

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 307-1

1 August 1947

UNITED STATES

v.

Case No. 12-409

EURT GONNELL, et al.

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA. The accused were tried during the period 6 February to 22 March 1946 at Ludwigsburg, Germany, before a General Military Government Court.

II. CHARGES AND PARTICULARS

FIRST CHARGE: Violation of the Laws of War.

Particulars: In that EURT GONNELL, Walter KROKINOVSKI, Erich WENTZEL, Karl WERNER, Jakob Valentine SEILER, Johann Josef SCHMITZ, Johann FOLTINGER, Gustav ALBRECHT, Karl GUYER, Heinz WITKE, Jan J. AKEHMANN, Klaus MEYER-GONNARD, Heinrich KUNDEL, Gerhard GARNHIL, Gustav MANNINGHA, Raedner MANNINGHA, Josef Peter HANKE, Heinrich MEININGHA, Jakob WITTMACH, one LAMMER, whose given name is believed to be Erich and/or Wilhelm, August HANSEN, August SCHENKLAU, and a certain individual whose surname is believed to be KIRBACH, German Nationals, in conjunction with other persons, German Nationals, whose names and whereabouts are unknown, did, at or near BORNH, BORNH ISLAND, Germany, on or about 4 August 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of W. LAMBERTUS, William J. MEYER, James W. DAND, William F. BOLD, Harvey E. WALTHALL, Kenneth FARR and Howard S. GRAHAM, all members of the United States Army, who were then unarmed, surrendered prisoners of war in the custody of the then German Reich.

SECOND CHARGE: Violation of the Laws of War.

Particulars: In that EURT GONNELL, Walter KROKINOVSKI, Erich WENTZEL, Karl WERNER, Jakob Valentine SEILER, Johann Josef SCHMITZ, Johann FOLTINGER, Gustav ALBRECHT, Karl GUYER, Heinz WITKE, Jan J. AKEHMANN, Klaus MEYER-GONNARD, Heinrich KUNDEL, Gerhard GARNHIL, Gustav MANNINGHA, Raedner MANNINGHA, Josef Peter HANKE, Heinrich MEININGHA, Jakob WITTMACH, one LAMMER, whose given name is believed to be Erich and/or Wilhelm, August HANSEN, August SCHENKLAU, and a certain individual whose surname is believed to be KIRBACH, German Nationals, in conjunction with other persons, German Nationals, whose names and whereabouts are unknown, did, at or near BORNH, BORNH ISLAND, Germany, on or about 4 August 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in assaults upon W. LAMBERTUS, William J. MEYER, James W. DAND, William F. BOLD, Harvey E. WALTHALL, Kenneth FARR and Howard S. GRAHAM, all members of the United States Army, who were then unarmed, surrendered prisoners of war in the custody of the then German Reich.

The return of service is not shown on the copy of charges and particulars in the record. However, the record contains an affidavit by a defense counsel showing that service of the charges was made on all defendants several weeks before the date of trial.

III. FINDINGS AND SENTENCES: At the outset of the trial the prosecution announced that accused GARRIS, HAKSEMA, HANSEN, WITTMANN, LAMMER, HARSIGER, SCHIMMELAU, and RIMBACH were not in custody and would not be tried in this proceeding (R 1).

All accused tried pleaded not guilty to both charges and both particulars (R 12). The Court made findings and imposed sentences as follows:

<u>ACCUSED</u>	<u>FINDINGS</u>	<u>SENTENCES</u>	
	Charge 1 and Particulars	Charge 2 and Particulars	
Hart GONNELL	G	G	Death by hanging
Walter KROLINOWSKI	G	G	Life imprisonment
Erich HUNTER	G	G	Death by hanging
Karl WENIG	NO	G	Imprisonment for 25 years, commencing 6 February 1946
Jacob Valentine SHILK	G	G	Death by hanging
Johann Josef SUMMIZ	G	G	Death by hanging
Johann FOINTNER	NO	G	Imprisonment for 5 years, commencing 6 February 1946
Conthor ALBRECHT	NO	G	Imprisonment for 6 years commencing 6 February 1946
Karl GUYER	NO	G	Imprisonment for 4 years, commencing 6 February 1946
Heinz WITZER	NO	G	Imprisonment for 11 years, commencing 6 February 1946
Jan J. AKEHMANN	G	G	Death by hanging
Klaus MEYER-GERHARDT	NO	NO	
Heinrich RUMEL	NO	G	Imprisonment for 3 years, commencing 6 February 1946
Gustav MANNINGHA	NO	G	Imprisonment for 20 years, commencing 6 February 1946
Heinrich HEINEMANN	NO	G	Imprisonment for 18 years, commencing 6 February 1946

IV. SUMMARY OF EVIDENCE

A. THE DISCOVERY. Borkum Island is located near the northern coast of Germany and has a population of 4,500 to 5,000 civilians. Approximately the same number of members of the German armed forces were stationed there in 1944 (R 584). The Borkum Island incident occurred on 4 August 1944. On that date, sometime between 1200 and 1430, an American bomber made a forced landing on the northern part of the island in a locality known as the Musselfeld (R 135, 140, 149, 180, 193-194, 206, 220). Seven members of the crew emerged safely from the plane and willingly surrendered upon the arrival of three German soldiers at the scene (R 181,

221). One flier voluntarily surrendered his pistol (E 221). The fliers were taken to nearby Ostland Battery (E 169), a distance of approximately 700 meters (E 32), where they were searched and interrogated upon order of accused GUESHILL (E 136), who was commander of all naval installations on the island (E 834) and whose immediate superior was stationed on the mainland (E 865). The prisoners were ordered to keep their hands up during the interrogation (E 136).

Following the interrogation, an order was issued directing that the prisoners be marched to the airport (E 137, 138) which was located on the southern coast of the island (See Appendix No. 2). The route chosen was the longest of three possible routes and significantly wound through the densely populated portion of the town of Borkum which is located at the western end of the island.

Attached as Appendices Nos. 1 and 2 are reproductions of P-Exs 1 and 2 to facilitate in describing clearly the route of march, the other two available routes, and the location of certain key points which are important to an understanding of the incidents involved. Appendix No. 2 is a map of the island. The route of the march is marked in red. Two shorter routes are marked in green and blue, respectively. The point where the plane landed is indicated on the map by a cross enclosed by a circle near a point representing the north shore of the island. The area immediately surrounding this point is the Musselfeld. Ostland Battery is located about 700 meters east of where the plane landed. The sea wall or strand, along which the march proceeded, follows the northern and eastern shore lines. The airport, designated as Fliegerhorst, is located on the southern shore of the island.

Appendix No. 1 is a plat of the town of Borkum. The route of march through the town is marked in red. The promenade, designated on the plat as "Obere Promenade", extends along the western boundary of the town and Victoria and Strand streets run at right angles from the promenade. Deutscher house, accused KILLIG's office, is located at No. 19 Strand street next to the theater, shown on the plat as point No. 20 (E 312). The new lighthouse is designated on the plat, "Neuer Leuchtturm". Bahnhof Street, designated on the plat as "Am Bahnhof", runs in a southerly direction from a point on Strand street east of the new lighthouse. The police station, No. 5 on the plat, is located at the intersection of Am Bahnhof and Strand streets (E 311). Frank-Habich street proceeds in a southeasterly

direction from Am Bahnhof and intersects with Housa street (Housastrasse) which proceeds in a northerly direction to the intersection with Saldte street (Saldte-strasse), subsequently re-named Greene street (R 34, 310). The Town Hall (Rathaus) is located on the southeastern corner of the intersection of Housa and Saldte streets. Directly across Saldte street is the Central Hotel (R 310). The Dorf Hotel is located on Saldte street, east of the Town Hall and near the old lighthouse which is designated on the plat as "Alter Leuchtturm". At the eastern end of Saldte street, Himmis street runs in a southeasterly direction to connect with Reede street which proceeds in a southeasterly direction toward the airport. The Sportplatz, where the shooting of six of the fliers took place, is located on Reede street at a point two or three hundred meters beyond the area covered by the plat.

The chain of command applicable to the accused starts with accused GOSPELL who was the ranking officer on the island. Accused KROKHUTSKI was commander of the 216th Naval Flak Battalion and was directly under GOSPELL. Lieutenant SHILER was commander of Outland Battery, a unit of the 216th Naval Flak Battalion and was directly under KROKHUTSKI. Lieutenant WENTZEL was under KROKHUTSKI in his capacity of adjutant for the 216th Naval Flak Battalion. Lieutenant WERNER was commander of the 216th Medium Flak Battery and was answerable directly to KROKHUTSKI. Sergeant SCHWITZ was under the command of Lieutenant SHILER and was the ranking non-commissioned officer of the guards on the march.

The total distance from Outland Battery to the airport by way of the route taken through the town is 12.35 kilometers (R 35). The distance by way of the so-called black road, sometimes referred to in the record as "back road", indicated by green marking on Appendix No. 2, is approximately 8 kilometers (R 36). The road indicated by blue marking on Appendix No. 2 leads along the edge of the village by the old lighthouse (R 42, 43). In addition to being somewhat shorter, this road avoids the densely populated portion of the town. Two of the guards suggested that they take the black road (R 195, 222).

In addition to the three possible routes for marching, there existed facilities for transporting the prisoners by rail to the airport (R 36, 1173). Evidence was adduced to show that these rail facilities had been used on previous occasions to transport prisoners (R 34, 248, 349). Accused GOSPELL admitted, by his admis-

Judicial sworn testimony, that he could have ordered a private car to transport the prisoners by rail (R 116).

After the prisoners were taken from the plane to Ostland Battery and interrogated, instructions were issued to the effect that the prisoners were to march around the Musselfeld, along the sea wall, or strand, to the promenade and thence through the densely populated portion of the town by way of designated streets (R 305). The following orders were prescribed for the march:

- a. Each guard was assigned a flier (R 196).
- b. The fliers were not to converse with one another (R 936).
- c. A distance of five meters was to be maintained between each flier during the march (R 936).
- d. The column was to march at a fast cadence (R 847).
- e. The fliers were to keep their hands above their heads at all times (R 208, 936).
- f. Weapons were to be used if any flier attempted to escape (R 826, 946).
- g. The fliers were to be marched through the town of Berkmun over the prescribed route (R 936, 989).
- h. The guards were not to protect the fliers in the event of attacks by the civilian population (R 207, 1028).

On the guard detail, accused POINTNER, SCHMITZ and Chief Petty Officer Hittensch carried pistols, while the remainder of the guards were armed with rifles and bayonets (R 223). The first guard to shoot a prisoner was to receive a bottle of whiskey (R 222).

Pursuant to an apparent plan to expose the unarmed prisoners to assaults by civilians, accused GOEBBEL telephoned accused ROHMEL, the Chief of Police, and informed him that "unfortunately" he had taken seven prisoners who were to be marched through the town, ROHMEL's attention being called to the decree of Dr. Goebbels, the Reich Minister of Propaganda (R 246, 292). The decree of Dr. Goebbels was not written and was to the effect, according to Commissioner Strupe of the Gestapo at Sueda, that if fliers were taken prisoners and the civilians started to attack them the police were not to interfere (R 292, 293). Also, GOEBBEL directed

Lieutenant Bayer (also spelled Bayer and Beier) to call accused AKERMAN, the acting mayor of the town, and to inform him that the fliers would be "led that way" (A 119).

Before the march started accused Lieutenant WENTZEL offered to show the way through the town (A 171) as Sergeant SCHMITZ, who was in immediate charge of the guards (A 138), did not know the way (A 147). One flier had trouble keeping his trousers up at the start of the march around the Musselfeld (A 150) and all the way thereafter (A 197). As the prisoners proceeded on the march along the sea wall accused SCHMITZ and Chief Petty Officer Wittmann hit some fliers with their fists (A 182). After marching along the sea wall toward the town, the column started to turn left on Victoria street, but some RAD men on the promenade shouted "bring them through here" (A 209). The RAD was the German Workers Corps (A 69, 142, 143). WENTZEL then ordered them to turn around and march down the promenade to Strand street (A 148, 182, 196, 209, 223). On the promenade 80 to 100 RAD men formed two lines, a gauntlet, through which the fliers had to march (A 69, 148, 172, 196, 224). The officer in command of the RAD shouted "at them, at them" (A 172). In going through the two lines, the RAD men shouted and beat the fliers with spades (A 69, 173, 183, 196, 209, 224, 345-346). The RAD men also hit the fliers with their fists and kicked them (A 183, 197). One tall flier was knocked to the ground with a spade (A 197). During this time the small flier bringing up the rear was still having trouble keeping up his trousers (A 173). The guards did not interfere with the RAD men (A 69).

After going through the double line of RAD men, the column turned left on Strand street (A 69, 70, 149, 224). The small flier at the rear of the column continued to have trouble keeping his trousers up; when he lowered his hands to pull up his trousers a guard shoved him along with his rifle butt (A 69, 70, 390, 371). The column then marched around the new lighthouse and turned right on Am Bahnhof to the intersection of Am Bahnhof and Franz-Babich street.

At this intersection accused AKERMAN, who was acting mayor of the town, shouted to the civilians (A 151, 162). He used such expressions as "beat the dogs, beat the murderers" (A 70); "murders, there you come! How many women and

children have you killed! Civilians, beat them dead! Beat them dead!" (R 455); murderers, murderers, murderers! Beat them on their necks" (R 236). The fliers were then beaten by civilians (R 70, 162, 173, 198, 225). There were 60 to 80 people there (R 162). No attempt was made by the guards to prevent such beatings (R 71, 173). The civilian crowd became undisciplined (R 460). Some were heard to shout: "Knock them down, kill them dead, they killed our sisters, brothers and children" (R 150).

Going down Franz-Habich street the guards mistreated the fliers (R 377A). One guard pushed or hit a flier, once under the arm and then on the right side (R 377A). A civilian kicked a flier and a soldier hit a flier with his rifle (R 431). Civilians were shouting "beat them, the murderers, hit them, they kill our women and children and bomb our houses" (R 198).

At the corner of Franz-Habich and Hona streets a civilian hit a flier in the back of the neck with his fist (R 163). Fifteen or twenty civilians hit and beat the fliers as they marched along Hona street (R 185).

One flier was shot in front of the Town Hall (R 52, 186, 212, 242). He was taken into the SHD (Security and Emergency Service) office in the Central Hotel and an ambulance was called (R 213). The fliers were in a weary and exhausted condition and they were still holding their hands above their heads (R 324). In front of the Town Hall, 10 or 15 civilians beat the fliers (R 185).

A German soldier kicked a flier when the column was in front of the Dorf Hotel (R 377A). Near the old lighthouse 25 or 30 civilians beat the fliers and the guards did nothing to prevent this (R 200). After turning into Blumen street, one flier was seen lying on the ground by a fence (R 326); a guard was beating him and "giving him the works" (R 327). An unidentified soldier beat a flier with his fists (R 388).

At about 1630 or 1700, a witness saw a German soldier riding on a bicycle along Reede street shouting "Take a look, there they come, the criminals! Beat them you civilians, we soldiers can't beat them, but you can beat them" (R 404). On Reede street SCHMITZ and Wittmann hit some of the fliers with their fists (R 187). A civilian took a piece of wood from a boy and beat a flier (R 201, 327, 397, 418). The piece of wood was about one foot long, and four inches in diameter

(R 405). The guards did nothing to prevent this beating (R 327, 419).

On Reede street near the Sportplatz, a German soldier started shooting the fliers in the backs of their heads, commencing with the last flier in line (R 187, 201, 338-339, 398). This soldier's name was Langer. The guards took no steps to prevent the shooting (R 339, 420). The remaining six fliers were then seen lying on the ground shot to death (R 53, 176, 214, 260, 294, 351).

After the fliers had been shot, a report of the incident was made in which it was stated that the fliers had been beaten to death (R 129, 130, 134-135, 188, 202-203, 228-229). Each guard was required to sign the report (R 177). They were ordered not to write or speak of the incident (R 166, 177, 189, 203, 216, 229).

After the shooting a Dr. Duda arrived and examined the bodies. One guard carried seven large brown envelopes containing personal effects of the fliers. He turned them over to the Doctor (R 228). An ambulance arrived and picked up the bodies of all six fliers (R 202, 249).

B. For Defense. The evidence for the defense consists of denials or explanations of various alleged acts and is appropriately treated under evidence relating to individual accused in Section VI, post.

On the part of all military personnel, compliance with superior orders was urged. The legal questions raised thereby are appropriately treated in Section V, D, post, and as respects the evidence on behalf of individual accused in Section VI, post.

In behalf of the civilian accused, it was contended that they had no responsibility in connection with the march, because it was under the control of the authorities, and in general contended that they did not participate in or give aid or encouragement to those directly involved in the incidents.

V. QUESTIONS OF LAW:

A. Jurisdiction. The Military Government Court which heard this case was properly constituted. It is well settled by accepted international law that members of an enemy armed force, or civilian nationals of an enemy country, may be punished by properly constituted courts established by the occupying power for violation of the laws and usages of war committed prior to the cessation of hostilities. (See

War Department Basic Field Manual 27-10, "Rules of Land Warfare", paragraph 345.1 set forth in Change 1, 13 November 1944, and paragraphs 346 and 347, as the latter is amended by said Change 1; In re Yamashita, 66 Supreme Court Reporter 340; United States v. Wiegand, November 1945, and authorities cited therein, which case is digested in Section 122, "Manual for Trial of War Crimes and Related Cases", 15 July 1946; and United States v. Altfuldisch, et al., February 1947, known as the Mauthausen Concentration Camp case.)

At the close of the prosecution's testimony a motion was filed challenging the jurisdiction of the court over accused GOEBELL on the ground that he was a prisoner of war and as such entitled to a trial by courts-martial, pursuant to Article 63, Geneva Convention of 27 July 1929, which provides that:

"Sentence may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining power."

This question was thoroughly discussed in the Mauthausen Concentration Camp case, supra. In the Mauthausen case, the question was resolved in favor of jurisdiction of the court and reliance was placed on the Yamashita case, 66 Supreme Court Reporter 340, wherein it was stated:

"But we think examination of Article 63 in its setting in the Convention plainly shows that it refers to sentence 'pronounced against a prisoner of war' for an offense committed while a prisoner of war, and not for a violation of the law of war committed while a combatant."

B. Sufficiency of Charges and Particulars. There can be no doubt that the charges and particulars sufficiently allege offenses by each accused. The particulars to the first charge allege that the accused did wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of named prisoners of war. The particulars to the second charge make the same allegation except that assaults are alleged instead of killings.

The theory of this case is the same as that in United States v. Joseph Hartgen, et al. (opinion of DVA, October 1945), known as the Russelsheim case. In the Russelsheim case it was alleged that accused, acting jointly, did wrongfully encourage, aid, abet and participate in the killing of several named American fliers who were then unarmed surrendered prisoners of war. The incident in that

case closely parallels the incident on Borkum island. American fliers were led through the town of Russelsheim while the civilian population shouted and beat them, the incident resulting in the death of the fliers. The sufficiency of the charge and particulars in that case was not challenged. There can be no doubt that an offense is adequately charged against each accused in this proceeding.

C. Conduct of Trial. The case was well and thoroughly tried and the accused were all represented by competent American and German counsel. One member of the court was a legally trained officer. Sufficient interpreters were provided at all times. A full right of cross-examination was extended throughout the trial. All accused were given an opportunity to testify in their own behalf and all chose to do so. Both the findings and sentence as to each accused were approved by a two-thirds vote of the members present. The trial was conducted with fairness to all accused present.

D. Superior Orders. Through the trial, considerable emphasis was placed upon compliance with superior orders. Throughout the hierarchy of the chain of command, each member of the armed forces, with the exception of GOEBEL, contended that his participation was pursuant to orders of his superior. The guards contended that they acted pursuant to the orders of SKILER, the battery commander, and during the march pursuant to the orders of WENTZEL and SCHMITZ. WIEBER contended that he acted pursuant to the orders of KHOLIKOVSKI; WENTZEL that he acted pursuant to the orders of SKILER; and SKILER and KHOLIKOVSKI that they acted pursuant to the orders of GOEBEL. HOMBEL, the chief of police, contended that he was under orders of his superior in Emten.

Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2d Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Dominikus Thomas, December 1945; and United States v. Alfons Klein, et al., (Madagascar Murder Factory case), February 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U.S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rule of the Law", by Ernst Fraenkel; and opinions of the Deputy Theater Judge Advocate for War Crimes in U.S. v. Albert Bary and Wilhelm Hofner, September 1945, U.S. v. Dominikus Thomas, December 1945, and U.S. v. Carl Beck and Otto Weinreich, December 1946.)

There is no merit to the contention of the defense that at the time the incident occurred superior orders constituted a complete defense under FM 27-10, War Department, U. S. Army, "Rules of Land Warfare", paragraph 347. Said provisions merely constituted a temporary self imposed policy of the United States concerning the imposition of punishment for violations of the laws and usages of war under the conditions therein contemplated and in no way altered the existing law of nations. Moreover, by this expression of policy which permitted of a very lenient administration and enforcement of the laws of war, the United States could not be said to have attempted to abrogate valid and existing provisions of international law then obtaining. The expressed policy of the United States has since been changed as indicated by FM 27-10, War Department, U.S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944.

2. Failure to Appoint Law Member. The record of trial (A 2) indicates that the president of the Court acted as an officer with legal training. However, it is not shown that he was appointed to the Court as an officer with legal training as required by letter, Headquarters, US Forces, European Theater, File AG 000.5-3 OAP, subject: "Trial of War Crimes and Related Cases," 16 July 1945. The Court did not lack jurisdiction to try the case because of this irregularity. Military Government Courts are not established pursuant to specific statutory authority. Likewise, the Articles of War and the principles governing courts-martial are not applicable to the trial of enemy nationals for violations of the laws of war (Manual for Trial of War Crimes and Related Cases, Section 270a, supra; In re Yamashita, supra).

It is provided in Title 5, Section 5-338, "Legal and Penal Administration," of "Military Government Regulations," published by Headquarters, United States Forces, European Theater, 30 November 1945, as follows:

"The proceedings shall not be invalidated, nor any finding or sentence disapproved, for any error or omission, technical or otherwise occurring in such proceedings, unless in the opinion of the Reviewing Authority, after an examination of the entire record, it shall appear that the error or omission has resulted in injustice to the accused." (Underlining supplied).

The letter requiring the detailing of an officer with legal training does not specify the amount of legal experience the officer must have. Consequently, there is considerable doubt as to the value of this provision in so far as the rights of the accused are concerned. Moreover, it is emphasized that even had the provision required the detailing of a lawyer of proven ability, neither that directive nor any other directive has required or granted to the officer with "legal training" any functions or responsibilities analogous to those of the law member provided for in connection with courts-martial by the Articles of War (Article 8, Articles of War, Manual for Courts-Martial, supra; War Department Technical Manual 27-255, "Military Justice Procedure," 1945 edition, page 79).

In view of the authorities above cited, it cannot well be contended that the proceedings are invalid because of the absence of an officer with legal training, or that the findings or sentences should be disapproved because of this technical omission in the order creating the court. This is particularly true in view of the fact that an examination of the entire record does not reveal anything on

which the reviewing authority could base a conclusion that the substantial rights of the accused have been prejudiced, nor that any injustice has resulted to them.

7. Admissibility of Evidence. Objection was made to the introduction in evidence of extrajudicial sworn statements on the ground that they were not the "best evidence available" as required by Title 5, Section 5-329, "Legal and Penal Administration" of "Military Government Regulations", published by Headquarters, United States Forces, European Theater, 30 November 1945. The contention was that the accused were present in the court room and their oral testimony would be the best evidence. It is now well settled that such statements are admissible. The "Manual for Trial of War Crimes and Related Cases", Section 270c, supra, specifically provides that sworn statements of accused and witnesses are always admissible regardless of the presence or absence of those who made the statements.

VI. EVIDENCE AND RECOMMENDATIONS

1. KURT GOEBEL (This is correct spelling of name)

Nationality:	German
Age:	50
Civilian Status:	Chemist
Party Status:	None
Military Status:	Commander of all naval installations on Berkes Island (1944)
Flee:	NO First Charge; NO Second Charge
Findings:	O First Charge; O Second Charge
Sentence:	Death by hanging

Evidence for Prosecution. Accused GOEBEL arrived at Cotland Battery while the fliers were being searched under the direction of accused SEILER (R 820a-821, 858). GOEBEL took charge. He changed a guard because the guard was not strict enough (R 117, 305). He ordered all prisoners to keep their hand above their heads (R 858). GOEBEL reprimanded SEILER for "his damn German humanitarian ideas just now at this time when women and children are being killed in Bremen" (R 1073). He ordered accused WENTZEL to interrogate the fliers (R 858). He directed SEILER to post seven guards to accompany the seven fliers on the march to the Naval Airport by way of the strand (beach), past the old lighthouse to Hede street (R 859). A gas engine

and driver were available on the railroad tracks near Ostland Battery (R 1173) and GOEBELL admitted in his extrajudicial sworn statement that it could have been used had he thought of it (R 117, 118). Prisoners of war had been transported by this means on other occasions (R 248, 349). GOEBELL ordered SKILER to march the prisoners with their hands raised, specifying each street to be traversed during the march and directed, in accordance with the edict of Reichminister Dr. Goebbels, that the guards should not interfere if the fliers were attacked by the civilian population (R 823, 824). While under arrest by American authorities GOEBELL said that he regretted giving all "those" orders to accused SKILER (R 1161, 1162).

GOEBELL left the fliers at the battery and went to his home at the Kaiserres where he telephoned accused KORNEL to alert the police (R 863). He notified KORNEL of the plane crash and told him that the fliers were to be led through the town. In the course of the conversation GOEBELL said, "unfortunately, seven fliers were taken prisoners. The fliers will be taken along the strand to the pier. The guards have received their instructions. I refer you to the edict of Reichminister Dr. Goebbels" (R 562). An office worker in the police station testified that KORNEL told her of the substance of this conversation immediately after it had taken place (R 292). GOEBELL instructed Lieutenant Beyer to telephone one accused AKERMAN, the Mayor, and to alert him of the fact that the fliers would be marched through the town (R 119, 871). AKERMAN testified both in his extrajudicial sworn statement and on the stand that he was informed by telephone that the guards had orders to lead the fliers through the town in accordance with the edict of Dr. Goebbels (R 234, 633).

Later, GOEBELL received a telephone call from accused KROLINOVSKI, in the course of which, it was reported that one of the fliers had been shot in front of the Town Hall. To this GOEBELL merely replied, "I can't change anything" (R 663, 664). Shortly thereafter, KROLINOVSKI made a second telephone call to GOEBELL and reported that the fliers were dead. GOEBELL then directed KROLINOVSKI to interrogate the guards and immediately make up a report (R 664, 665). In his written report to GOEBELL, KROLINOVSKI stated that one flier had been shot in front of the Town Hall and the remaining six had been beaten to death near the Sportsplatz (R 665, 666).

In his extrajudicial sworn testimony, GOEBEL asserted that he had been informed by a report from KRULINOVSKI that all the fliers had been beaten by civilians and that they had then all been shot (E 120). Sometime after the telephone conversations, GOEBEL went to the Dorf Hotel and talked to KRULINOVSKI (E 1079) and GOEBEL admitted in his extrajudicial sworn statement that he went to the Dorf Hotel and talked to someone (E 121). The shooting of the fliers was common knowledge in Berlin (E 815, 1034). However, so far as it appears from the record no disciplinary action was taken against anybody until the end of April 1945, just before the capitulation of the German Armed Forces, when GOEBEL appointed a military court to investigate the shooting of the fliers (E 894).

Evidence for Refusal. GOEBEL testified that the short route to the airport was not chosen because the column would pass large numbers of foreign workers who might facilitate escape and the terrain on that route also favored concealment in the event of an escape (E 861). GOEBEL gave reasons why it was impractical to utilize the railroad, stating that there was a shortage of fuel for the gas engine and the regular locomotive wasn't available until evening (E 862). He denied ordering SEILER to have the fliers hold their hands over their heads during the march, specifying the route which was followed (E 859), and directing that the fliers were not to be protected if attacked by civilians (E 862). This testimony is corroborated by testimony of the witness Lieutenant Bern (E 1097, 1098).

GOEBEL testified that he reported the incident of the killing of the fliers to his superior, Admiral Scherling who was in Berlin. On instructions from his superior, GOEBEL ordered his subordinates not to write or talk about the flier incident (E 121, 865). His superior informed him that the Gestapo would undertake the investigation and on the following day two officials arrived for this purpose (E 865). The results of the investigation were never disclosed.

With respect to telephone conversations with KRULINOVSKI on the day of the incident, GOEBEL testified that he directed KRULINOVSKI, on one occasion, to establish order, and on the other occasion, he ordered KRULINOVSKI to initiate an

investigation of the guards (R 864). He further testified that KROLIGOVSKI had reported to him that all the fliers had been beaten to death (R 864). At one point in his testimony, CORBELL stated that a written report from KROLIGOVSKI did not mention any shooting at the Town Hall (R 893), but at another point in the same testimony, he contradicted himself to the effect that the report may have stated that a flier was shot near the Town Hall (R 894). CORBELL attributed the contradictions between his extrajudicial sworn statement and his testimony on the stand to his poor physical condition at the time of his original interrogation (R 887). Dr. Ostermuth, as a medical expert, testified concerning the ill effects of smoking a cigarette on a person who is in such physical condition and has not smoked for a long time (R 1019-1026). He claimed that it was several days before he heard rumors to the effect that all the fliers had been shot instead of beaten (R 864).

The witness, Klein, testified to accused CORBELL's good character and his reputation as a good officer (R 1117). CORBELL's wife testified how distressed her husband was on the evening immediately after the killing of the fliers (R 1121). She also confirmed the telephone call with accused CORBELL's superior in which accused CORBELL was instructed that the Gestapo would make the investigation (R 1125).

Sufficiency of Evidence. The Court was warranted from the evidence concerning his high degree of participation in this atrocity in its findings of guilty. The Court was justified in attaching credibility to the evidence indicating that he issued the orders which set in motion the chain of events. The Court might well have concluded that the essential over-all plans for this atrocity were conceived by him and that he gave comparatively detailed orders implementing the same to the principal military and civilian officials on the island. The sentence is not excessive.

Petitions. A Petition for Clemency was submitted by three of the seven members of the Court which states in part, "there is sufficient doubt as to the criminal intent and participation of the accused, Kurt CORBELL, with respect to the type of orders issued by the accused Kurt CORBELL as to warrant this Petition for Clemency." Petitions for Clemency were filed by the accused's wife, Elisabeth Corbell, 1 April 1946, 10 July 1946 and 28 August 1946; by the accused's mother, 23 July 1946; by his father-in-law, 18 July; by a servant, Frieda Vieten,

17 July 1946; by members of the clergy: petitions signed by three priests, 1 April 1946; the Archbishop of Cologne, J. G. Frings, 3 April 1946; the Evangelical Bishop, D. Lorn, 26 April 1946 and 11 September 1946; a priest, H. Hardmeyer, 29 June 1946; Evangelical Superintendent Harney, 12 July 1946; Priest, R. Herweg, 3 August 1946; Bishop A. J. Moench of Fargo, 13 October 1946; by professional associates, petition with 11 signatures, 11 July 1946; Dr. Erich Grunthal, 18 July 1946; Dr. Helmut Firgen, 16 July 1946; Frau Helen-Mentke, 23 July 1946; petition with 19 signatures, undated; by neighbors, Frau Paula Waringen, 8 July 1946; petition with 29 signatures, 15 July 1946; A. Wolfgang Lubbert, 23 July 1946; Dr. Friedrich Galle, 25 April 1946 and 14 January 1947; by members of the armed forces, Karl Montchaux, 17 October 1946 and 24 October 1946; Jakob Klein, 7 December 1946; Herbert Schulte, 1 April 1946 and 2 April 1946; Dr. Oskar Horn, 8 April 1946 and 11 April 1946; Herbert Spang, 23 September 1946; by friends, Frau Gusto Fuchs, 24 April 1946; Hans Crell, 8 July 1946; Hermann Brandts, 8 July 1946; Franz Hoster, 9 July 1946; Viktor Kirberg, 12 July 1946; Dr. Wilhelm Pape, 28 July 1946; Otto Grestleinbeck, undated; by the Mayor of Düsseldorf Arnold, 12 July 1946; by former Mayor of Mannheim and Elsdorf, Ferdinand Hubetsch, 1 July 1946, 8 July 1946 and 25 August 1946 and 23 September 1946; by organizations, German Carborundum Works, 1 July 1946; Christian Democratic Union, 1 July 1946; Henkel and Company, 12 July 1946; Demokratische Arbeitsgemeinschaft, Düsseldorf-Bonn, 13 July 1946; the Bavarian State Commissioner of the victims of Fascism, 10 October 1946; by lawyers, Dr. G. H. Fuhlbuch, 3 February 1946; 3 October 1946 and 5 April 1947; Dr. E. Schneider, 10 July 1946, 22 July 1946 and 19 August 1946; Dr. R. Brandt, 25 March 1947, 28 April 1947, 29 April 1947 and three letters dated 6 May 1947; Dr. Ottmar Weber, undated.

Recommendation. Approval of findings and sentence.

2. WALTER KROLIOVSKI

Nationality:	German
Age:	41
Civilian Status:	None
Party Status:	None
Military Status:	Korvetten Captain (Lieutenant Commander) Commander of 216th Flak Battalion
Facts:	NO First Charge; NO Second Charge
Findings:	G First Charge; G Second Charge
Sentence:	Life imprisonment

Evidence for Prosecution. Accused KROLIOVSKI was at his command post in the old lighthouse when he observed the plane coming in for a crash landing. He sent Lieutenant Schleich to obtain a report on the cause of the crash (R 654). Late that afternoon, KROLIOVSKI was eating in the Children's Home, an annex of the Dorf Hotel. He was informed by his orderly that the fliers were being led by and that something was happening (R 658). KROLIOVSKI rushed out onto the street because, as he said, "it was my responsibility to look after" the fliers and he had to find out what was going on (R 660). Accused WEINMANN testified that he saw KROLIOVSKI run out of the Dorf Hotel and then talk to accused WIEBE as the column passed (R 554-556). KROLIOVSKI saw the guards hitting the fliers and did nothing to prevent it (R 259, 260). Accused WENTZEL then reported to KROLIOVSKI about the shooting of a flier in front of the Town Hall (R 661). Thereupon, KROLIOVSKI telephoned Dr. Dahn and directed him to treat the wounded flier (R 662). He ordered Lieutenant Schleich to follow the column of fliers and see what was going on, but gave him no orders concerning any steps to be taken to protect the fliers (R 663). Next, KROLIOVSKI telephoned GOEBEL and told him what had happened and what he had done. GOEBEL merely commented that he couldn't change anything (R 663, 664). KROLIOVSKI then ordered WIEBE and WENTZEL to follow the column on their bicycles to see what had become of Lieutenant Schleich (R 664, 740). WENTZEL returned and reported that all the fliers were dead which fact KROLIOVSKI, in turn, reported to GOEBEL by telephone (R 664).

On instructions from GOEBEL, reports were prepared immediately. KROLIOVSKI interrogated accused SCHMITZ concerning the killing of the six fliers at the Sport-

plate. SCHMITZ testified that he indicated that the fliers had been shot (R 796). A report was dictated by KROLINOVSKI to WENTZEL to the effect that the fliers had been beaten to death. The report was read to the guards and then dispatched to GOSBELL (R 666, 667). KROLINOVSKI issued an order that the soldiers were not to write or talk about the killing of the fliers (R 308).

WENTZEL testified that a few days after the killing of the fliers he told KROLINOVSKI about the persistent rumors of the shooting at the Sportplatz and that KROLINOVSKI spoke to GOSBELL two or three times about it (R 781). WERNER testified that Dr. Dada examined the head of each slain flier (R 814) and that KROLINOVSKI and Dr. Dada ate at the same mess (R 790). WERNER added that the day after the killing of the fliers, the whole town knew that they had been shot and not just beaten (R 815).

Although WENTZEL, WERNER, SEILER and all the guards were under KROLINOVSKI's command, at no time did KROLINOVSKI initiate any disciplinary action (R 683). A day or two after the killing of the fliers, KROLINOVSKI said to his men at Gotland Battery, "You idiots. Why didn't you do away with the fliers at the beginning" (R 1034).

Evidence for Defense. KROLINOVSKI testified that when he emerged from the Dorf Hotel he saw a civilian kicking a flier and that he ordered the civilian to cease. There is testimony to the effect that KROLINOVSKI ordered the women and children to scatter (R 660, 715). KROLINOVSKI testified that SCHMITZ, in reporting the killing, informed them that the fliers had been beaten to death by civilians (R 665). KROLINOVSKI asserted that disciplinary measures could not be taken until the investigation by the Gestapo was completed (R 683). No explanation was made as to why SCHMITZ was not punished for making a false report to his superior officer.

Sufficiency of Evidence. The Court was warranted from the evidence concerning his participation in this atrocity in its findings of guilty. The significance of his non-action in front of the Dorf Hotel, in view of his comparatively high military status, his act of immediately dispatching a lieutenant to follow the march, his calling GOSBELL, his dispatching two lieutenants to look for the first one, and his later falsification of the report regarding the fate of the fliers is not

clear. Nevertheless his acts were compatible with the plan and in the furtherance thereof.

Petitions. None

Recommendation. Approval of findings, but that the sentence be reduced to imprisonment for 14 years, commencing 6 February 1946.

1. HAIGH WENTZEL

Nationality	German
Age	43
Civilian Status	Merchant
Party Status	None
Military Status	Naval Lieutenant; Adjutant of Naval Fleet Battalion 216
Facts	NO First Charge; NO Second Charge
Findings	G First Charge; G Second Charge
Sentence	Death by hanging

Evidence for Prosecution. After interrogating the fliers at Outland Battery, accused WENTZEL volunteered to accompany the guard detail and indicate the route over which the fliers were to be marched through the town of Durban (R 725). Upon meeting accused WEBER, WENTZEL told him that he was taking the column through the streets. From this, WEBER assumed WENTZEL was in charge (R 775). WENTZEL represented accused WEBER for permitting the small flier to take his arms down to retrieve his falling trousers and finally ordered him to exchange places with accused GYER (R 967-968, 1028). WENTZEL refused, upon repeated requests by GYER, to stop the column to enable the small flier to fix his trousers. WENTZEL threatened GYER with punishment because he permitted the flier to take his arms down (R 1028-1029).

On reaching the promenade, the column turned into Victoria street. WENTZEL talked to the leader of a group of RAD men who were drilling on the promenade. WENTZEL then ordered the column to turn back onto the promenade. The fliers were then marched between the two lines of RAD men who beat them with spades (R 992). WENTZEL heard the crowd at Frere-Habich street yelling, "Beat them, they are the murderers of our women and children." He saw some of the fliers beaten at this point, but took no measures to protect them (R 724-725).

WENTZEL was present at the Town Hall when the small flier was knocked to the ground and shot (R 800, 941). He did nothing more than go to the Dorf Hotel and report to accused KROLIKOVSKI what had occurred (R 739). WENTZEL saw civilians beating the fliers near the Dorf Hotel. He told the guards they were not to protect the fliers (R 200-201). According to the statement of one witness, WENTZEL was with the column as it proceeded toward Rado street (R 260). He admitted that he was there directly after the shooting and looked at the dead bodies (R 741, 791).

Later, at the Dorf Hotel, accused SCHWITZ reported to KROLIKOVSKI in WENTZEL's presence. KROLIKOVSKI then dictated a report to WENTZEL that the fliers had been beaten to death by the civilian population (R 742-743, 770, 996). WENTZEL ordered SCHWITZ and the guards to sign the false report (R 971, 996, 1033-1034).

Evidence for Defense. WENTZEL testified that he was not in charge of the guard detail escorting the prisoners, but merely volunteered to go along through the town to point out the prescribed route to SCHWITZ who was unfamiliar with the streets (R 723-726). He admitted reprimanding a guard three times but stated that he did so because the guard was failing to adhere to orders concerning the distance to be maintained between fliers and the manner of carrying a rifle (R 728). WENTZEL admitted turning the column back from Victoria street, but denied that he talked with the RAD leader or that he intended that the fliers be beaten (R 730-731).

WENTZEL testified that the attitude of the crowd at Franz-Babich street took him by surprise (R 734). He tried to hold the people back and get the fliers past in a hurry (R 735). At the Town Hall, when WENTZEL observed that the SHD men were taking care of the wounded flier he went on to the Dorf Hotel to report to KROLIKOVSKI (R 152, 737).

When KROLIKOVSKI and WENTZEL were told that the fliers were lying on the ground at the Sportplatz, WENTZEL went there and looked at the dead fliers. WENTZEL testified that SCHWITZ told him the fliers had been beaten to death (R 741). WENTZEL testified that back at the Dorf Hotel SCHWITZ reported to KROLIKOVSKI what had happened and KROLIKOVSKI dictated a report to WENTZEL (R 742). This report was read to the guards who were asked if they desired anything added. The guards agreed

with the report and all signed (R 743). WENTZEL testified that he did not find out until later that the report was not true (R 770).

Sufficiency of Evidence. The Court was warranted from the evidence concerning his participation in this atrocity in its findings of guilty. The evidence that he acted under superior orders in making up the false report subsequent to the incident has little, if any, bearing on his participation in the incident. All who join as participants in a plan to commit an unlawful act, the nature and probable consequences of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. The sentence is not excessive.

Petitions. A Petition for Review was filed by defense counsel, Dr. W. Schoenk, 28 March 1946. Petitions for Clemency were filed by the accused's wife, Hilar Wentzel, 14 April 1946; supplementary petitions by the accused's wife, 20 July 1946, 4 August 1946, 9 September 1946, 15 September 1946 and 11 November 1946; by his brother, Kurt Wentzel, 5 May 1946; by the accused's wife, brother and a friend jointly, 23 March 1946; by members of the clergy - Evangelical Bishop D. Rurn, 17 April 1946, 6 May 1946, and 4 March 1947; a priest, Hans Carls, 3 May 1946; Evangelical Bishop D. Haisur, 2 July 1946; Vatican Secretariat of State, 12 July 1946; by a friend, Karl Paul, 1 April 1946; Dr. Oscar Horn, 11 April 1946 and 23 September 1946; Frederic Rottmann, 14 April 1946; Victor S. Hayde, 22 April 1946; Ragnan Laurvall, 23 April 1946; E.W.V. Thompson, 24 April 1946; Ernest G. Hinton, 25 April 1946; Harry Nyström, 3 May 1946 and Toni Kleener, 18 August 1946; by accused's former business partner, Max Schneider, 5 April 1946.

4. KARL WEBER

Nationality:	German
Age:	42
Civilian Status:	None
Party Status:	None
Military Status:	First Lieutenant; Commander of 216th Medium Flak Battery
Place:	NO First Charge; NO Second Charge
Findings:	NO First Charge; G Second Charge
Sentences:	Imprisonment for 25 years, commencing 6 February 1944

Evidence for Prosecution. In the afternoon of the plane crash, accused WEBER saw accused WENTZEL leading the column of fliers along Strand street (R 794). WENTZEL explained to WEBER that he was leading the fliers through the village. WEBER decided to go along with WENTZEL to the Dorf Hotel for the purpose of submitting a combat report (R 795). WEBER testified that he was present when the fliers were beaten on Franz-Habich street, and admitted that he took no action to protect the fliers (R 798).

WEBER, preceding the column of fliers as it approached the Old Lighthouse near the Dorf Hotel, called to the witness Adel, "There the pigs are coming, beat them to death" (R 386-387). Witness Wulff, a civilian, testified that near the Dorf Hotel WEBER told a soldier to let go of the flier's wrist as that "was up to the civilian population". Either WEBER or an officer standing alongside of him called to the witness Wulff to beat the flier (R 325-326). Accused HEINEMANN stated that WEBER saw the guards hitting the fliers (R 259) and that he saw WEBER behind the column of fliers as it proceeded toward Reede street (R 260). WEBER and WENTZEL looked at the dead bodies at the Sportplatz (R 808). WEBER was told that they had been beaten and shot. WEBER made no effort to determine who had perpetrated the crime (R 808).

Evidence for Defense. WEBER testified that when he observed the beating of the fliers on Franz-Habich street he took no action because he had no authority to arrest civilians. He did not make a report later identifying the civilians who had participated in the beatings because he learned that an investigation had been

started (R 798). When he reached the Town Hall ahead of the column the crowd there was normal and therefore he did not anticipate a repetition of the beatings that had occurred on Franz-Habich street (R 800).

WEBER emphatically disclaimed that he stated to a soldier that it was a matter of the civilians to beat the fliers or that he called to the witness bulk to beat a flier (R 804). He denied, for the purpose of overcoming the testimony of witness Adel, leading the column and shouting, "There they come, the murderers! Hit them, civilians!" (R 805). WEBER testified that he left the Dorf Hotel and arrived at the Sportplatz with accused BENTZEL after the shooting had occurred (R 807-808). Since BENTZEL was sent by HEDLICHOWSKI and was the senior ranking officer, WEBER awaited orders from BENTZEL to investigate and apprehend the perpetrators. BENTZEL did not issue any orders so WEBER could do nothing (R 808-809).

Inefficiency of Evidence. The Court was warranted from the evidence in its findings of guilty. The evidence indicates that he was active in inciting the crowd to action. All who join as participants in a plan to commit an unlawful act, the natural and probable consequences of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. The sentence is not excessive.

Exhibitions. None.

Recommendation. Approval of findings and sentence.

5. JAKOB VALENTIN SKILER

Nationality:	German
Age:	37
Civilian Status:	Salesman, musician and laborer
Party Status:	Nazi Party member since 1932; Hitler Youth since 1933; Jungstammfuhrer in Hitler Youth 1935-1939
Military Status:	First Lieutenant; Commander of 24 Battery, (Gottland Battery) 216th Naval Flak Battalion
Plans	NO First Charge; NO Second Charge
Findings:	G First Charge; G Second Charge
Sentence:	Death by hanging

Evidence for Prosecution. Accused SKILER was at his command post at the Gottland Battery directing fire when the plane crashed (R 819). Acting on orders through official channels, he directed that the fliers be taken prisoner and brought to his battery where they were searched (R 820-823a). While the search of the prisoners was in progress, accused GOSKILL, accused HENTZEL and Lieutenants Sobiesch, Horn and Bayer arrived at the battery (R 821).

SKILER formed the guards and the fliers for the march to the airport. He admittedly issued certain orders to the guards, which are set forth at page five, supra.

One guard testified, in his extrajudicial sworn statement, that SKILER offered a bottle of whiskey to the first guard who shot a flier (R 223). If any flier stepped out of line the guards were to assume that it was an attempt to escape and such flier was to be shot. In addition, SKILER told the guards that, if the fliers did not hold their hands correctly over their heads, the guards were to beat them with their rifle butts (R 182, 946).

SKILER remained at the battery after the fliers were marched away. After he learned that all the fliers had been killed, he remarked to accused ALBRECHT that the fliers deserved what they got (R 216). He told ALBRECHT that, if he were ever asked whether the fliers were shot or beaten, he was to say that they were beaten to death (R 948). Prior to or during the interrogation of the fliers SKILER inquired

of accused GYER whether his home had been bombed and why he had not shot the fliers immediately upon the crash of the plane (R 194).

Verdict for Defense. SKILLEN admitted, on the stand, that he gave orders set forth on page five, supra. He testified that the orders were issued by him at the direction of his superior officer, accused GOEBEL (R 823, 824). GOEBEL confirmed giving certain of these orders to SKILLEN but denied issuing the crucial ones concerning the non-protection of the fliers from civilian attacks (R 857-863) and the requirement that the fliers march with their hands held continually over their heads (R 872). When GOEBEL arrived at the battery he took complete charge (R 821-823, 858). He reprimanded SKILLEN for his "damned German humanitarian ideas just when women and children were being killed in Bremen" (R 1073). GOEBEL changed everything SKILLEN had started and issued orders to the last detail (R 827). When SKILLEN inquired why the fliers were marching with hands above their heads, SKILLEN responded: "All this has been ordered. I have nothing to do with it" (R 739).

Sufficiency of Evidence. The Court was warranted from the evidence in its findings of guilt. All who join as participants in a plan to commit an unlawful act, the natural and probable consequences of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. The evidence indicates that he was at least comparatively willing participant. While he is legally responsible as a principal for the illegal killings, the extent of his culpability is not too clear in that the orders he issued and the steps he took were apparently at the direction of his superior officer and there is no showing as to acts in furtherance of the plan following the time that the fliers started on the march. The extent of his culpability is not sufficient to warrant the death penalty.

Petitions. A Petition for Review was filed by defense counsel Engelhorn, 26 March 1946; Petitions for Clemency were filed by a friend, Dr. Oscar Bern, 11 April 1946 and by the accused's wife, May Sailer, 15 July 1946.

Recommendation. Approval of the findings and sentence, but that the death sentence be commuted to life imprisonment.

6. JOHANN JOSEF SCHMITZ

Nationality:	German
Age:	52
Civilian Status:	Foreman in stove business
Party Status:	None
Military Status:	Technical Sergeant; gun crew member 2d Battery (Oakland Battery), 216th Naval Flak Battalion
Floor:	NO First Charge; NO Second Charge
Findings:	G First Charge; G Second Charge
Sentence:	Death by hanging

Evidence for Prosecution. Accused SCHMITZ was ranking non-commissioned officer of the guard detail escorting the fliers from Oakland Battery to the Sportplatz where the fatal shooting occurred (R 988-989). Frequently, during the course of the march, the fliers were beaten by civilians and guards (R 259, 910, 912-913, 948). Before the column reached the promenade, SCHMITZ hit and kicked a flier (R 196). He ordered accused ALBRECHT to hit a flier and called upon all the guards to hit the fliers to make them keep their arms up (R 204-209). In front of the Delf Hotel SCHMITZ pushed and kicked some of the fliers (R 1031). Near the old lighthouse SCHMITZ beat the fliers (R 200). Accused KROLEWICKI saw SCHMITZ with the column at this point (R 640). Accused GINTER testified, both in his extrajudicial sworn statement and on the stand, that he was positive he saw SCHMITZ shoot a flier at the Sportplatz (R 202, 1036). Later SCHMITZ admitted that he drew several rounds of ammunition (R 997). Shortly after the fliers had been killed, SCHMITZ signed a false report to the effect that the fliers had been beaten to death by the civilian population (R 996).

Evidence for Defense. SCHMITZ testified that he acted upon orders given him by his superior officer, accused SKILLER (R 989). These orders are set forth at page five, supra.

SCHMITZ maintained that he did not mistreat the fliers. As the column marched to the promenade he pushed the fliers back into line so that the guards would not shoot them on the supposition they were attempting to escape (R 991). SCHMITZ

testified that when the RAD leader called upon his men to beat the fliers, he called out, "Don't do it" (A 992). He further testified that when the small flier was knocked down in front of the Town Hall he stayed until accused WENTZEL ordered him to join the column which had, meanwhile, continued on toward the Dorf Hotel (A 176, 993). He stated that he did not overtake the column until after it had reached the Sportplatz. On arriving there all the fliers were dead (A 994). He explained the necessity of drawing ammunition by stating that his gun went off accidentally and he had to give some to another soldier (A 997). SCHMITZ testified that he was ordered to sign the false report concerning the killing of the fliers (A 996).

Insufficiency of Evidence. The Court was warranted from the evidence concerning his participation in this atrocity in its findings of guilty. There is credible proof that accused SCHMITZ mistreated the fliers and shot one of them. The evidence as to superior orders falls far short of meeting the burden required by the authorities discussed in Section V, D, supra. The acts of mistreatment and the shooting did not come within the sphere of the orders relied upon. All who join as participants in a plan to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. The sentence is not excessive.

Petitions. A Petition for Review was filed by defense counsel Dr. Kerstbaum, 23 March 1946.

Recommendation. Approval of findings and sentence.

7. JOHANN FOINSTER

Nationality:	Austrian
Age	24
Civilian Status:	Butcher
Party Status:	Unknown
Military Status:	Private first class and acting corporal; 116th Naval Flak Battalion
Floes:	NO First Charge; NO Second Charge
Findings:	NO First Charge; G Second Charge
Sentences:	Imprisonment for 5 years, commencing 6 February 1946

Evidence for Prosecution. Accused FOINSTER was the lead guard in the march of the fliers from Ostland Battery to the fatal ending at the Sportplatz (R 906). He carried seven large envelopes containing personal effects of each flier (R 915). The fliers were forced to march with their hands above their heads (R 906, 936). During the march, the fliers were beaten by RAD men on the promenade (R 908) and by civilians at the corner of Bahnhof and Franz-Hahle streets (R 910, 939), at the Town Hall (R 912), and in front of the Dorf Hotel (R 913). Practically all the guards hit the fliers more than once (R 239). One flier was shot at the Town Hall (R 912) and the rest were shot and killed at the Sportplatz (R 913-915). Directly after the fliers were killed FOINSTER signed a written statement attributing the death of the fliers to beatings by the civilian population, although he had witnessed the shooting by military personnel (R 917-918, 932).

Evidence for Defense. FOINSTER relied upon superior orders. These orders, as issued by accused SKILER are set forth at page five, supra.

FOINSTER testified that he arrived at the plane just after it crashed. He gave a flier his first aid kit in order that a wounded flier could be bandaged (R 904). When SKILER stated that the fliers were to be escorted to the airport, FOINSTER inquired whether or not the direct route over the black road would be followed (R 905). FOINSTER was informed that the fliers would be marched through the town (R 907). In attempt to follow the shortest route possible, he led the column into Victoria street, but was ordered to turn back by accused HINTZEL (R 907

and, later, at the corner of From-Habich and Hous streets he intended to turn right on Hous street but he was ordered to turn left in the direction of the Town Hall (R 911).

FOISTNER testified that the guards were not capable of protecting the fliers from the RAD men (R 908). He led the column at a faster cadence to hurry the fliers through the crowds (R 911). FOISTNER said he signed the false statement concerning the killings of the fliers because he was ordered to do so (R 912, 912). He further testified that he was armed only with a pistol, since he was burdened with envelopes containing the fliers' personal effects. His pistol always remained in its holster (R 915) and at no time did he push, hit or beat a flier (R 934).

Sufficiency of Evidence. The Court was warranted from the evidence concerning his participation in this atrocity in its findings of guilty. All who join as participants in a plan to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. The Court could have believed that the escort guards for the fliers did more than faithfully execute orders. The lightness of the sentence indicates that the Court gave ample consideration to accused's contention that he acted pursuant to superior orders and that ample mitigation was extended. The sentence is not excessive.

Petitions. None

Recommendation. Approval of findings and sentence.

8. GUNTHER ALBRECHT

Nationality:	German
Age:	23
Civilian Status:	Worker in shipbuilding yard
Party Status:	Unknown
Military Status:	Private, member of the 2nd Battery (Gutland Battery), 216th Naval Flak Battalion
Floes:	NO First Charge; NO Second Charge
Findings:	END First Charge; G Second Charge
Sentence:	Imprisonment for 6 years, commencing 6 February 1944

Evidence for Prosecution. Accused ALBRECHT was a member of the escort guard detail. He was assigned the third flier (R 938) and participated in the march only as far as the Town Hall (R 944). During this phase of the march the fliers were beaten by RAD men (R 937-938), by civilians at the corner of Bahnhof and Frank-Mabich streets (R 940, 939), and by guards along the sea wall (R 943) and at other points (R 239). At the Town Hall, ALBRECHT was near the small flier when he was shot by a soldier (R 212, 941). After a delay following this incident, he proceeded alone to the Sportplatz and arrived after the shooting of the remaining six fliers (R 214, 944). After viewing the dead bodies, ALBRECHT returned to the Dorf Hotel and signed a false statement that the fliers had been beaten to death by civilians (R 946-947).

Evidence for Defense. ALBRECHT relied on the orders issued to the guards. These orders are set forth at page five, supra.

ALBRECHT testified that he was helping the fallen small flier near the Town Hall when a soldier pushed him aside and shot the flier (R 212). ALBRECHT then helped carry the wounded flier into the END offices (R 741). He then went in the direction of the Dorf Hotel and was informed that the remaining fliers had been killed on Heede street near the Sportplatz. He proceeded there and looked at the bodies (R 944-945). ALBRECHT testified that accused WENTZEL ordered him to sign the false statement reporting the killing of the fliers (R 946-947).

He testified that he was ordered by accused SCHMITZ to hit a flier but denied that he hit any flier at any time (R 948).

Efficiency of Evidence. The Court was warranted from the evidence concerning his participation in this atrocity in its findings of guilty. All who join as participants in a plan to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. The Court could have believed that the escort guards for the fliers did more than faithfully execute orders. The lightness of the sentence indicates that the Court gave ample consideration to accused's contention that he acted pursuant to superior orders and that ample mitigation was extended. The sentence is not excessive.

Petitions. None

Recommendation. Approval of findings and sentence.

9. KARL OETTER

Nationality:	Austrian
Age:	34
Civilian Status:	Farmer
Party Status:	Unknown
Military Status:	Lance corporal; member 2nd Battery (Outland Battery), 216th Naval Medium Flak Battalion
Place:	NO First Charge; NO Second Charge
Findings:	NO First Charge; G Second Charge
Sentence:	Imprisonment for 4 years, commencing 6 February 1946

Evidence for Prosecution. Accused OETTER was one of the guards who escorted the fliers on the march from Outland Battery to the Sportplatz. Initially, OETTER guarded a tall flier with a white sweater who was next to the last flier in the column (R 195). Accused BINTZEL ordered accused BITZER and OETTER to exchange fliers so that OETTER guarded the small flier who had trouble keeping up his trousers (R 1038)

when the fliers were beaten while on the promenade the small flier rushed ahead and the tall flier with the white sweater reverted to GAYLER's control and he continued to guard this flier until he was shot at the Sportplatz (R 1029).

The fliers were compelled to march with their hands over their heads (R 936). They were beaten by SAJ men (R 908), by civilians at the corner of Bahnhof and Franz-Habich streets (R 910, 939), at the Town Hall (R 912), in front of the Dorf Hotel (R 913) and by guards along the sea wall (R 948) and at other points (R 259). One flier was shot in front of the Town Hall and the others at the Sportplatz (R 1030-1033). GAYLER signed the false statement at the Dorf Hotel that the fliers had been beaten to death by civilians (R 1033, 1034).

Evidence for Refusal. GAYLER relied on the orders issued to the guards, which are set forth at page five, supra.

GAYLER testified that at Ostland Battery he inquired whether the fliers could not be transported by rail (R 1028). He also testified that he requested accused WENTZEL to stop the column to permit the small flier to adjust his falling trousers. WENTZEL threatened him with punishment when he permitted the flier to take his hands down to retrieve his trousers (R 1028-1029). On one occasion when a civilian attempted to beat his flier, GAYLER pushed the civilian away, first with his rifle and then by raising him by the collar (R 798, 1030). GAYLER testified that he was ordered to sign the false report concerning the killing of the fliers (R 1033, 1034).

Sufficiency of Evidence. The Court was warranted from the evidence concerning his participation in this atrocity in its findings of guilty. All who join as participants in a plan to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. The Court could have believed that the escort guards for the fliers did more than faithfully execute orders. The lightness of the sentence indicates that the Court gave ample consideration to accused's contention that he acted pursuant to superior orders and that ample mitigation was extended. The sentence is not excessive. Austria was a co-belligerent of Germany.

Exhibitions. None

Recommendations. Approval of findings and sentence.

1. THE WITKE

Nationality:	German
Age:	35
Civilian Status:	Post Office employee
Party Status:	Unknown
Military Status:	Private First class; member of Searchlight Battery No. 3
Floor:	NO First Charge; NO Second Charge
Findings:	NO First Charge; O Second Charge,
Sentence:	Imprisonment for 11 years, commencing 6 February 1946

Evidence for Prosecution. Accused WITKE was a member of the escort guard detail that conducted the fliers from Ostland Battery to the Sportplatz, where the final shooting of the fliers occurred. At the outset, WITKE was assigned the last flier in the column. This flier was the smallest one of the group and the one who continually during the march had difficulty keeping up his trousers (R 966). As the column marched on the promenade, accused WITKE ordered WITKE and accused WITKE to exchange fliers (1 1028). When the RAD men were beating the fliers, the small flier ran ahead with the result that the small flier reverted to WITKE's control and the flier originally guarded by WITKE reverted to him (R 967, 968).

The fliers were made to march with their hands above their heads (R 936). They were beaten by RAD men (R 908), by civilians at the corner of Hafshof and Franz-Habich streets (R 910, 939), at the Town Hall (R 912), in front of the Dorf Hotel (R 913) and by guards along the sea wall (R 948) and at other points (R 959). Going down Franz-Habich street, the small flier was hit with a rifle butt by his guard (Presumably WITKE) (R 950). At the Town Hall, WITKE abandoned the small flier who was then shot (R 969). WITKE guarded another flier until the column reached the Sportplatz, where this flier was also shot (R 969). Shortly thereafter, at the Dorf Hotel, WITKE signed a false report which stated that the fliers had been beaten to death by the civilian population (R 971).

violation for defense. WITKE fell in the orders that were issued to the guards. These orders are set forth on page five, supra.

WITKE testified that WENTZL recommended him for permitting the small flier to take his arms down to retrieve his falling trousers and finally required him to exchange fliers with OETZ (1 967-968). At the Town Hall, WITKE said he was pushed away from the small flier and marched on with the column (1 969). At the Sportplatz his flier and the one in front were suddenly shot in quick succession (1 969-970). WITKE testified that he was ordered to sign the false statement concerning the killing of the fliers (1 971).

Sufficiency of Evidence. The Court was warranted from the evidence concerning his participation in this atrocity in its findings of guilty. All who join or participate in a plan to commit an unlawful act, the natural and probable consequences of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. The Court could have believed that the escort guards for the fliers did more than faithfully execute orders. The lightness of the sentence indicates that the Court gave ample consideration to accused's contention that he acted pursuant to superior orders and that ample mitigation was extended. The sentence is not excessive.

Petitions. None

Recommendation. Approval of findings and sentence.

11. JAN J. ABERNATHY

Nationality:	German
Age:	51
Civilian Status:	Merchant; Acting Burgemeister of Berlin
Party Status:	NSDAP member since 1930 and Ortsgruppenleiter of Berlin since 1932
Military Status:	None
Facts:	NO First Charge; NO Second Charge
Findings:	0 First Charge; 0 Second Charge
Sentence:	Death by hanging

Witness for Prosecution. According to his extrajudicial sworn statement, in the afternoon of the plane crash WEINMANN received a telephone call from accused FUEHL to the effect that the fliers would be led through the town of Borkum by way of the strand and that the guards had orders to lead the prisoners in accordance with the decree of Dr. Goebbels (P 234). In his testimony on the stand, he said that the call was from Lieutenant Beyer on behalf of FUEHL (P 633). ARKEMANN telephoned accused MEYER-ORHARDT and stated that the highest military authority had ordered the fliers to be marched through the village in accordance with the decree of Dr. Goebbels. He further said that an example should be set and that the air raid police should be alerted immediately (P 604). MEYER-ORHARDT understood this to mean that the air raid police should demonstrate against the fliers (P 612). The accused ROHMEL was also telephoned by ARKEMANN. ROHMEL said that he did not know about the decree of Dr. Goebbels. To this ARKEMANN replied that he should go to Beulke, the leader of the Emergency Service, who compiled regulations. ARKEMANN also told accused ROHMEL to inform Beulke that the fliers were coming through the town of Borkum (P 564, 635). ARKEMANN telephoned the office of the air raid police and talked to accused MANNINGHA. ARKEMANN told him that the prisoners were being led through the town and that the air raid police should show "what kind of guys you are" (P 72). The witness Hinfelt testified to the same or a similar conversation (P 377).

ARKEMANN told his employee, Kunkel, to turn out as the fliers marched by, "You lost everything in Hamburg, in your block of houses over 40 children have been killed" (P 635). He told his other employees about the fliers and then went to the corner of Rathaus and Franz-Halbig streets with Kunkel and another employee, Wahnson (P 636). As the fliers marched past, ARKEMANN, according to his own testimony on the stand, yelled several times, "There are the murderers, the ones that killed your women and children, the ones who bombed your homes, beat them on the neck, beat them" (P 637). He also yelled to beat them to death (P 455, 637, 739, 767). He used such expressions as, "Beat the dogs" or "Beat the murderers" (P 70); "Murderers where you come! How many women and children have you killed! Civilians, beat them dead! Beat them dead" (P 455); and "Murderers, murderers,

murderers, beat them on their necks' (R 236). Many people came out of their houses and the fliers were beaten (R 1456, 236, 210-211).

Dr. Volmel heard from his patients that the fliers had been shot to death and that ARKEWMANN had instigated the population to beat the fliers. He went to ARKEWMANN who said he couldn't understand Dr. Volmel's attitude in pitying fliers who kill German women and children and who destroy German cities (R 462).

Evidence for Defense. There was testimony by two witnesses to the effect that ARKEWMANN was an impulsive and amiable person and therefore the villagers discounted his superlative statements (R 531, 613). The accused attributed his conduct on the day in question to these traits (R 637, 648). ARKEWMANN testified that he did not voluntarily assume his position of acting mayor and, because of this job, his duties as ortgruppenleiter, and his private business, he was exceedingly overworked (R 632). ARKEWMANN did not call out any members of the party organizations (R 636). He denied people streamed out of their houses when he yelled at the fliers on Franz-Hubich street because, he stated, there were only two other houses there and both were entered from Hubich street (R 637). ARKEWMANN regarded the yelling at the fliers merely as creating an opportunity for the population to give vent to their outraged feelings (R 636, 641). ARKEWMANN admitted, in part, the conversation with Dr. Volmel but explained it on the ground that it occurred just after a bombing attack in which a bomb landed in front of his house and almost killed his wife, daughter and grandchild (R 639-640).

As mayor, ARKEWMANN said that he had no authority over the police. It was a matter for the police to control the civilians (R 647).

Sufficiency of Evidence. The Court was warranted from the evidence concerning his participation in this atrocity in its findings of guilty. All who join as participants in a plan to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. The Court was warranted in concluding that the accused, in his dual capacity as local party

leader and as mayor, exerted a strong influence in inciting the civilian population to anger against the fliers. The sentence is not excessive.

Petitions. A Petition for Review was filed by defense counsel, Dr. Gerhard Wagner, 23 March 1946. A Petition for Clemency was filed by Bremen Town Council, signed by the mayor and four senators, 25 June 1946.

Recommendation. Approval of findings and sentence.

17. VIALE MEYER-GORHAMER

This accused was acquitted (R 1282).

18. FRIEDRICH ROHMEL

Nationality:	German
Age:	54
Civilian Status:	Chief of Police of Bremen
Party Status:	Member of NSDAP since 1937
Military Status:	None
Place:	NO First Charge; NO Second Charge
Findings:	NO First Charge; 0 Second Charge
Sentence:	Imprisonment for 2 years, commencing 6 February 1946

Evidence for Prosecution. Accused ROHMEL received a telephone call from accused FUEHL who informed him of the plane crash. ROHMEL stated that the fliers were being led along the strand to the airport and the guards had their orders. He then drew ROHMEL's attention to the decree of Dr. Goebbels (R 246). This conversation was corroborated by an office worker in the police station (R 292). ROHMEL reported this information to the Gestapo in Bremen and was instructed by his superior that the matter was strictly military and he should have nothing to do with it (R 246). Accused AKERHANN then telephoned and told ROHMEL to inform Boelte, leader of the Emergency Service, about the fliers and to tell him about Dr. Goebbels' decree (R 246, 564). ROHMEL went to Boelte's house and agreed that neither the Emergency Service nor the police should have anything to do with the affair (R 247).

THIEL rode on his bicycle to the promenade and then to his office. He saw the fliers but did not observe any mistreatment, although his fellow policeman Fick told him of the beatings by the 713 men (R 213). He saw the prisoners again as they passed the police station (R 297). Later he was told by Fick that the fliers had been shot on "Acade street" (R 249).

THIEL and Fick then went to Acade street where they blocked off the street and chased away the women and children. THIEL and Fick returned to the police station where he reported to the Gestapo in "Berlin". He was again instructed to do nothing because it was a military matter (R 249).

THIEL took no action to protect the fliers. Later he expressed the intention of committing suicide (R 573). After his arrest he attempted suicide by jumping overboard in Tamm Harbor (R 574).

Evidence for Defense. THIEL testified that twice his superiors had ordered him not to take any action because the matter concerning the fliers was strictly military (R 563, 568). The witness Heller corroborated THIEL's testimony concerning the telephone calls with GOETTEL and with THIEL's superior in "Berlin". Heller also said that THIEL was informed by his superior that the decree of Dr. Goebbels provided that the police were not to interfere, if the civilians attacked captured fliers (R 292-293).

THIEL further testified that, as there were only two policemen in "Berlin" including himself, it was not practical for them to interfere with the guards nor to prevent the civilians from hitting the fliers (R 596).

Sufficiency of Evidence. The Court was warranted from the evidence concerning his participation in the atrocity in its findings of guilt. All who join as participants in a plan to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. The

lightness of the sentence indicates that the Court gave ample consideration to the accused's attempt to minimize the extent of his participation. The sentence is not excessive.

Petitions. A Petition for Review was filed by defense counsel, Dr. Kotaler, 1 April 1944.

Recommendation. Approval of findings and sentence.

14. GISELHARD GARNICA

This accused was neither served nor tried.

15. GUSTAV WANNENGA

Nationality:	German
Age:	52
Civilian Status:	Telephone operator
Party Status:	Unknown
Military Status:	Private in the Security and Emergency Service
Facts:	NO First Charge; NO Second Charge
Findings:	NO First Charge; 0 Second Charge
Sentence:	Imprisonment for 20 years, commencing 6 February 1944

Witness for Prosecution. Accused ARHIMANN telephoned and informed accused WANNENGA that the fliers were being led through town. He added, "Show what kind of guys you are" (R 574). WANNENGA went outside his office in the Central Hotel and, as the fliers passed by, he hit the small flier two or three times with his open hand (R 253-254, 525). Accused FRIEDT testified that when the column reached this point he saw an air raid policeman hit the small flier over the head with a rifle and later he saw the flier on the ground (R 973).

WANNENGA then heard a shot behind him and turned to see a soldier holding a pistol. Accused MEYER-GERNARD ordered the wounded flier to be carried into the Central Hotel in which the SDH offices were located. WANNENGA did not help take care of the wounded flier (R 254, 525).

Witness for Defense. WANNENGA testified that he heard someone shout, "Look

them, beat them, they killed my wife and my child" and, thinking of his son who was killed in action, he struck one of them. He asserted the blows were struck with the fist of his right hand and were not hard blows, because he had not completely recovered from a fracture of his left arm (R 525). He further stated that he struck a medium sized flier and not the small one who was subsequently shot (R 527, 530). He did not help carry the wounded flier into the hotel because accused WITTE-GUTHMANN had directed him to chase the children away (R 536).

Sufficiency of Evidence. The Court was warranted from the evidence concerning his participation in the atrocity in its findings of guilty. All who join as participants in a plan to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. Accused admitted that he struck a flier. The sentence is not excessive.

Waiving. A Petition for Review was filed by defense counsel, Dr. Metzler 1 April 1944.

Recommendation. Approval of findings and sentence.

16. RAKHMER HAKHMA

This accused was neither served nor tried.

17. JERRY PETER HARKIN

This accused was neither served nor tried.

18. WILHELM HARTMANN

Nationality:	German
Age:	29
Civilian Status:	Butcher shop employee
Party Status:	Member of Sturm Abteilung from 1933 to 1935
Military Status:	Inactive member of Navy

Charges	NO First Charge; NO Second Charge
Findings	NO First Charge; 0 Second Charge
Sentences	Imprisonment for 15 years, commencing 6 February 1946

Witness for Prosecution. According to the extrajudicial sworn statement and the testimony of accused WITEN, HEINEMANN came out of his father's butcher shop, which is located on the corner of Frank-Rabich and Hous streets, to watch the fliers as they passed. HEINEMANN beat a flier with his fist (P 163). By his extrajudicial sworn statement, HEINEMANN admitted that later when a customer entered the store and stated that a flier had been shot in front of the Town Hall, he went there on his bicycle. He first stated that when he arrived at the Town Hall no one was there so he proceeded past the Duff Hotel and overtook the fliers (P 259), but in a supplementary statement he asserted that when he passed the Town Hall a German soldier jumped in front of his bicycle (P 362). At the Sportplatz, he witnessed the shooting of the fliers (P 260).

Accused WITEN-GUTHMANN said in his extrajudicial sworn statement that he saw WITENMANN rush into the crowd as the fliers passed the Town Hall (P 242). When he testified at the trial, however, he expressed doubt that the person he saw was HEINEMANN (P 608). Mrs. Garrels testified that WITEN-GUTHMANN said to HEINEMANN, in her presence, that he had seen HEINEMANN knock down a flier at the Town Hall (P 431-432).

Witness for Defense. The father of HEINEMANN testified that his son stood alongside of him while the fliers passed his butcher shop on Frank-Rabich street and his son did not beat any flier (P 1059). This is corroborated by the witness Mrs. Schroeder (P 1126-1137). Accused WITEN-GUTHMANN denied having conversations with Mrs. Garrels concerning HEINEMANN (P 609). The witness Fleiter, who was also present according to Mrs. Garrels, corroborated the testimony of WITEN-GUTHMANN that no such conversation occurred (P 1130). Mrs. Mayer-Gerhardt testified concerning the enmity between the Garrels family and the families of HEINEMANN and WITEN-GUTHMANN (P 1135-1136).

Sufficiency of Evidence. The Court was warranted from the evidence concerning his participation in the atrocity in its findings of guilty. All who join as

participants in a plan to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are legally responsible as principals for a homicide committed by any of them in pursuance of or in furtherance of the plan. The accused very actively furthered and contributed to the plan which resulted in several illegal killings. While the evidence is very conflicting, it was for the Court to determine weight and credibility to be attached to the testimony of the various witnesses. However, the evidence does indicate participation and culpability to a sufficient degree to warrant some punishment.

Petitions. A Petition for Review was filed by defense counsel, Dr. Meteler, 1 April 1946; a Petition for Clemency was filed by a friend, R. L. Eisenhart, 5 September 1946.

Recommendation. Approval of findings and sentence, but that the sentence be reduced to five years, commencing 6 February 1946.

19. JAMES WITKRAACK

This accused was neither served nor tried.

20. LEWIS (first name unknown)

This accused was neither served nor tried.

21. ARWITT HASSLER

This accused was neither served nor tried.

22. ARWITT SCHENSLAU

This accused was neither served nor tried.

23. THOMAS (first name unknown)

This accused was neither served nor tried.

VII. CONCLUSIONS:

An examination of the entire record of trials fails to disclose any error or omission in the conduct of the trial which resulted in injustice to the accused and discloses that the evidence is legally sufficient to support the findings of the Court. According, it is

recommended that the findings of the Court be approved as to all the accused and that the sentences to death by hanging as to accused CORBELL, WENTZEL, SCHWITZ and AXELSMANN be approved and ordered executed; that the sentence to death by hanging as to accused MILLER be approved, but commuted to imprisonment for life and as commuted ordered executed; that the sentence to life imprisonment as to the accused KROLIKOVSKY be approved, but reduced to imprisonment for fourteen (14) years and as reduced ordered executed; that the sentence to imprisonment for twenty-five (25) years as to accused SMITH be approved and ordered executed; that the sentence to imprisonment for twenty (20) years as to accused HANSEN be approved and ordered executed; that the sentence to imprisonment for eighteen (18) years as to accused HANSMANN be approved, but reduced to imprisonment for five (5) years and as reduced ordered executed; that the sentence to imprisonment for eleven (11) years as to accused RITZKE be approved and ordered executed; that the sentence to imprisonment for six (6) years as to accused ALBRECHT be approved and ordered executed; that the sentence to imprisonment for five (5) years as to accused POINTER be approved and ordered executed; that the sentence to imprisonment for four (4) years as to accused MEYER be approved and ordered executed; and that the sentence to imprisonment for two (2) years to accused KAMMEL be approved and ordered executed.

Legal Forms Nos. 13 and 16 to accomplish these results are attached hereto, should it meet with approval.

RICHARD D. REYNOLDS
Major, ORG

MAXWELL S. MERRICK
Major, MI

Attorneys
Post Trial Branch

Having examined the record of trial, I concur, 6 September 1947.

G. S. STRAIGHT
Lieutenant Colonel, JAGC
Deputy Judge Advocate
for War Crimes