NOTES & COMMENTS

MILITARY EXECUTIONS DURING WWII: 
THE CASE OF DAVID COBB

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ABSTRACT

While few topics today generate more heated debate in American criminal justice than capital punishment, little attention has been directed to the one institution other than civilian courts that can execute U.S. citizens: the military. This article calls attention to this oversight and provides general descriptive information about military executions during WW II's European Theater of Operations (ETO), and a more detailed examination of the ETO's first execution. It illustrates several striking features of other ETO executions: predominately Black males with White victims, speedy trials, weak defense efforts and an appeal processes subject to illegal influence of commanders. In view of the U.S. Supreme Court's 1996 decision (9-0) in Loving v. United States upholding the constitutionality of the military executions and disproportion of minorities on Levenworth's death row, the data reported here is timely and important for comparative research and the death penalty debate.

INTRODUCTION

Given the long and illustrious research and judicial attention devoted to the imposition of the death penalty within the U.S., it is surprising that little empirical research has been devoted to the one social institution, other than civilian courts, where the death penalty has been imposed on U.S. citizens: the military. This neglect can not be explained by the argument that military executions have been beyond scholars' knowledge or opportunities to examine it. For at least 10 of the 64 years the federal government has been reporting statistical descriptions of capital punishment, the Bureau of Justice Statistics' widely circulated

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Other sources in the decades since WW II have also recognized and commented on the U.S. military's use of capital punishment. These executions, excluding those resulting from war crime tribunals such as the Nuremberg trials, have been addressed by journalists, novelists, legal scholars, and film makers. Huie's (1954) acclaimed examination of *The Execution of Private Slovik*, the only U.S. soldier to be executed for desertion in more than ninety years, Natanson's (1965) *The Dirty Dozen*, each of which were made into Hollywood films, and HBO's 1995, *The Affair*, are three examples of Hollywood's interest in this topic.¹ Sherrill's (1971) *Military Justice is to Justice as Military Music is to Music*, Terkel's (1984) *The Good War*, Luszki's (1991) *A Rape of Justice: MacArthur and the New Guinea Hangings*, and Allen's (1993) *The Port Chicago Mutiny*, have each given some attention to this subject in the U.S. The future of military executions has also been a topic of recent interest in the legal arena of European human rights (Conners, 1982; Jackson, 1986; Anderson, 1990; Parkerson & Stoehr, 1990; Spradling & Murphy, 1990; Intoccia, 1990). For the last twenty years several legal scholars have been concerned with the constitutionality of military executions (Trogolo, 1974; Berkman, 1996).

Details about military executions in other countries' has, like the U.S., received scant attention. This neglect includes Britain where, in recent years, two book-length reviews of its military executions during WW I have prompted debated in Parliament and in the media (Babington, 1983; Putkowski & Sykes, 1989; Shrimley, 1993; Bellamy, 1993). Issues central to these debates include accounts involving questions of class-based justice meted out to more than 300 soldiers executed for desertion under conditions of poor health, and combat and shell-shock, none of which were recognized as mitigating circumstances during WW I.² As in the U.S., the execution of soldiers by their own forces has yet to stimulate British sociological or criminological investigation.

More perplexing than the general sociological and criminological neglect of this topic is the fact that military sociologists with an explicit concern for social control have been silent on this subject (cf., Burk, 1991; Janowitz, 1974; Moskos, 1966, 1970, 1973). In general terms, the closest criminologists have come to connecting crime and the military has been Mannheim's (1965) work on civilian crime during war, Cloward's unpublished report on a military discipline barracks (Merton, 1955, p. 24-55), and Bryant's (1979) study of khaki-collar crime.