

The Execution of Private Slovik¹

Reviewed by Major Michael A. Rizzotti*

*The one man in such a situation always deserves to be known. Someday I must dig him up. I must also examine the significance of the fact that in its struggle to inspire its youth, to discipline them, to make them stand and fight, the United States resorted, as late as 1945, to one full-dress execution.*²

I. Introduction

In January of 1945, U.S. Army Private Edward D. Slovik, hands bound and affixed to a wooden post, in a snow-filled courtyard in the French countryside, was executed by a twelve-man firing squad for crimes committed against the United States during World War II.³ In death, Private Slovik became the only American post-Civil War, whether civilian or Soldier, to be executed for a “crime of omission”—desertion in the face of the enemy.⁴

In *The Execution of Private Slovik*, author William Bradford Huie masterfully examines, through both document review and meticulous interviews of those who best knew Private Slovik, the events surrounding his formative years, his court-martial, and his ultimate execution by firing squad. In these details, Huie seeks to resolve why, of the more than 40,000 deserters in the European Theater of Operations (ETO) during World War II, 2,864 of whom were convicted at general courts-martial, forty-nine of whom were sentenced to death, Private Slovik was the only Soldier to elude clemency and actually be put to death.⁵

In researching and presenting the facts surrounding Private Slovik’s execution, the author asks the reader to pontificate three overarching questions: one, whether it is dangerous to allow an able-bodied American citizen to

desert military service of the United States with relative impunity; two, whether the United States was at fault for failing to quash the prevailing notion (at the time) that a Soldier could willfully “avoid hazardous duty” at relatively little danger to himself; and three, whether the United States is willing to accept, modify, or discard the idea that an able-bodied American who will not fight for his country has no right to live.⁶ Huie does not affirmatively answer these questions and instead allows the individual reader to form their own conclusions. He does, however, posit that the timing and egregiousness of Private Slovik’s military criminal offenses, in concert with his civilian criminal record, ultimately led to the denial of his request for clemency and his execution.

Huie does not seek to absolve the accused of his military crimes, but rather gives credence to Private Slovik’s assertion, “They’re not shooting me for deserting the U.S. Army. Thousands of guys have done that. They need to make an example out of somebody and I’m it because I’m an ex-con,”⁷—a voice in death. Moreover, Huie seeks to remove Private Slovik from an obscure filing cabinet in the Pentagon and ensure his proper place in the annals of military justice in the post-Civil War era. Military officers and judge advocates today would be well-served to read Huie’s work, not only from an historical perspective, but as a means of professional development to fully experience the interplay between morality, discipline, and leadership in extremely trying times.

II. Background—Who Was Private Eddie Slovik?

Edward D. Slovik was raised in Michigan during the Great Depression and found himself in trouble with the law as an adolescent, culminating in a conviction for embezzlement in 1937.⁸ Ostensibly straightened out over the next five years at a Michigan reformatory,⁹ Slovik was paroled in 1942—in the throes of World War II—with a 4F draft status: an ex-convict unfit for military service.¹⁰ One

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¹ WILLIAM BRADFORD HUIE, *THE EXECUTION OF PRIVATE SLOVIK* (Westholme Publishing ed., 2004) (1954).

² *Id.* at 14. See also Fred Borch, *Lore of the Corps, Shot by Firing Squad: The Execution of Pvt. Eddie Slovik*, *ARMY LAWYER*, May 2010, at 3; U.S. ARMY, *THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL’S CORPS, 1775–1975*, at 192–94 (1975).

³ HUIE, *supra* note 1, at 227–34.

⁴ *Id.* at 8.

⁵ *Id.* at 11–12. Huie’s book was adapted as a screenplay (Richard Levinson, William Link, William Bradford Huie, Lamont Johnson) in the made-for-television movie of the same name, airing in 1974 and starring Martin Sheen (Eddie Slovik), Ned Beatty, and Gary Busy. The tagline questioned, “Was it an Act of Cowardice . . . or an Act of Conscience?” *THE EXECUTION OF PRIVATE SLOVIK* (NBC television broadcast Mar. 13, 1974). One reviewer of the movie notes, “This is a film that will leave you crying, angry and filled with righteous indignation, as it should.” *Reviews and Ratings for “The Execution of Private Slovik,”* IMDB (Aug. 16, 2001) <http://www.imdb.com/title/tt0071477/reviews>.

⁶ HUIE, *supra* note 1, at 189–90.

⁷ *Id.* at 228. Private Slovik uttered these words to Sergeant Frank McKendrick while being escorted to his position in front of the firing-squad. *Id.*

⁸ *Id.* at 25.

⁹ *Id.* at 32.

¹⁰ *Id.* at 32, 40.

year later, on 7 November 1943, Slovik's draft eligibility changed to 1A: fit for duty. Leaving his pregnant wife in Michigan, Slovik left for basic training in Texas in January 1944,¹¹ setting sail for the ETO nine months later in August 1944. Private Slovik was destined to be a replacement Soldier for the 28th Infantry Division, a Pennsylvania National Guard unit which endured thousands of casualties while in persistent armed conflict with the Germans.¹²

Arriving in France on 25 August 1944, Private Slovik failed to rendezvous with his assigned unit until 8 October 1944.¹³ Ordered to take his position on the front line with G Company, 109th Infantry, Private Slovik refused, reducing his defiance to writing: "I told my commanding officer my story. I said that if I have to go out there again, I'd run away. He said there was nothing he could do for me so I ran away again AND I'LL RUN AWAY AGAIN IF I HAVE TO GO OUT THERE."¹⁴ When Private Slovik could not be persuaded to do his duty as ordered, charges were brought against him in late October 1944, and on 11 November 1944, he was tried and convicted at a general court-martial for desertion; his sentence was death.¹⁵

On 27 November 1944, the General Court-Martial Convening Authority, Major General Norman "Dutch" Cota, Commander of the 28th Division, approved the sentence in consultation with his Division Staff Judge Advocate, Lieutenant Colonel Henry Sommer.¹⁶ Thereafter, the case was forwarded to the ETO Commander, General Dwight Eisenhower, for the final decision regarding clemency and punishment. On 23 December 1944, General Eisenhower approved the sentence. With the record of trial found legally sufficient, and on advice from the Office of the Judge Advocate General of the Army, General Eisenhower denied Private Slovik's request for clemency and ordered his execution on 23 January 1945.¹⁷ Thereafter, Private Slovik was executed by a twelve-man firing squad on 31 January 1945, with more than fifty enlisted Soldiers and commissioned officers watching.¹⁸

¹¹ *Id.* at 45, 53, 63.

¹² *Id.* at 102–03.

¹³ *Id.* at 119–20. Whether Private Slovik purposefully failed to rendezvous with his unit on 25 August 1944, or the fog of war caused his missed connection remains unknown as Private Tankey and Private Slovik's accounting for this time period contradict one another. Regardless, Private Slovik did not refute evidence presented at trial that secured his conviction for desertion during this time period. *Id.*

¹⁴ *Id.* at 131–32.

¹⁵ *Id.* at 120–21, 169–70 (noting that Private Slovik's court-martial panel took three separate ballots, all of which resulted in a unanimous vote for imposition of the death penalty).

¹⁶ *Id.* at 121.

¹⁷ *Id.*

¹⁸ *Id.* at 225–27, 234.

III. The Judicial Process

In researching and detailing the military judicial process Private Slovik underwent in 1944 and 1945, and in asking whether or not death was the appropriate punishment for a crime of omission, the author forces the reader to think critically and analytically about the military justice system as a whole, and more specifically, about the actions of the commanders and judge advocates making decisions and offering advice with regard to Private Slovik's case.¹⁹

A. *United States v. Private Eddie Slovik*

Huie concludes that Private Slovik's court-martial in the fall of 1944 afforded him the appropriate amount of due process, and that it was his ill-advised written confession,²⁰ one which an infantry lieutenant colonel advised him to retract,²¹ which ultimately sealed his fate on both the merits and in the sentencing phases of his court-martial.²² Colonel Guy Williams, the court-martial panel president, verified that the panel was unaware of Private Slovik's civilian crimes at the time they sentenced him to death.²³ Colonel Williams noted they "were convinced that, for the good of the division, he ought to be shot,"²⁴ but that no member of the court-martial panel believed he would ever be shot based on common practice at the time.²⁵ Colonel Williams and his fellow panel members' assumption regarding Private Slovik's punishment lends credence to the prevailing notion in the military in 1944 that desertion, or failure to execute your duties before the enemy as ordered, would not be met with capital punishment, regardless of the egregiousness of the facts, a notion that Private Slovik appears to have relied on to his detriment.²⁶

¹⁹ See generally *id.* at 188–92.

²⁰ *Id.* at 131.

²¹ *Id.* at 143.

²² But see Benedict B. Kimmelman, *The Example of Private Slovik*, AM. HERITAGE, vol. 38, no. 6 (Sept./Oct. 1988), <http://www.americanheritage.com/con-tent/example-private-slovik?page=show> (last visited Sept. 19, 2013, 10:09 AM). Benedict Kimmelman served as an officer on the panel that adjudged Private Slovik's death sentence. Kimmelman became a prisoner of war shortly after the trial concluded during the Battle of the Bulge, and, in hindsight, argues that Private Slovik did not receive a fair trial because he was tried by support officers and not line officers, and because he did not have a lawyer serving as his defense counsel. *Id.*

²³ HUIE, *supra* at note 1, at 169–70.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 170–71.

B. The General Court-Martial Convening Authority

In addition to Private Slovik's written confession from trial, Lieutenant Colonel (LTC) Sommer knew of Private Slovik's civilian criminal record through the Federal Bureau of Investigation and incorporated it into his legal review for Major General Cota.²⁷ Major General Cota reflected on his decision years later and surmised, "Given the situation as I knew it in November, 1944 . . . it was my duty to this country to approve that sentence. If I hadn't approved it—if I had let Slovik accomplish his goal—then I don't know how I could have looked a good Soldier in the face."²⁸ Moreover, Major General Cota noted that "after I approved the sentence, I assumed that the accused would ultimately be shot."²⁹

Much like the members of the court-martial panel, LTC Sommer, as the primary legal advisor to Major General Cota, believed that Private Slovik would not be shot because "[g]iven the common practice up to that time, there was no reason . . . to think that the Theater Commander would ever actually execute a deserter."³⁰ While the panel believed execution appropriate but unlikely to be carried out, LTC Sommer, with the added benefit of having reviewed Private Slovik's record of trial along with his criminal record, also believed execution appropriate but unlikely, opining, "[i]f ever they wanted a horrible example, this was one. From Slovik's record, the world wasn't going to be losing much."³¹ Thus, Huie's assertion that Private Slovik's civilian criminal record (in addition to the gravity of his offenses) distinguished him from the thousands of other deserters begins to take shape in determining his suitability, or lack thereof, for clemency.

C. Final Approval—Commander, European Theater of Operations

Though General Eisenhower does not appear to have provided the author an interview, those who advised him on Private Slovik's case did. Brigadier General E.C. McNeil, the Assistant Judge Advocate General and senior Army lawyer in the ETO, provided the following endorsement to the legal review certifying that Private Slovik's record of trial was legally sufficient and supported the sentence:

This is the first death sentence for desertion which has reached me. It is probably the first of the kind in the

American Army for over eighty years—there were none in World War I. In this case the extreme penalty of death appears warranted. This soldier has performed no front line duty. He did not intend to. He deserted from his group of fifteen when about to join the infantry company to which he had been assigned. His subsequent conduct shows a deliberate plan to secure trial and incarceration in a safe place. *The sentence adjudged was more severe than he anticipated*, but the imposition of a less severe sentence would have only accomplished the accused's purpose of securing his incarceration and consequent freedom from the dangers which so many of our armed forces are required to face daily. *His unfavorable civilian record indicates that he is not a worthy subject for clemency.*³²

With the Battle of the Bulge and the German counter-offensive underway in January 1945,³³ General Eisenhower signed Private Slovik's execution order, concurring with Brigadier General Field's assessment that Private Slovik was not worthy of clemency—his civilian record serving as the determining factor in Brigadier General Fields's endorsement of the legal review recommending the denial of clemency.

The author asserts that General Eisenhower, by ordering Private Slovik shot, helped serve a threefold purpose: (1) to correct the dangerous assumption regarding punishment for desertion, (2) to serve as a deterrent, and (3) and because he deserved punishment for his confessed crime.³⁴ The author goes on to thoroughly detail the name, rank, and unit of assignment for each of the Soldiers who bore witness to Private Slovik's execution,³⁵ also providing the contents of a letter disseminated by LTC Rudder, Commander of the 109th Infantry Regiment, to his men describing the Slovik execution.³⁶

Reason would dictate that with so many eyewitnesses, the desired effect of executing Private Slovik was crystal-clear for those contemplating shirking their duty; however, the effects of the execution remain a mystery. Huie hints that there was no consequential deterrent effect, but never outright says so. Notably, the war in the ETO ended on 8 May 1945, approximately ninety days after the execution

²⁷ *Id.* at 174.

²⁸ *Id.* at 177.

²⁹ *Id.* at 178.

³⁰ *Id.* at 174.

³¹ *Id.*

³² *Id.* at 197 (emphasis in original).

³³ *Id.* at 149.

³⁴ *Id.* at 191–92.

³⁵ *Id.* at 225–27.

³⁶ *Id.* at 117.

was carried out, leaving the desired effect of Private Slovik's execution more a matter of academic debate than empirical data.

IV. Conclusion

Huie provides a thought-provoking read, one that unearths a significant event in American history allowing for policy makers, military leaders, and American citizens to debate the merit, morality, and necessity of capital punishment. Judge advocates and students of military history would be well served in undertaking a reading of this book, as it provides a detailed accounting of an obscure, yet important, event in the history of the U.S. military and the practice of criminal law within the military system.

While *The Execution of Private Slovik* would have benefitted from an interview of General Eisenhower (similar to the interview of General Cota) and could have benefitted from a more comprehensive accounting of how the details of Private Slovik's execution were disseminated to U.S. forces in both theaters, these omissions do not detract from Huie's desired and achieved end-state—the unearthing of Private Eddie Slovik's story from anonymity in an unmarked grave in France to assume his place in American history.³⁷

³⁷ *Id.* at 249. In 1987, the United States permitted Private Slovik's remains to be disinterred from France and returned to the United States for burial beside his wife, Antoinette Slovik.