

**Trials of ANTON SCHOSSER,
and of JOSEF GOLDBRUNNER and
ALFONS JACOB WILM**

UNITED STATES MILITARY COMMISSIONS AT DACHAU, 14-15TH AND
17TH SEPTEMBER, 1945

A. OUTLINE OF THE PROCEEDINGS

The three accused were charged with a violation of the Laws of War, in that they, " German civilians, did, at or near Moosinning, Germany, on or about 20th July, 1944, wilfully, deliberately and wrongfully encourage, aid, abet, and participate in the killing of " a named United States airman, an unarmed prisoner of war.

It was alleged that the airman had been shot by Schosser and his body thrown into a canal by two and perhaps all three accused. Schosser was sentenced to death on 15th September, 1945. This sentence was confirmed and put into effect.

The trial against the remaining two accused was severed and on 17th September, 1945, they were tried and acquitted. Schosser admitted that he had lied at his trial, confessed to the killing and exonerated Goldbrunner and Wilm.

B. NOTES ON THE CASE

I. THE LEGAL BASIS OF THE COMMISSIONS

In both trials the appointment of the Commission and its proceedings were governed by the directive regarding Military Commissions in the European Theatre of Operations of 25th August, 1945, to which reference has already been made.⁽¹⁾

In the first trial, each member of the Military Commission disqualified himself from the ensuing trial of Goldbrunner and Wilm and another military commission was appointed to try the remaining two accused. Paragraph 1, sub-paragraph (c) (Composition) of the directive simply provides that :

" Military commissions shall be composed of not less than three commissioned officers of the United States Army. There shall also be appointed a trial judge advocate and defence counsel."

Paragraph 2 (Rules of Procedure), however, states that: "... The provisions of Section VII, paragraphs 38-47, War Department FM 27-5, subject: " Military Government and Civil Affairs," dated 22nd December, 1943, are designed as a general guide in this field and will be followed except as amended by this letter or other instructions of this headquarters." Sub-paragraph (a) (Military Commissions) of paragraph 40 (Composition) of War Department FM 27-5 contains the following provision: "... In

⁽¹⁾ See p. 56.

general, the rules for army or navy general courts martial will serve as a guide in determining the compositions of military commissions, including the designation of law members, trial judge advocates, and necessary assistants. . . ."

The appointment of a new Commission for the second trial would seem, therefore, to be an application to a war crime trial of the provisions of paragraph 70 (b) of the *Manual for Courts Martial, U.S. Army*: ". . . . Where, as a result of action on a motion to sever, trial of one or more accused is deferred, the facts will be reported at once to the appointing authority by the trial judge advocate in order that such authority may take appropriate action with a view to the trial of such accused by another court, or other disposition of the charges as to such accused."

2. THE SEVERANCE OF TRIALS

Upon a motion by Counsel for all accused, the Commission granted a severance of trial as to accused Alfons Jacob Wilm and Josef Goldbrunner. While the exact nature of the defence expected to be interposed by Goldbrunner and Wilm was only hinted at in the statements of Defence Counsel and in their affidavit testimony, it appeared that they would attempt to blame Schosser for the murder, and that their defence would therefore be almost diametrically opposed to his. The same Defence Counsel could not, therefore, adequately represent both Schosser and the two other accused in the same trial. As a result of the severance it became correct for Goldbrunner and Wilm to appear in the witness box among the witnesses for the Prosecution against Schosser.⁽¹⁾

⁽¹⁾ See Volume II, pp. 6-7, for an application for separate trials in the Belsen Trial, and *ibid.*, pp. 134-5, regarding evidence by one accused against another.