: Civilian. Nazi Party record: Joined 1933. Health: Unknown.

b. Sentence:

Sentence adjudged by court: On 14 May 1946, sentenced to life imprisonment.  
Recommendation of DJA/JC : On 11 December 1946, recommended approval of the sentence.  
Recommendation of WCRB : None.  
Recommendation of JA : On 8 January 1947, recommended approval of the sentence.  
Action of Review Authority: On 11 January 1947, approved sentence.  
Recommendation of subsequent WCR Board and Appraisals : None.  
Present recommendation : No modification.

\*NOTE: The name of the accused under consideration is capitalized wherever appearing in this review.

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c. Charge and Particular:

CHARGE: Violation of the Laws of War.

PARTICULAR: In that Otto WEINREICH and Gerd BECK, German nationals, acting jointly, did, at Wolfenbuettel, Germany on or about 28 September 1944, willfully, deliberately, and wrongfully, encourage, aid, abet and participate in the killing of a member of the U.S. Army, whose name is unknown, who was then unarmed and a prisoner of war in the custody of the then German Reich.

Plea: Not Guilty.

Finding: Guilty.

3. EVIDENCE

a. Concerning the Case Generally:

On the 28th of September 1944, an American aviator parachuted from his disabled plane and landed on the eaves of a house on Krumme Strasse, Wolfenbuettel, Germany. A crowd gathered in the street outside, and a few men entered the house, went to the second floor, opened the window and cut the risers of the parachute and pulled the aviator into a room through a window. At this time, the victim was uninjured, unarmed, and had his hands raised above his head in surrender. The accused, Otto WEINREICH and Gerd Beck entered the house and went to the second floor into the room with the aviator. The room was crowded with approximately ten to fifteen people. A Wehrmacht Captain by the name of Kanschak was present and ordered all Wehrmacht out of the room. At this time the American aviator was standing with his back toward the people in the room. A pistol, belonging to WEINREICH was used by the co-accused, Beck, who fired one shot through the aviator's head, killing him. All present in the room, then left and went outdoors, leaving the body in the room. The victim was then carried out into the backyard and later was taken away by automobile.

The facts set out above appear uncontroverted. In this case it should be understood that WEINREICH, who was a political leader (Ortsobmann), and co-accused Beck were tried jointly and that the Wehrmacht Captain was tried several months later. The incident occurred during an air-raid alert which was in effect at the time of the incident.

This case was originally called to trial on 28 December 1945, but on defense motion was postponed for a sanity test and examination of co-accused Beck. The witnesses, however, being present, by agreement of the parties and approval of the Court, were called and examined and cross-examined in the presence of prosecution and defense counsel and the accused, and the testimony perpetuated in deposition form. These depositions were later introduced at the trial, and unless otherwise specially noted, the Exhibits hereinafter summarized are the depositions so taken.

The incident concerned in the case occurred during an air raid which was in effect at the time of the incident.

b. Prosecution Evidence Concerning the Accused WEINREICH:

(1) The prosecution introduced into evidence the disposition of Liaslotte Lunkewitz (R-10, P-Ex. 3). She testified that she recalled an incident on 28 September 1944, in which a parachute came down upon the house of Mrs. Dickhoff in Krumme Strasse. She testified that she saw Lt. Bohm, Mr. Leuders, a man in paratrooper uniform and a party member go inside the house.

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She also saw an officer of the Wehrmacht enter the house. She saw the risers of the parachute cut and the parachutist pulled inside of the house and through the second story window. At this point witness momentarily left the window and when she returned she saw them carrying somebody out of the room. She went outside and across the street to the house where the flyer had been, and saw him lying in the backyard. There was some blood next to his head. The flyer did not move and a few moments later he was put on a vehicle, covered with a blanket and carried away.

On cross-examination, she testified that the attitude of the crowd which gathered in the street was partly hostile and partly friendly.

(2) The prosecution introduced the deposition of Martha Dickhoff (R-10, P-Ex. 4). The witness testified that during the month of September 1944, a parachutist became suspended from the roof of her house in front of the window of the apartment in which she lived. When she arrived at the house after leaving the air-raid shelter, the flyer had already been pulled into the room and only the parachute was hanging from the roof. When she tried to get into the house she was stopped by a soldier, but upon explaining that she lived there, he let her enter. While standing in front she was able to look through the house to the backyard, and there she saw the flyer lying on the ground surrounded by soldiers. She went to the backyard and from a distance of about five feet saw the flyer lying motionless. She later went up to the room in which she lived and discovered a blood stain about three inches in diameter on the rug. Blood stains led from the room, down the stairs and into the backyard where the flyer was lying. After the flyer had been taken away she discovered a blood spot, approximately one foot in diameter in the backyard. The witness also found one cartridge in the room.

On cross-examination, she testified many people gathered in the street in front of the house and there was considerable excitement. She also testified on cross-examination that in the backyard she saw an officer but was unable to state whether or not he was from the police or the Wehrmacht.

(3) The prosecution introduced in evidence the testimony of Minna Brecht (R-11, P-Ex. 5). The witness testified that she recalled a parachutist coming down in Krumme Strasse in the month of September 1944. She testified that there were many people standing in the street. While she was standing in her doorway, a parachute soldier from the German Army passed and said: "Well, we finished this one."

(4) Prosecution introduced in evidence the testimony of Ernst Meier (R-12, P-Ex. 6). Meier testified that he was standing in front of his house one day during the month of September 1944 and he saw a parachutist drifting down. The witness ran around the corner and saw the parachute become entangled on the roof of the house and the flyer hanging down outside a second story window. While the witness was standing on the street, he saw Mr. Bohm inside the window of the house and saw him cut off the pilot and pull him inside. The witness also saw at the window a party member in uniform and Captain Kanschat.

On cross-examination, the witness was unable to identify WEINREICH. The witness also testified that the attitude of the people gathered in the street was both hostile and friendly to the flyer, but everyone was very excited.

(6) The prosecution introduced into evidence the sworn pre-trial statement of the co-accused Back in which accused Back admitted having shot an American flyer under the orders of Captain Kanschat, and that the pistol used in the killing was given to him by the accused WEINREICH (R-18, P-Ex. 8).

(7) The prosecution introduced in evidence the sworn pre-trial statement of the accused WEINREICH which is quoted below:

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"I, Otto WEINREICH, born 21 May 1901, in Wittmar Asserweg #81, District of Wolfenbuettel, state hereupon under oath that, on the 29th of September 1944, I gave my pistol to Sergeant Beck. The pistol was used to shoot an American prisoner of war through the head. I gave the pistol to the sergeant without force" (R-21; P-Ex. 9).

(8) Gerd Beck, a co-accused took the stand and testified not under oath that on 28 September 1944 an American parachute flyer parachuted to earth and became entangled on the roof of a house. The flyer was cut from the parachute and taken in a second story window of the house on Krumme Strasse. He went upstairs to the room and entered finding about fifteen people present in the room. Captain Kanschke ordered all the Wehrmacht soldiers out of the room. The witness Beck, the accused WEINREICH and Captain Kanschke remained. Accused WEINREICH drew his pistol and began loading it. Captain Kanschke then ordered the flyer shot. The witness was not able to recall positively whether the accused WEINREICH handed his pistol to him or whether he (Beck) grabbed it from WEINREICH, but, at any rate, the pistol was in his hands and he shot and killed the flyer who was standing on the other side of the room with his hands raised above his head (R-27, 28).

On cross-examination, the witness testified that he was positive WEINREICH, the political administrator officer, was in the room (R-36). He testified that he was not sure whether or not WEINREICH handed him the gun, but to the best of his recollection he believed that he did not take the pistol from WEINREICH but it was handed to him (R-43).

(9) Otto WEINREICH, the accused at his own request made the following unsworn statement: He testified that he lived in Wittmar, district of Wolfenbuettel, was a mechanic by trade and 46 years old. On the morning of September 1944, he attended a meeting in Wolfenbuettel at the District Administrator's Office (R-59). At that time he was Ortsobmann for the town of Wittmar. His function in the job was to look after the welfare and treatment of workers, salary regulations and better living and working conditions. The accused remembered an air-raid on the 28th of September and that he was present in a room of a house on Krumme Strasse where the American flyer had been taken. He testified that he was loading his pistol at the time because, first, he wanted to protect himself, and, second, because of the threatening attitude taken by the populace toward the flyer, and, the third reason, he did not know at the time whether the flyer was armed or not. While he was loading the pistol he encountered a stoppage and while loading it someone called out: "Shoot that man!" At the same time, an unknown soldier jumped toward him and took the pistol out of his hands by surprise. Witness had no intention at all to shoot at the American (R-60). Shortly after the pistol was taken from him he heard a shot and was unable to remember how he got his pistol back. He further testified that in the Spring of 1945 while in Camp #93, he reprimanded Beck for having taken the pistol and for shooting the pilot. Beck replied by asking why he had such a thing in his hands, and said when he (Beck) saw the "pig" standing there, and when he recalled when he had jumped over enemy territory and ground batteries were firing at him, he was overtaken with anger. The accused was talking to Captain Kanschke afterwards and Kanschke asked whether or not the accused had heard the order (R-61), to which the accused replied: "Yes," and Kanschke stated: "If you report this fact, Mr. WEINREICH, then it is my neck." The accused was asked the following question: "You just admitted that you heard the order in that room. Was it on account of that order that you loaded your pistol?" Answer: "I really loaded the pistol on account of that order." The witness testified that he never intended to shoot and had loaded the pistol simply as a precautionary measure. The witness maintained that he was repeatedly beaten and forced to make a written statement (R-62). The accused insisted that the pistol was taken out of his hands by a soldier who at the time was unknown to him (R-63).

On cross-examination, the accused admitted that he saw Beck when he jumped at him to take the gun and after he had grabbed the gun, Beck

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shot the pilot. The accused joined the Nazi Party in April 1933 (R-64), and became party administrator one year later. He testified that all people who were in the room with the American flyer were unknown to him, and there were many people in the room but he did not know how many (R-65). Replying to a question of why he pulled out his gun, he said that he had been taught that the American pilots wore a combination suit which contained automatic strings attached to pistols which came up to the hands of the pilot upon certain motions such as the raising of his hands in surrender (R-66). He testified that during one of the conversations with Beck, Beck had said that he was the one who shot the flyer, to which the accused replied: "If that is the case, you know I could have done that myself" (R-66). In explanation he said that if the flyer had to be shot Beck wasn't needed to do it. Captain Kanschat, as a Wehrmacht Officer, had no right to order him, a party man, around (R-67). The flyer's hands were raised. After the shooting the accused ran outside (R-68). The accused admitted that he had training in handling the pistol (R-69), but the surprising and sudden act of Beck in taking the pistol, made it impossible for the accused to prevent the loss of the pistol. The accused admitted that he had never heard of an official order to shoot Allied Flyers who parachuted down over Germany, but he knew that Goebbels mentioned it in one of his speeches (R-70).

On examination by the Court, the accused testified that he possibly had the pistol in his hands when the order to shoot the pilot was given (R-71). He did not know how many people were in the room when the shot was fired, nor did he know why he didn't leave before that time. He maintained that all the people in the room were strangers to him. The accused was unable to remember having stated on direct examination that he loaded the pistol after he heard the order (R-72). He did not protest the order to shoot because it happened so rapidly. The accused was sorry he had gone to the room in the first place, but once he was in he couldn't back out, and lost his head and drew the pistol (R-73).

d. Post Trial Reviews and Statements:

Attached to the original of this review as "Exhibit A" are three petitions for clemency submitted in behalf of the accused.

(1) A petition, dated 24 November 1948, from Paul Beck, attorney who represented the accused at the trial repeats the contention that WEINREICH's pistol was forcibly taken from him and that this accused could not prevent the shooting. No new evidence was presented and it was recommended the petition be filed without further action.

(2) Another petition, dated 17 December 1948, from the same lawyer reiterates the contention presented at trial and in the petition, dated 24 November 1948, but claims new evidence in the form of a sworn statement from co-accused Beck, wherein Beck states that he took the pistol from WEINREICH by force. However, the statement is not submitted which supposedly was in the hands of WEINREICH. Appraisal by the War Crimes Branch on 11 January 1949, recommended the petition be filed with the record.

(3) On 6 April 1950, the Town Council of Wittmar petitioned for an early review of the case for, in the opinion of the council, the accused never committed a crime.

4. CLEMENCY

a. Civilian Background:

The accused is now 50 years old. He joined the Nazi Party in 1933 and became a party administrator in the town of Wittmar a year later. He was an order mechanic in civilian life. He is married, has one child over 18 years of age. His reputation in his home community is apparently good and he has not been previously convicted of a crime.

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b. The Sentence:

The defense of this accused summed up briefly, is that he was an innocent victim of a twist of fate which resulted in his being present when an American flyer was deliberately shot and killed. He maintained he had done no wrong and while loading his pistol to protect the flyer from the angry mob in the street, the co-accused Beck forcibly grabbed the pistol and shot pursuant to an order of a Wehrmacht captain. The accused maintained that at no time did he intend to kill the flyer, and was motivated by the desire to protect the flyer. From the evidence it seems certain that the only weapon in the room at the time was the one in possession of the accused.

It is difficult to understand the necessity for drawing the weapon in the room after the flyer had been searched and was standing arms overhead in surrender, especially when he was outnumbered at least three to one. The excuse of the accused that he had been told of strings to which weapons were tied, is fantastic when there is no indication of any movement on the part of the flyer.

WEINREICH testified that he loaded the pistol because of the order to shoot the flyer. After a noon recess, WEINREICH could not recall having said it. The co-accused Beck says the pistol was handed to him. The written statement of the accused shows the pistol was handed to the co-accused. WEINREICH on the stand, testified Beck wasn't needed to shoot the flyer, but that he could have done it himself. This may very well be what he intended to do when he drew the weapon, for certainly he did not need it to protect him from the crowd while still in the room. Just what the intentions of the accused were cannot here be determined, but it is to be remembered his testimony was unsworn and the Court was able to observe the demeanor of the accused on the stand and form an opinion upon which to base its judgment. In so doing, the Court judged the degree of culpability of the accused and assessed the penalty accordingly. Under our theory of law all present might have been tried and convicted on the basis that they stood in the position of accomplices, and, as such, were principals. WEINREICH was the only man in the room under arms, and if his intentions were to protect the flyer had it within his power to do so, however, in the opinion of this reviewer the evidence fails to show, except for his own statement, that he took any action to carry out his good intentions.

The Court who saw and heard the witnesses obviously rejected the accused's contention after duly considering all the facts. Under these circumstances and after a thorough examination of the record of trial and allied papers it appears that the sentence as approved should not be modified.

The record of trial indicates the accused was first placed in confinement on 27 April 1945.

5. RECOMMENDATION:

That the approved sentence to life imprisonment be not modified.

*R. C. Miller*  
R. C. MILLER  
Lt Col LSC

CONCURRING:

*V. H. McClintock*  
V. H. McCLINTOCK  
DA Civilian Attorney

*F. W. Harksworth*  
F. W. HARKSWORTH  
Lt Col ARMOR

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