DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 407

9 January 1948

UNITED STATES)
)
v.) Case Nos. 12-1368 and 12-1369
)
Friedrich HILDEBRANDT, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 20 February - 31 March 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

FIRST CHARGE: Violation of the Laws of War.

Particulars: 1. In that Kurt MUELLER, Fritz SCHROEDER, Karl GROENWALDT, and Friedrich HILDEBRANDT, German nationals, did in the vicinity of VEELBOKEN, Germany, on or about 21 June 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of an unknown member of the Allied Air Forces who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich.

2. In that Friedrich HILDEBRANDT, Karl GROENWALDT, Wilhelm BOLLOW, Ewald HASELOW and Franz PENSIEN, German nationals, did at or near PINGELSHAGEN, Germany, on or about 21 June 1944, wilfully, deliberately, and wrongfully, encourage, aid, abet and participate in the killing of two unknown members of the United States Army, who were then unarmed surrendered prisoners of war in the custody of the then German Reich.

3. In that Friedrich HILDEBRANDT, a German national, did, in the vicinity of MOLLIN, Germany, on or about 21 June 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of three unknown members of the Allied Air Forces who were then unarmed, surrendered, prisoners of war in the custody of the then German Reich.

Note: Particulars 3 was amended at the trial, as follows: "the third paragraph of the charge sheet is amended by deleting the figure and word, "21 June," and the figure and word, "1 September," is substituted therefor; and the word "three" is deleted and the word "two" is substituted therefor" (R 249).

4. In that Friedrich HILDEBRANDT, German national, did in the vicinity of KLINK, Germany, on or about 21 June 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of nine unknown members of the Allied Air Forces who were then unarmed, surrendered, prisoners of war in the cus-

(Surname of PENSIEN actually spelled PENZIEN, (R 5; P-Ex 23, p. 7). Surname of GROENWALDT actually spelled GRONWALDT, (R 193; P-Ex 12). Surname of MUELLER actually spelled MULLER, (R 210; P-Ex 25).

III. SUMMARY OF EVIDENCE: On about 21 June 1944, in Kreis Schwerin and Kreis Waren of Gau Mecklenburg, Germany, several Allied flyers parachuted from disabled bombers. On the same day the accused HILDEBRANDT, as gauleiter, reichstatthalter (governmental director) and defense commissar of Gau Mecklenburg, issued a direct order through the accused GRONWALDT to the accused Kreisleiter BOLLOW directing that all enemy flyers, who had landed in the vicinity, be searched out immediately and killed before evening. Under this order one of the flyers was shot and killed by accused MULLER, with accused SCHRODER assisting, in the vicinity of Voelboken. Also two American flyers were killed near Pingelshagen, Germany, by accused HASELOW and PENZIEN. Seven, or possibly nine, Allied flyers were killed on the same day by unknown Party members and police in the vicinity of Klink, Germany. On or about 1 September 1944, two Allied flyers were killed by Party members in the vicinity of Mollin, Gau Mecklenburg.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Friedrich HILDEBRANDT

Nationality:	German
Age:	48
Civilian Status:	Farmer
Party Status:	Member Nazi Party with position as Gauleiter and Reichstatthalter
Military Status:	Defense Commissar
Plea:	NG Charge and Particulars 1-4
Findings:	G Charge and Particulars 1 and 2 NG Charge and Particulars 3 and 4
Sentence:	Death by hanging

Evidence for Prosecution: The accused was gauleiter and reichstatthalter of Gau Mecklenburg. He was gauleiter from 1925 until the end of the war (R 33). He was also defense commissar (R 43). Five witnesses testified that prior to 21 June 1944, in his official capacity, the accused had held numerous meetings of kreisleiters, ortsgruppenleiters and other Party officials, government and police officials, in Gau Mecklenburg, at which he had

discussed the Bormann, Himmler and Goebbels orders concerning treatment of captured enemy flyers, and had added his own orders that enemy flyers captured within the Gau were to be shot and killed (R 57, 59, 66, 130, 138, 139, 141, 148, 178, 179, 181, 182, 445, 567). Voelcker testified that the accused was absolute ruler in Mecklenburg (R 1081). It was general talk "all over the place" that he had ordered flyers killed (R 1088). The accused admitted in his testimony that in meetings he spoke about terror flyers and said that they were to be tried by a drumhead court and shot (R 906). He also on cross-examination admitted his authority and influence in the Gau. He had two minister presidents of Mecklenburg demoted and removed. He said that the last minister president, Dr. Schraff, never failed to take action upon any suggestion he (accused) made (R 978-983). Hagen testified that a circular which amounted to an order to shoot terror flyers was issued from the accused's office (R 142-144).

Accused GRONWALDT testified that on 21 June 1944 the accused issued a direct order over the Gau air raid communication net and which order was given to accused GRONWALDT as Kreisamtsleiter and directed to Kreisleiter BOLLOW of Kreis Schwerin Land, reciting that parachutists had landed in the area (R 418) and directing substantially as follows:

> "You are to search for the parachutists with all energy immediately. They are to be captured and finished off by evening. I expect a report this evening. The Kreisleiter is to be called back immediately. He is personally responsible for the fulfillment of this order to me" (R 419).

Accused GRONWALDT further testified, as well as stated in his extrajudicial sworn statements, that this order was given personally by the accused, who had a very distinctive voice (R 376, 377, 419, 420, 433, 434, 437, 441, 195, 199; P-Exs 13 p. 2, 14 pp. 1, 2; 15 pp. 4, 5). This was corroborated by the extrajudicial sworn statement of accused BOLLOW (R 200; P-Ex 16). Geese also testified that the accused had a very distinctive voice (R 836, 855). The evidence showed that the order was passed on to accused MULLER (R 420, 421, 551, 552; P-Ex 11, p. 3), and by him to accused SCHRODER (R 552, 553, 604, 605). These two last named accused did the actual killing alleged in Particulars 1 (R 210, 237, 238, 560; P-Exs 25, 26, 27 pp. 4, 5). The evidence also showed that accused GRONWALDT called accused Kreisleiter BOLLOW

at the Kreis headquarters, as directed by the accused, and relayed to him the order (R 419) of the accused (R 277-280, 446, 447), which was then relayed to accused HASELOW and PENZIEN (R 288, 450, 488, 491, 509, 511, 519, 521-523, 525, 193; P-Ex 12 p. 4), each of whom shot one of the two flyers involved in Particulars 2, at Pingelshagen (R 213, 214, 507, 523, 536, 537).

Accused BOLLOW testified that, the next morning after the killings, he reported the killings alleged in Particulars 1 and 2 to the accused by telephone and that the accused approved in language as follows:

> "Then all is well. With the three that have been taken in the Kreis Schonberg, I think all of them are accounted for" (R 203; P-Ex 18 p. 2) (See also R 293-295).

Former Deputy Gauleiter von Koerber testified that afterward, because the Landrat had complained about the flyers having been taken from the police and killed, the accused said that the Landrat should be arrested (R 103, 108-110). Hagen testified, and the accused admitted on cross-examination, that shortly after the killings the Landrat published an order directing that enemy prisoners be delivered to the police or the Wehrmacht and to no other agency, and that the accused forced the Landrat to rescind and withdraw the order (R 135, 955-958). Accused BOLLOW and PENZIEN testified that all orders concerning flyers and all reports of killings were ordered to be kept secret; that no information was to be given to any authorities; and that all inquiries were to be referred to the accused (R 359, 369, 538). Accused BOLLOW and MULLER testified that all reports of killings were to show: "shot while trying to escape" (R 363, 1125, 1126). Accused BOLLOW further testified that the accused criticized Kreisleiter Doescher for having allowed two of nine flyers captured in Kreis Waren to remain alive stating: "It should not be allowed that two of them were left behind. All of them should be shot" (R 386).

Hagen and accused MULLER testified that two, or possibly three, Allied airmen were killed by Party members in the vicinity of Mollin in August or September 1944 (R 127-130, 596, 597).

Accused BOLLOW testified, and captured German documents showed, that seven, or possibly nine, Allied flyers were killed by police and Party members at Klink in Kreis Waren on approximately the same date as the killings

in Kreis Schwerin (R 386, 387, 27; P-Exs 10, 10A).

Evidence for Defense: Ueberreither, a former German Government legal administrator, as well as a German lawyer, Richter, testified that the accused never had any authority or command over the police, the Wehrmacht, or the Luftwaffe (R 697, 718). A Party member who was a rural guard or landwacht came under police orders exclusively and the accused was not responsible for their actions (R 697, 698). He further testified that the accused was criticized by Goebbels for being soft regarding flyers (R 699); that the accused expressed himself as opposed to the flyer orders (R 700); that he was not friendly with Bormann (R 711); and that the accused had no power over the SS (R 713).

In his testimony (R 872) the accused specifically denied that he ever gave orders to kill enemy flyers (R 881, 882, 920). He also specifically denied encouraging, ordering or participating in the killings alleged in Particulars 1 (R 882), in Particulars 2 (R 882, 883), in Particulars 3 (R 883), and in Particulars 4 (R 883). He first heard of the killings at Pingelshagen by accused HASELOW and PENZIEN through accused BOLLOW in July 1944 (R 883). The accused did not hear of the killing of one flyer at Veelboken until interrogated on 31 July 1945 (R 889). He first heard of the killing of two flyers at Mollin about Christmas of 1944 (R 891). He further testified that he did not hear of the killings at Klink until an interrogation at Dachau, 9 October 1946 (R 895). He denied that he issued orders in meetings or over the air raid communication net. He also denied making statements regarding the killing of flyers (R 896-904). At meetings he spoke against summary killings (R 913-917).

The accused interposed a defense of alibi claiming that he was absent during the entire day of 21 June 1944 and that he left home at about 0800 and did not return that day (R 918, 919). He asserted that he never at any time spoke over the air raid communication net on 21 June 1944 (R 919). Schoennenbeck and Trummler corroborated the alibi (R 722, 725, 747, 748). Also Schoennenbeck, who was Kreisleiter of Kreis Stargard in Gau Mecklenberg, testified that he never heard any orders over the communication net (R 724, 725) and asserted that he never heard the accused at any time give orders to

kill flyers (R 727) (But see R 728, 731).

The accused further testified that more than 1500 enemy flyers were captured in his Gau and delivered to the Wehrmacht or to the police during 1944 (R 920). He did not know about the Bormann secret order to kill flyers until 24 July 1944. He did not pass the order down to his kreisleiters (R 927). He belonged to that group of gauleiters who opposed Himmler, Bormann and Goebbels (R 937). He had disputes and tried to resign (R 938). Accused BOLLOW admitted to him (this accused) that he (BOLLOW) claimed superior orders from the accused as a defense in the belief that it would help him (BOLLOW), and in the belief that the accused was dead (R 933-936).

Geese, who was technician in charge of the air raid communication net, testified that he never in June 1944, nor at any time, heard an order given over the net to kill flyers, and that he was always present at the Gau command bunker, with very few exceptions, when the net was in use (R 829-832, 837, 848). The witness further testified:

> "I remember exactly that the Gauleiter said at this meeting, 'Gentlemen, I cannot give an order to shoot flyers because it is against the Geneva Convention. This type of order would become known immediately and the enemy would treat our shot-down flyers correspondingly.'"

The witness testified that the above statement was made at a meeting at the Gau school in 1943 (R 831). He did not remember any report being received from accused HASELOW (R 842) and never heard of any flyer being killed while trying to escape (R 854).

Von Willisen testified that he attended several meetings during the spring of 1944 at which the accused spoke. He never once heard any statement by the accused that could have been interpreted by the listeners as an order to go out and kill flyers (R 1128-1132).

Sufficiency of Evidence: Apparently it was the theory of the defense that the accused did not direct that the flyers be killed or otherwise participate. The evidence clearly establishes that the accused personally directed the killing of the flyers covered by Particulars 1 and 2.

The findings of guilty of the Charge and of Particulars 1 and 2 thereunder are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by defense counsel, First Lieutenant Emanuel M. Miller, 14 April 1947, supplemented by letter, 20 June 1947.

Petitions for Clemency were filed by the accused, 20 May 1947; Gerhardt Gaul, German counsel, 18 October 1947, 22 October 1947, 23 October 1947, 28 October 1947, 15 November 1947, 17 November 1947, 27 November 1947, 28 November 1947 and 7 December 1947; Elise Hildebrandt, wife of the accused, 20 October 1947; First Lieutenant Emanuel M. Miller, defense counsel, 3 October 1947 and 23 October 1947; and by accused Karl GRONWALDT, 29 October 1947.

Accused GRONWALDT, in his Petition for Clemency, to some extent retracts his own sworn testimony as given at the trial by stating that he is no longer certain that it was this accused personally who issued the order over the air raid communication net on the day that the flyers involved in this case were killed. However, reference is made to two Petitions for Clemency filed by accused GRONWALDT in behalf of himself dated 26 August and 15 July 1947 in which he reaffirms the testimony as he gave it at the trial and attaches an affidavit by one Biege who stated under oath that he also heard such an order given by the accused and definitely recognized the voice of the accused.

Even if there should be any doubt raised that the accused personally issued said order on 21 June 1944, the evidence clearly establishes that the accused had previously on many occasions announced his policy that all flyers should be killed. Also it is clearly established that the order of 21 June 1944 was issued from the headquarters of the accused and beyond a reasonable doubt must have been issued by his authority. Also according to the testimony of the accused BOLLOW, as noted under Evidence for Prosecution, supra, the accused to all effects and purposes ratified said order and approved the killings of the flyers on the next day when accused BOLLOW reported to him. The remarks made to accused BOLLOW are consistent and add strength to the evidence indicating that the accused issued the order.

Recommendation: That the findings and sentence be approved.

2. Wilhelm BOLLOW

Nationality: German

Age:	49
Civilian Status:	Secretary to Estate
Party Status:	Member Nazi Party with position as Acting Kreisleiter
Military Status:	Unknown
Plea:	NG Charge and Particulars 2
Findings:	G Charge and Particulars 2
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he was the acting kreisleiter of Kreis Schwerin in Gau Mecklenburg, Germany (R 267-269). On cross-examination he admitted that he knew about the orders to kill flyers and approved of them: "These orders must come from the fuehrer and they must be right" (R 370). He testified that he attended about "eight to ten" meetings at which accused HILDEBRANDT referred to the treatment Allied airmen were to receive in the Gau (R 343-348). He passed these orders on to his ortsgruppenleiters (R 348-350, 363). This was corroborated by the testimony of accused MULLER (R 566, 567). This accused further testified that orders and reports concerning airmen were never to be in writing (R 369-370), and that when a flyer was killed the report was always to say: "Shot while trying to escape" (R 363, 538). This policy was corroborated by the testimony of accused MULLER (R 1125,1126). The accused further admitted in his testimony that he was the party superior of accused GRONWALDT, MULLER, SCHRODER, HASELOW and PENZIEN (R 364, 365).

The accused testified that he received from accused GRONWALDT, during the afternoon of 21 June 1944, the HILDEBRANDT order to search out and kill all enemy flyers within his Kreis (R 277-279, 312). This was corroborated by accused GRONWALDT (R 420, 421). The accused further testified that he directed his subordinates, accused GRONWALDT and HASELOW, accordingly (R 288, 395). Accused HASELOW testified to the same effect (R 488, 489). The order had already been given by accused GRONWALDT to accused MULLER (R 280, 327).

The accused testified that he drove with accused GRONWALDT and HASELOW to Muehleneichsen, where two flyers were held in police custody(R 286, 312).

These flyers had parachuted from an American "Liberator" (R 389). The accused admitted that he demanded the two flyers; that he was refused by local police; that he later got custody by appealing to district police; and that he sent the flyers away to be killed by accused GRONWALDT and HASELOW (R 287, 288, 290). This admission was corroborated by the testimony of accused HASELOW (R 488, 489). The accused by his own admission and by the testimony and extrajudicial sworn statements of his co-accused was shown to have understood the order received and to have ordered the killing of the two flyers (R 289, 424, 193, P-Ex 20, pp. 2, 4, P-Ex 12, p. 4). Accused HASELOW and PENZIEN both testified as well as stated in their extrajudicial sworn statements, that PENZIEN was picked up by HASELOW and other accused; that the orders of the accused were relayed to him (R 491, 519); that the two flyer prisoners were shot in the back and killed; and that each of the two accused last mentioned shot one in a woods near Pingelshagen (R 507, 537, 206, 207, 208, 209; P-Exs 20, 22, 23, 24). The accused further testified that later the same day he received the report of the killing. He went to view the dead bodies (R 290): "Because I wanted to make sure for myself" (R 416). He testified that he reported the killings in his Kreis to accused HILDEBRANDT (R 293-295). Accused PENZIEN testified, as well as stated in his extrajudicial sworn statement, that a few days after the killing the accused complimented him on his participation (R 530, 538, 208; P-Ex 23, p. 4).

The accused admitted on cross-examination that he did not interrogate the flyers prior to sending them to be executed (R 338). He testified that he would have initiated action against accused HASELOW, if he had refused to carry out the killing order (R 365-367).

A kreisleiter did not have to carry out an illegal order of the gauleiter, and could not have been punished for refusing an order of the gauleiter to kill Allied airmen: "Because neither accused HILDEBRANDT nor any other gauleiter was entitled to issue such an order" (R 645-647), according to the witness, Dr. Klopfer, who was head of the Section for Public Law of the Party Chancellory (R 637). The accused also admitted that before the date of the killings Landrat Boethefuer had denounced the Bormann order to him, stating: "No, that can't be. That is murder. I can't do that as an

officer" (R 411). The accused testified that he did not see nor speak with accused HILDEBRANDT on the day of the killings (R 281), but that he did receive the order through his own subordinate, accused GRONWALDT (R 277-279). The accused admitted that he knew that orders which came from the Reichs Ministry did not always comply with international law and the Geneva Convention (R 411).

Evidence for Defense: By his testimony (R 266) the accused freely admitted his participation in the crime alleged in Particulars 2 under the Charge (R 287-290) but based his defense upon superior orders received by him from accused Gauleiter and Defense Commissar HILDEBRANDT (R 277-279). He testified that he would not have gone out to kill the flyers nor would he have given orders to kill them, except for the order received from accused HILDEBRANDT (R 300) and the standing orders from Hitler that, when the code word "parachutists" was given, parachutists were to be destroyed at once (R 315, 316, 321, 330). He was trained as a soldier in the First World War to obey every order (R 335). Severe action would have been taken against him, if he had refused to obey accused HILDEBRANDT's order (R 367, 368). "I would have been shot or put in a concentration camp if I wouldn't follow his orders" (R 391, 392). The accused further testified that the orders of the Party were superior to police or Landwacht orders (R 394). The prosecution witness Koerber testified that all Party officials were sworn to "unconditional obedience" (R 36). The accused claimed that he believed at the time that the executed flyers were "terror flyers" or spies (R 285, 287, 382-384).

Sufficiency of Evidence: The evidence establishes that the accused relayed orders from superiors to kill the flyers, and by his own admissions he issued orders of his own and took affirmative action to help collect the flyers and to assure that subordinate personnel would promptly kill them. The Court might well have concluded that the accused, a high official in a vital Nazi organization, voluntarily participated in the killings; that he did not act in the presence of superiors; that his desire to cooperate with and please superiors was stronger than other considerations; that he did not act under immediate compulsion; and that as to superior orders he failed to meet the

burden of proof required by pertinent authorities discussed in Section V, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by Else Bollow, wife of the accused, 6 June 1947; the accused, 4 October 1947, 25 October 1947; and by Dr. Wolfgang Hollensteiner, German lawyer, 24 October 1947.

Recommendation: That the findings and sentence be approved.

3. Karl GRONWALDT

Nationality:	German
Age:	54
Civilian Status:	City official and merchant
Party Status:	Member of Nazi Party with position as Kreisamtsleiter
Military Status:	Unknown
Plea:	NG Charge and Particulars 1 and 2
Findings:	G Charge and Particulars 1 and 2
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he received the order to search for and kill enemy flyers from accused HILDEBRANDT through the air raid communication net on 21 June 1944 (R 419, 420). He immediately relayed the order to accused Ortsgruppenleiter MULLER by telephone (R 420, 421). Then he requested accused BOLLOW by telephone to come to the Kreis headquarters, where he gave accused BOLLOW the HILDEBRANDT order (R 421, 446, 447). This was corroborated by the testimony of accused BOLLOW (R 278, 279, 312). The accused further testified that he and BOLLOW then picked up accused HASELOW; that the three of them went by the crashed plane and then on to Muehleneichsen, where they had heard that enemy flyers were being held (R 422); and that accused BOLLOW went in the police station and later came out with the two flyers (R 423, 424). After the flyers were placed in the car, accused BOLLOW said, "Drive ahead." The accused further testified that he and accused HASELOW then left with them to carry out the order of the Reichs Defense Commissar, accused HILDEBRANDT (R 424), "to finish the

parachutists off" (R 425). After a short drive to Dalberg, where accused PENZIEN was waiting to go hunting with accused HASELOW, the flyers were transferred to accused PENZIEN's car. Accused PENZIEN was told (apparently by the accused) about the orders to kill the flyers. Thereupon the accused returned to Muehleneichsen for accused BOLLOW (R 425). The accused and accused BOLLOW returned later that day to view the bodies in the woods near Pingelshagen (R 426). Accused HASELOW testified that he and accused PENZIEN killed the flyers (R 507).

In regard to the killing alleged in the Charge and Particulars 1 thereunder, the accused has also admitted his participation by stating in his extrajudicial sworn statement:

> "However, I told MUELLER to determine whether flyers were in his vicinity, and if they were captured, to take them and shoot and kill all pilots. - - - Yes, later that day, I found out that MUELLER shot and killed the pilot" (R 192; P-Ex 11, p. 3).

The accused also admitted in his testimony that he gave the order to accused MULLER (R 421), which accused MULLER confirmed (R 552). The latter testified that he killed the flyer because of the order received from this accused (R 560).

Accused BOLLOW testified that this accused never told him that he did not desire to participate in killing the flyers (R 378).

The record contains much additional evidence concerning the participation in the killings by the accused (R 193, 195, 199, 200, 202, 203, 206, 237, 278-280, 453, 509, 519; P-Exs 12-20, 26 p. 2).

Evidence for Defense: The accused testified that before they reached Muehleneichsen, accused HASELOW told him that the plane, before it crashed, " --- had flown several circles and that there were shots being fired from the plane --- on his column of laborers where he, himself, and his grandchild were" (R 423). He further testified that the flyers were wearing civilian shoes, had no insignia on their combination suits and were civilian clothing underneath (R 426, 427).

In interposing the defense of superior orders, the accused testified:

> "If I had not relayed this order, a thing I did only with a very heavy heart and under duress because this order did not correspond to my way of feeling, I would either have been shot or put in a concentration camp" (R 436).

"--- and I would not have only been playing with my own life but also with the life of my family. That is what I feel, that is my idea" (R 439).

"It was not in my power to stop the execution of this order or this action" (R 476).

Sufficiency of Evidence: The accused, in his position as an important Nazi official, relayed orders as to killing the flyers, gave direct orders to a subordinate to kill the flyers, and personally aided in collecting some of them for subordinates to kill. The Court might well have concluded from the evidence that the accused participated voluntarily and willingly; that his desire to please and cooperate with superiors was stronger than other considerations; that at least part of his participation was not in the presence of a superior; that he did not act under immediate compulsion; and that he failed to meet the burden of proof required by pertinent authorities discussed in Section V, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by Elisabeth Gronwaldt, wife of the accused, 26 April 1947, 11 September 1947, 29 September 1947, and one undated; and by the accused 15 July 1947, 26 August 1947, and 4 November 1947.

Recommendation: That the findings and sentence be approved.

4. Kurt MULLER

Nationality:	German
Age:	45
Civilian Status:	Farmer
Party Status:	Member of Nazi Party with position as Deputy Ortsgruppenleiter
Military Status:	Unknown
Plea:	NG Charge and Particulars 1
Findings:	G Charge and Particulars 1
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he was a deputy ortsgruppenleiter of Kreis Schwerin in Gau Mecklenburg (R 548). Accused GRONWALDT testified, as well as stated in his extrajudicial sworn statement,

and the accused admitted in his testimony that on 21 June 1944 he received by telephone from accused GRONWALDT the order of accused HILDEBRANDT to search for and kill all Allied flyers (R 420, 421, 551, 552, 192; P-Ex 11 p. 3). The accused testified that he picked up accused SCHRODER and gave him the gauleiter's order; that together they started the search; that after a short time they met a policeman with a flyer (R 553) and took custody of him (R 554). He caused the flyer to walk along beside the car for a short distance, while the flyer was allowed to finish a cigarette, "then I stepped out of the car, walked behind the parachutist, and then I shot him" (R 557). The accused further testified that he and accused SCHRODER then dragged the body from the road and covered it with rape seed (R 558). Accused BOLLOW testified that this accused reported to him that he had killed the flyer "while trying to escape" (R 379). The accused testified that he was alone with the flyer when he made up his mind and fired the shots. He returned to the scene later on the same day with a policeman and Ortsgruppenleiter Roepecke and showed the dead body to them (R 558). Of the shooting the accused testified: "I had meant to shoot him when he finished smoking his cigarette, and that is just what I did" (R 592) (Also, see R 199, 202, 203, 210, 237, 280, 293, 605, 610; P-Exs 15 p. 5, 17 p. 3, 19 p. 3, 25, 26, 27 pp. 2-7). The accused admitted in his testimony that he was the superior of accused SCHRODER (R 572); that he had only talked by telephone to accused GRONWALDT before he killed the flyer (R 574); and that he never reported to anyone that the plane had fired upon him and his workers prior to dropping parachutists (R 575). Wilhelm Buhlert stated in his extrajudicial sworn statement that he "recognized the body as the American flyer whom I had seen shortly before with MULLER" (R 242; P-Ex 29 pp. 3, 7).

Evidence for Defense: The accused testified that, at about 1030 hours on the morning of 21 June 1944, he and his field workers were fired upon by a low flying plane which flew on (R 549). Soon thereafter he saw parachutists who had jumped from a plane from an altitude of approximately 150 meters, and the plane continued flying out of sight (R 550). The plane was not being attacked. The accused did not know what happened to it (R 551).

The accused interposed the defense of superior orders. He testified that he shot the flyer in obedience to orders by Bormann, Hitler, Himmler and accused HILDEBRANDT. He believed that he would be shot himself, if he refused to obey the orders (R 559, 560).

Sufficiency of Evidence: The accused, in his important position as an official in a vital Nazi organization, relayed orders from superiors, aided in collecting one of the flyers, and personally killed him. The Court might well have concluded from the evidence that the accused willingly and voluntarily killed the flyer; that his desire to please and cooperate with his superiors was stronger than other considerations; that he did not act in the presence of a superior; that he did not act under immediate compulsion; and that he failed to meet the burden of proof required by pertinent authorities discussed in Section V, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by accused's wife, Gertrude Muller, 15 May 1947, and 20 May 1947; Wilhelm Zerrahn, 18 May 1947; accused's mother, Martha Muller, 19 May 1947; accused's sister, Henny Hintzpeter, 20 May 1947; Frieda von Zedletz, 20 May 1947; and by the accused 11 August 1947 and 20 November 1947.

Recommendation: That the findings and sentence be approved.

5. Fritz SCHRODER

Nationality:	German
Age:	47
Civilian Status:	Farmer
Party Status:	Member of Nazi Party with position as Blockleiter
Military Status:	Unknown
Plea:	NG Charge and Particulars 1
Findings:	G Charge and Particulars 1
Sentence:	20 years, commencing 31 March 1947

Evidence for Prosecution: The accused testified that at about 1130 hours on 21 June 1944, he received orders by telephone to get ready to

accompany accused MULLER (R 604). In the car accused MULLER gave him the HILDEBRANDT orders (R 605). In his extrajudicial sworn statement, the accused admitted that he acted with accused MULLER in taking the flyer away from two Wehrmacht soldiers (R 238; P-Ex 27 p. 2); that he was told by accused MULLER that the flyer was to be shot (R 238; P-Ex 27 pp. 4, 5); that he saw accused MULLER shoot and kill the flyer; that he helped drag the body off the road, after which they left together in the car; and that accused MULLER said to keep the matter secret (R 238; P-Ex 27 pp. 5-7). (See also R 239; P-Ex 28). Buhlert stated in his extrajudicial sworn statement that he saw another man in a brown party uniform together with accused MULLER and the flyer shortly before the killing and near the place where the flyer was killed (R 242; P-Ex 29 p. 2). Fehlandt stated in his extrajudicial sworn statement that he saw two men get into the car and drive away from the scene of the killing shortly after he heard the shots fired (R 243; P-Ex 30 p. 2).

Evidence for Defense: The accused denied in his testimony that he had any part in killing the flyer. He also denied knowing that accused MULLER intended to shoot the flyer (R 610). The accused contended that he was 200 meters away when accused MULLER fired the shots (R 609) and that accused MULLER told him that the flyer was shot because he attempted to escape (R 610). The accused repudiated the broad admissions formerly made in Prosecution Exhibit 27 (R 612, 613, 617-621). Accused MULLER stated in his extrajudicial sworn statement in referring to the accused: "He held himself aloof. He did not want to be connected with it at all" (R 237; P-Ex 26 p. 4).

Sufficiency of Evidence: His participation in the killing covered by Particulars 1 is clearly established. It is apparent that he desired to cooperate with and please high officials in his Nazi organization. It appears that he may have had a slight reluctance to being a participant in the killing. However, by the sentence imposed, the Court gave ample consideration to any mitigating factors present.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by accused's sister, Anna Klages, 5 May 1947 and 21 May 1947.

Recommendation: That the findings and sentence be approved.

6. Ewald HASELOW

Nationality:	German
Age:	50
Civilian Status:	Forester
Party Status:	Member of Nazi Party with position as Ortsgruppenleiter
Military Status:	Unknown
Plea:	NG Charge and Particulars 2
Findings:	G Charge and Particulars 2
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he was acting ortsgruppenleiter of Gross-Trebbow in Kreis Schwerinland, Gau Mecklenburg (R 480). He admitted in his extrajudicial sworn statement that, before the flyers were taken from the police, he and accused BOLLOW and GRONWALDT agreed, "We shall kill these prisoners" (R 206; P-Ex 20 p. 2). He also admitted in his statements that he shot one of the flyers with a hunting rifle and killed him (R 206, 207; P-Exs 20 p. 3, 22 pp. 1, 3). (See also R 213, 214, 208, 209; P-Ex 23 p. 2; 24 p. 2). The accused testified that he and accused PENZIEN were alone with the two flyers and admitted that he and accused PENZIEN each shot one of them (R 507, 508). He further admitted that he had previously requested accused PENZIEN to shoot one of them (R 491). The accused testified that after telephoning a report of the killing for accused BOLLOW, he and accused PENZIEN "continued to go hunting" (R 493). Accused PENZIEN testified that neither he nor this accused was the superior of the other (R 536).

Evidence for Defense: The accused in his testimony relied for his defense entirely upon superior orders of accused HILDEBRANDT (R 419) as relayed to him by accused GRONWALDT and BOLLOW (R 488, 489). He testified that he would have been shot, if he had refused to carry out the orders (R 494). He asserted that the plane from which the flyers landed had fired one burst of fire at him and his small grandson and had also fired at a group of Russian prisoners of war and German workers, while flying very low (R 482, 483).

The accused testified that the flyers were civilian clothes under their combination suits (R 491, 492). Accused GROMWALDT also testified that the flyers were civilian clothing (R 426, 427).

Sufficiency of Evidence: It is clear that the accused shot one of the flyers covered by Particulars 2. The Court might well have concluded from the evidence that the accused willingly and voluntarily killed the flyer; that a superior was not present; that his desire to please and cooperate with superior officials in his vital Nazi organization was stronger than other considerations; that he did not act under immediate compulsion; and that he failed to meet the burden of proof required by pertinent authorities discussed in Section V, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by accused's wife, Elisabeth Haselow, 25 August 1947; Wilhelm Tabel, 10 September 1947; accused Wilhelm BOLLOW, 10 November 1947; and by the accused, 20 November 1947.

Recommendation: That the findings and sentence be approved.

7. Franz PENZIEN

Nationality:	German
Age:	51
Civilian Status:	Kreis construction man
Party Status:	Member of Nazi Party with position as Kreisstellenleiter
Military Status:	Unknown
Plea:	NG Charge and Particulars 2
Findings:	G Charge and Particulars 2
Sentence:	Death by hanging

Evidence for Prosecution: Accused HASELOW testified, as well as stated in his extrajudicial sworn statement, and the accused admitted in his testimony and in his extrajudicial sworn statement that he met accused GROMWALDT and HASELOW, who had the two flyer prisoners in custody, at Dalberg; that accused HASELOW said that the flyers had to be shot on orders of accused BOLLOW; that the prisoners were transferred to the accused's car; that he

and accused HASELOW drove with them to the woods of Pingelshagen, where each shot one of the flyers in the back; that the accused shot with a 7.65 pistol; that both flyers were killed; and that the flyers had made no attempt to escape (R 507, 508, 537, 208, 206; P-Exs 23 pp. 2, 3; 20 p. 3). The accused claimed in his extrajudicial sworn statement that he at first refused, but that he then went along to do the killing (R 208; P-Ex 23 p. 2). This was corroborated by the testimony of accused GRONWALDT (R 426). It was shown that neither the accused nor accused HASELOW was the superior of the other (R 536). Neither of the prisoners could speak German (R 544, 545).

Evidence for Defense: The accused relied for his defense upon the plea of superior orders. He testified that he believed that he would be shot within the next few days, if he refused to obey the order (R 523). He also testified that he believed the flyers to be "terror flyers" (R 522, 523). The flyers wore civilian clothing under coveralls. The plane had shot at civilians (R 520) (See also R 482, 483, 491, 492, 426, 427).

Sufficiency of Evidence: It is clear that the accused shot and killed one of the flyers covered by Particulars 2 at a point removed from superior officials in his Nazi organization. The Court might well have concluded from the evidence that the accused willingly and voluntarily killed the flyer; that his desire to please and cooperate with his superiors was stronger than other considerations; that he did not act under immediate compulsion; and that he failed to meet the burden of proof required by pertinent authorities discussed in Section V, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by the accused's wife, Luise Penzien, 25 April 1947, 24 May 1947, 1 June 1947 and 25 August 1947; and by the accused, 2 October 1947 and 20 November 1947.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the persons of the accused and of the subject matter.

Severance. The Court did not abuse its discretion in denying the motion by the defense for severance of the accused as defendants. Severance is not a right or a privilege of the accused. The applicable rule is that such a motion is addressed to the sound discretion of the Court. Under the procedure applicable to the trial of war crimes, the test is whether an injustice would result to accused and not whether purported substantial rights of accused would be violated, if the motion were overruled, because accused have no right in this connection (United States v. Altfuldisch, et al., opinion DJAWC, February 1947, and United States v. Becker, et al., opinion DJAWC, May 1947, commonly known as the Mauthausen and Flossenburg Concentration Camp cases, respectively).

Superior Orders. All of the accused, as shown in Section IV, supra, directly or by implication sought to justify their actions by offering evidence to show that they respectively were acting in compliance with "superior orders". Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd 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. Thomas, opinion DJAWC, December 1945; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, February 1946; and French Republic v. Wagner, et al., Court of Appeals (France), July 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 in fact, 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 63, "Military Occupation and the Rules of the Law", by Ernst Fraenkel; United States v. Bury, et al., opinion DJAWC, September 1945, United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWC, December 1946).

Terror Flyers and Spies. Each of the accused introduced evidence that bombing attacks and low flying strafing had occurred in Gau Mecklenburg prior to 21 June 1944, and that a number of civilians had been killed and wounded, especially in attacks upon railway trains. There was also testimony that a low flying plane had fired upon civilians in the area where the flyers concerned in this case were killed some ten or fifteen minutes before parachutes were seen descending. However, no witness testified positively to seeing the parachutes come from the plane that did the firing. There was also testimony that each of the flyers who was killed wore civilian clothes under his flying combination suit, and that the accused believed the flyers to be spies and "terror flyers". However, it is quite inconceivable that the crew of a plane in distress, and immediately before taking to parachutes to surrender or in an endeavor to act as spies, would fire upon people who they know in all probability would be their captors within a few moments. Moreover, it is shown that the accused knew the flyers could not speak German, which casts a shadow on the sincerity of the assertions by the accused that they believed the flyers to be spies.

In any event further discussion of the evidence and the significance of the alleged action by the flyers is not necessary, because while under inter-

national law a person who has been found guilty of acting as a spy or of having committed a war crime may be legally executed, the execution must be preceded by a proper trial and sentence by lawfully constituted authority. There is no basis in law nor in the universally accepted standards of human conduct for the type of outlawry practiced by the accused in this case (Volume II, Oppenheim's "International Law," Sixth Edition, pages 331, 456, 457; Article 30, Annex to Hague Convention No. IV of 18 October 1907, set forth in TM 27-251, War Department, U. S. Army, "Treaties Governing Land Warfare," 7 January 1944; Volume 2, "Wheaton's International Law," Seventh Edition, pages 220, 240).

Service of Charges. It appears from the record that the charge and particulars were served on the accused on 19 February 1947 and trial was begun on 20 February 1947. However, no injustice resulted to the accused, inasmuch as the accused named in the first particulars were served with a charge and like particulars in October 1946, those named in the second particulars were served with a charge and like particulars in May 1946, and accused HILDEBRANDT, the only accused covered by Particulars 3 and 4, was found not guilty as to both of those particulars (R 11). It is obvious that the charge and particulars on which the accused were tried were merely drafted and served as a consolidated charge and particulars superseding those formerly served. Furthermore, provision was made whereby the defense could secure a continuance in the event one was needed to properly defend the case (R 11).

Form of Charges. The unusual manner in which the charge and particulars were drafted was not raised during the trial, but merits discussion. Pertinent regulations contemplate that each "charge" shall disclose one offense only (Section 5-323, Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Headquarters, US Forces, European Theater, 30 November 1945; see also Legal Form No. 8 set forth in Section 5-908 thereof). Provision is made in said Legal Form No. 8 for only one particulars following each charge. However, the regulations contain no specific prohibition against including more than one particulars under one allegation of violation of law, e.g., violation of the law of war. In reading

the charge sheet used in this case, it is clear on the face thereof that each particulars must be read in conjunction with the allegation of violation of the law of war, which is common to the respective particulars. Moreover, the form of the charge sheet substantially adheres to the practice recognized in courts-martial in instances where a number of specifications allege separate and distinct violations of the same Article of War ("Manual for Courts-Martial, U.S. Army", 1928, paragraph 24 and Appendix 4, page 238).

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and sentences be approved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

V. H. McCLINTOCK
Attorney
Post Trial Branch

Having examined the record of trial, I concur this _____ day of _____ 1948.

C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes