

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

UNITED STATES

v.

JÜRGEN STROOP

et al

Case

No. 12-2000, etc.

REVIEW AND RECOMMENDATIONS
OF THE DEPUTY JUDGE ADVOCATE
FOR WAR CRIMES

and

ACTION BY THE
APPROVING AUTHORITY

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

2 September 1947

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Jurgen STROOP, et al.

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 10 January 1947 to 21 March 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

CHARGE 1: Violation of the Laws of War.

Particulars: That the accused, Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Arthur FÜHR, Wilhelm HÖHLER, Hans EICHEL, Josef Johann KIWITT, Wilhelm ALBRECHT, Hermann MÖLLER, Wilhelm Friedrich GOEHRENDT, Paul NAHRGANG, Philipp HAMMANN, Bernard FAY, Georg BEST, Erwin GOSS, Heinrich Matthias MICHELY, Leonard BRANNER, Julius LASSAK, Fritz GIRKE, Heinz HELLENBROICH, Karl Franz STATTMANN and Michael RAAF, German nationals, between the 9th day of December 1941 and the 8th day of May 1945, at sundry places within the then German Reich, individually and collectively, as principals, accessories, leaders organizers, instigators and accomplices, did engage in, formulate and participate in a common plan or design to commit, or cause to be committed, violations of the Laws of War and pursuant thereto did, wilfully, deliberately and wrongfully encourage, aid, abet, order and participate in, or took a consenting part in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, including killings, beatings, tortures, abuses and indignities.

CHARGE 2: Violation of Par. 1(d), Article 2 of Control Council
Law No. 10.

Particulars: That the accused, Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Arthur FÜHR, Wilhelm HÖHLER, Hans EICHEL, Josef Johann KIWITT, Wilhelm ALBRECHT, Hermann MÖLLER, Wilhelm Friedrich GOEIRENDT, Paul NAHRGANG, Philipp HAMMANN, Bernard FAY, Georg BEST, Erwin GOSS, Heinrich Matthias MICHELY, Leonard BRANNER, Julius LASSAK, Fritz GIRKE, Heinz HELLENBROICH, Karl Franz STATTMANN and Michael RAAF, German nationals, were members of organizations declared criminal by the International Military Tribunal in Case No. 1, i. e., the Leadership Corps, Die Geheime Staats Polizei (commonly known as the Gestapo), Die Sicherheitsdienst der Reichsfuehrer SS (commonly known as the SD), or Die Schutzstaffeln der National Socialistischen Deutschen Arbeitspartei (commonly known as the SS), after 1 September 1939, with knowledge that the said organizations were being used in the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, annexed to the agreement establishing the Tribunal, dated 8 August 1945, or were personally implicated in the commission of such criminal acts.

CHARGE 3: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Julius LASSAK and Leonard BRANNER, German nationals, did, on or about 3 October 1944, at or near GIESSEN, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of an unknown member of the United States Army who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 4: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Wilhelm HÖHLER and Arthur FÜHR, German nationals, did, on or about 19 October 1944, at or near WIESBADEN, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Sgt. Willard F. PERRY, ASN 36591162, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 5: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN and Arthur FÜHR, German nationals, did, on or about 30 December 1944, at or near DELKENHEIM, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be T/Sgt. Robert W. GARRISON, ASN 33355463, who was then and

there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 6: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Fritz GIRKE, Heinz HELLENBROICH, Karl Franz STATTMANN and Michael RAAF, German nationals, did, on or about 15 February 1945, at or near BENSHEIM, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Ray R. HERMANN, ASN 0-695168, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 7: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Hans EICHEL, Josef Johann KIWITT, Wilhelm ALBRECHT, Hermann MÖLLER, and Wilhelm Friedrich GOEHRENDT, German Nationals, did, on or about 22 February 1945, at or near BIEBER, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be William A. DUKE, 2nd Lt., Air Corps, AUS, ASN 0-825602, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 8: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Hans EICHEL, Josef Johann KIWITT, Paul NAHRGANG, Philipp HAMMANN and Bernard FAY, German nationals, did, on or about 22 February 1945, at or near OFFENBACH, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Archibald B. MONROE, Jr., 2nd Lt., Air Corps, ASN 0-834832, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 9: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Georg BEST, Erwin GOSS and Heinrich Matthias MICHELY, German nationals, did, on or about 18 March 1945, at or near WALLRABENSTEIN, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Jimmie R. HEATHMAN, ASN 37630603, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 10: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Fritz GIRKE, Heinz HELLENBROICH, Karl Franz STATTMANN and Michael RAAF, German nationals, did, on or about 24 March 1945, at or near BENSHEIM, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of two members of the United States Army, believed to be Lt. William H. FORMAN, T.D., AGO Card No. 652973, and Pvt. Robert T. McDONALD, ASN 32773939, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich.

All accused pleaded not guilty to all charges and particulars in which they were named.

III. FINDINGS AND SENTENCES:

The findings of the Court and sentences imposed are as follows: (The numbers preceding the names are those assigned by the Court to the respective accused. These numbers will be used hereinafter to facilitate reference to the various accused.)

FINDINGS

ACCUSED	NOT GUILTY OF CHARGES NOS.	GUILTY OF CHARGES NOS.	SENTENCES
1. STROOP, Jurgen	7, 8, 10	1, 2, 3, 4, 5, 6, 9	Death by hanging
2. TRUMMLER, Hans	3, 7, 8, 9, 10	1, 2, 4, 5, 6	Death by hanging
3. SOMANN, Otto	3, 4, 5, 6, 7, 8, 9, 10	1, 2	4 years, commencing 30 May 1945
4. FUHR, Arthur		1, 2, 4, 5	Death by hanging
5. HOHLER, Wilhelm		1, 2, 4	Death by hanging
6. EICHEL, Hans	2	1, 7, 8	Death by hanging
7. KIWITT, Josef Johann	2	1, 7, 8	Death by hanging
8. ALBRECHT, Wilhelm	2	1, 7	15 years, commencing 29 May 1945
9. MOLLER, Hermann	1, 2	7	Death by hanging
10. GOEHRENDT, Wil- helm Friedrich	1, 2, 7		
11. NAHRGANG, Paul	1, 2	8	5 years, commencing 6 December 1945

FINDINGS

ACCUSED	NOT GUILTY OF CHARGES NOS.	GUILTY OF CHARGES NOS.	SENTENCES
12. HAMMANN, Philipp	1, 2	8	15 years, commencing 12 May 1945
13. FAY, Bernard	1, 2	8	5 years, commencing 22 May 1945
14. BEST, Georg		1, 2, 9	15 years, commencing 8 May 1945
15. GOSS, Erwin		1, 2, 9	Death by hanging
16. MICHELY, Heinrich Matthias	1	2, 9	Death by hanging
17. BRANNER, Leonard	Trial in absentia commenced — no findings or sentence.		
18. LASSAK, Julius	3	1, 2	3 years, commencing 6 May 1945
19. GIRKE, Fritz		1, 2, 6, 10	Death by hanging
20. HELLENBROICH, Heinz		1, 2, 6, 10	Death by hanging
21. STATTMANN, Karl Franz		1, 2, 6, 10	Death by hanging
22. RAAF, Michael		1, 2, 6, 10	Death by hanging

IV. SUMMARY OF EVIDENCE:

1. *Common Plan and Design:* Orders and directives to kill unarmed prisoners of war were conceived and passed down by various persons holding high official positions in the hierarchy of the then German Reich. These orders were transmitted through official channels to accused STROOP, SOMANN, and TRUMMLER in Wehrkreis VII. STROOP was the Higher SS and Police Leader in said Wehrkreis, SOMANN was the Inspector of the Security Police and Security Service and was later succeeded by accused TRUMMLER. These accused held conferences at various times concerning these orders among themselves and with their subordinates, and they passed them on through official channels to lower commands. Acting in accordance with these orders, their subordinates killed unarmed and surrendered American prisoners of war.

Most of the accused in this case admitted their guilt and the respective parts played by each in this common plan and design to violate the laws of war. Such confessions of guilt appear in the extrajudicial sworn statements made by them and in their testimony given during the trial. Most of them contended that they acted pursuant to superior orders emanating from higher civil and military authority. This and other legal questions raised during the trial will be discussed in Section VI, post.

2. *Organization of German Police:* Himmler, as Reichsführer SS and Chief of the German Police, by decree dated 26 June 1936 reorganized the German Police into two separate branches, i.e., Ordnungspolizei (ORPO, meaning Order Police or regular police) and the Sicherheitspolizei (SIPO, meaning Security Police).

The Order Police was composed of the uniformed forces consisting of the schutzpolizei (protection police), the gendarmerie (rural police), and the administrative police. The Security Police was made up of the Criminal Police (short title KRIPO) and the State Secret Police (Gestapo). The Security Service (SD) was consolidated with the Security Police (SIPO) by decree of 27 September 1939. The consolidation placed both the Security Police and Security Service under the Reich Security Head Office (RSHA), which was at the same time both one of the principal offices (Hauptamt) of the SS under Himmler as Reichsführer SS and an office in the Ministry of the Interior under Himmler as Chief of the German Police. The SD was the intelligence agency of the SIPO. This change, above referred to, necessitated the appointment of certain high police officers to supervise the work of the ORPO and SIPO in their respective spheres and also to act as liaison officers with the local governments and the central police departments in Berlin. To each wehrkreis or military district was assigned an inspector of ORPO and of SIPO. The accused SOMANN was appointed to the latter position in Wehrkreis XII and was subsequently succeeded by accused TRUMMLER. Their tasks were to co-operate with the gauleiters and commander of the wehrkreis to which they were appointed as well as with the administrative authorities. Subsequently, in order to concentrate police power in the hands of a trusted few, Himmler elevated the inspectors of ORPO and the inspectors of SIPO to the positions of befehlshaber der ORPO (BDO) and befehlshaber der SIPO und des SD (BDS). They were then commanders. As commanders, they had complete command of their respective forces and were responsible for their training, preparedness, equipment, etc.

Later, Himmler appointed a police leader in each wehrkreis, who was his personal representative. For this job he chose the SS fuhrer or leader of the SS forces in the SS oberabschnitte. (The oberabschnitte was the territorial division of the SS in the German Reich coextensive with the wehrkreis or military district.) As such, he was the head of all police forces. In Wehrkreis XII he appointed the accused STROOP, who was at that time SS leader, as Higher SS and Police Leader. By virtue of his rank and position, he was the "Little Himmler" in the wehrkreis. At his disposal he had Allgemeine SS regiments, units of the Waffen SS in local garrison and all branches of Regular Police, Security Police and Security Service in the wehrkreis. His job was to assure co-operation between the regional SS, police officers, and the local military and civil authorities and in the event of emergencies was to take over command of the combined SS and police forces in his area. Himmler gave STROOP this extraordinary authority in September 1944.

3. Chain of Command:

a. *From the Nazi Hierarchy:* Himmler, as Reichsminister of the Interior and Commander-in-Chief of the SS and German Police, was the supreme commander. He had a direct channel of command to the Reichssicherheitshauptamt (RSHA), Reich Security Head Office, headed by the Chief of the Security Police and Security Service, General Kaltenbrunner, and to the Hauptamt Ordnungspolizei (ORPO), Head Office, Order Police, headed by the Chief of the Order Police, General Wunnenberg. Both of these head offices were located in Berlin. Included in the organization of these head offices were the "Amts", i.e., the departments similar to our general staff sections. From these head offices there existed a channel of command to the Higher SS and Police Leader and the commander of the Security Police and Order Police in Wehrkreis XII. There was also a direct channel of command from Himmler to the Higher SS and Police Leaders (R 61; P-Ex 9).

b. *From the Higher SS and Police Leader:* From the Higher SS and Police Leader in the wehrkreis there was a direct channel of command to the commander of the Security Police and Order Police in the wehrkreis. The Higher SS and Police Leader was the commander of all police forces in the wehrkreis. STROOP's territorial command consisted of Wehrkreis XII and that part of Wehrkreis IX known as Hessen. The entire area under his command was called the Rhein-Westmark area. By virtue of his rank of lieutenant general, he was the appointing and reviewing authority of the SS and police courts and in charge of the prisoners of war in the wehrkreis. He was also commander of the SS in his area, maintaining SS offices at Frankfurt, Saarbrücken and Koblenz. His area was comprised of three gaus, Gau Westmark, Gau Hessen-Nassau, and Gau Moselland, the last named included Luxembourg. Each gau was governed by a gauleiter. In the performance of his duties STROOP was assisted by a chief of staff and a staff organized into "Amts". These "Amts" were similar to those in the head offices of both branches of the police in Berlin. The wehrwolf undertaking, sabotage activities behind enemy lines, in his wehrkreis was under his command and the accused BEST aided in the supervision thereof (R 61, 71; P-Exs 9, 13). Accused GOSS was in charge of the wehrwolf school located at Wallrabenstein. Accused MICHELY was an instructor in the school (R 1032).

c. *From Inspector and Commander of the Security Police and Order Police:* The inspector or commander of the Security Police and Security Service in Wehrkreis XII, the accused SOMANN and his successor the accused TRUMMLER had a direct channel of command to the branch offices in the wehrkreis, viz., the Criminal Police (KRIPO), the State Secret Police (Gestapo), and the Security Service. The Gestapo headquarters for this wehrkreis maintained offices at Darmstadt, Frankfurt, Koblenz, and Saarbrücken. The Darmstadt office was under the command of the accused GIRKE assisted by the accused HELLENBROICH.

These branch offices in turn had a channel of command down to the suboffices in their respective areas.

The channel of command for the Order Police followed the same pattern. The commander of the Order Police had a channel of command to the higher police authorities and state governments, the lord mayor, national police administration headquarters, and district police authorities. The higher police authorities and state governments were of wehrkreis level and the last three of regional and local level.

The national police administration headquarters had jurisdiction over the SCHUPO (protective police) in large cities with channels of command to police law enforcing agencies subordinate thereto. The district police authorities had jurisdiction over police agencies in small towns and administered police protection through the gendarmerie (R 61, 71; P-Exs 9, 13).

4. *Incidents:* The incidents covered by charges 3 through 10 will hereinafter be referred to as "incident number 3", "incident number 4", etc. There follows a description of these incidents:

a. *Incident Number 3:* On or about 3 October 1944 in the vicinity of Giessen, Germany, the accused LASSAK turned over a captured American flyer to the Gestapo. The flyer was shot by BRANNER in conformity with orders issued by his immediate superior Wintzer. The shooting was done in the Philosophen forest, near Giessen, Germany, on or about 3 October 1944.

b. *Incident Number 4:* On or about 19 October 1944 accused TRUMMLER ordered accused HÖHLER and FUHR and one Fraund, Gestapo agents under his command, to kill a captured American flyer who was in the Gestapo headquarters in Wiesbaden. In conformity with this order, HÖHLER, FUHR and Fraund drove the flyer in an official car toward Frankfurt. On the Wiesbaden-Frankfurt road, the flyer was ordered out of the car and shot by Fraund.

c. *Incident Number 5:* On or about 30 December 1944 accused TRUMMLER ordered accused FUHR and one Fraund, both Gestapo agents under his command, to kill a captured American flyer who was in the Gestapo headquarters in Wiesbaden. That evening, in conformity with this order, FUHR and Fraund drove the flyer in the direction of Frankfurt, Germany. On the Wiesbaden-Frankfurt road the flyer was ordered out of the car and they both shot him, resulting in his death.

d. *Incident Number 6:* On or about 15 February 1945 a captured American flyer was brought to the Gestapo headquarters in Bensheim, Germany. Accused GIRKE was in charge of the headquarters. He telephoned accused TRUMMLER, his superior, for instructions regarding the disposition to be made of this flyer. Upon being informed by TRUMMLER that the flyer had to be shot, he ordered his assistant, accused HELLENBROICH, to have accused STATTMANN and RAAF, Gestapo agents under his command, kill the flyer. In conformity with this order, accused STATTMANN and RAAF walked the flyer to a forest

in the vicinity of Bensheim where they both shot the flyer, resulting in his death.

e. Incident Number 7: On or about 22 February 1945, a captured American flyer was brought to the police station in Bieber, Germany. Accused ALBRECHT, a police lieutenant, was the commanding officer of the police station. Accused MOLLER and GOEHRENDT were policemen under his command. Accused EICHEL, a lieutenant colonel of the police, was the police director of the area and accused KIWITT, a police captain, was one of EICHEL's assistants. While the flyer was being interrogated by ALBRECHT and others, EICHEL and KIWITT entered the police station. EICHEL tore the scarf from the flyer's neck and hit a cigarette out of his mouth. Both EICHEL and KIWITT reprimanded ALBRECHT and the others present for showing consideration to the flyer. In ALBRECHT's office EICHEL gave him an order to shoot the flyer. ALBRECHT refused to do this, whereupon EICHEL ordered MOLLER to kill the flyer. Outside the police station both EICHEL and KIWITT incited the crowd by making inflammatory remarks directed at the flyer. The flyer left the police station with MOLLER, accompanied by ALBRECHT and a policeman named Gomer. ALBRECHT ordered accused GOEHRENDT to follow them. In a forest near Bieber, MOLLER shot the flyer to death.

f. Incident Number 8: On or about 22 February 1945, accused GOEHRENDT turned over a captured American flyer to policemen Michel and Schneider in the Police station in Bieber, Germany, with instructions to deliver him to police headquarters in Offenbach. They took the flyer to Offenbach and reported to accused KIWITT who ordered them to kill the flyer. On the return trip an air raid alarm sounded and the policemen together with the flyer went to an air raid shelter on Bierbrauer Weg for cover. The air raid shelter consisted of an open area and an underground shelter one end of which was used as a command post by accused EICHEL. EICHEL was present in this underground shelter at the time. With the exception of the main gate the only other exit from the area was on Bierbrauer Weg. Near the main gate one of the policemen told accused NAHRGANG they had a flyer who was to be shot. NAHRGANG called for accused HAMMANN and FAY. They engaged in a whispering conversation and FAY was heard to say that this was an easy matter. Thereupon, FAY shoved and pushed the flyer toward the stairway accompanied by NAHRGANG and one of the policemen. In the meantime a policeman had given FAY his pistol. Suddenly, FAY fired the pistol into the air and shouted that a flyer was escaping. The flyer ran down the stairway toward the secondary exit. HAMMANN, who remained behind, ran to the main gate, took a carbine from the guard who was standing there and ran down Bierbrauer Weg to head off the flyer who could only come out of the secondary exit. Shortly thereafter the flyer came out and HAMMANN fired three shots, killing him.

g. Incident Number 9: On or about 18 March 1945 a captured American

flyer was brought to the wehrwolf school in Wallrabenstein, Germany, by accused MICHELY. MICHELY was an instructor in the school and accused GOSS was the director. GOSS ordered MICHELY to take the flyer to Idstein and kill him on the way. The order given by GOSS to MICHELY was in conformity with an order from accused STROOP through accused BEST. That evening, in conformity with this order, MICHELY took the flyer toward Idstein and shot him on the way.

h. Incident Number 10: On or about 24 March 1945 two captured American prisoners of war were brought to the Gestapo headquarters in Bensheim, Germany. Accused GIRKE ordered accused HELLENBROICH to have accused STATTMANN and RAAF kill the two prisoners of war in the garden in the rear of the headquarters. In conformity with the order STATTMANN and RAAF shot the two prisoners.

V. EVIDENCE AND RECOMMENDATIONS:

1. JURGEN STROOP

Nationality:	German
Age:	51
Civilian Status:	Unknown
Party Status:	Nazi party since 1 September 1932
Military Status:	SS Major General of the Waffen SS; Chief of the SS Main District Rhein-Westmark; Lieutenant General and Higher SS and Police Leader, Rhein-Westmark, from 9 November 1943; Allgemeine SS since 1 July 1932; Waffen SS since 1936
Plea:	NG Charges 1 through 10
Findings:	G Charges 1 through 8 and 9 NG Charges 7, 8 and 10
Sentence:	Death by hanging

Evidence for Prosecution: Accused was the Higher SS and Police Leader for the Rhein-Westmark area with the rank of lieutenant general in the SS since 9 November 1943 (R 289, 1947; P-Ex 41). As Higher SS and Police Leader, he was in command of the Order Police and Security Police in said area (R 227; P-Ex 35A, p. 9). The area was comprised of Wehrkreis XII and that part of Wehrkreis IX known as Hessen (R 65; P-Ex 11). The headquarters for the area was located in Wiesbaden, Germany (R 1947).

About the middle of September 1944, accused received an order, hereinafter referred to as the noninterference order, from Himmler to the effect that the police were not to interfere in actions by the civilian population against captured Allied flyers. The order was passed down from Himmler's office. This order contained a request that he transmit it to the commanders of the Regular Police and Security Police (R 91;

P-Ex 19). The accused subsequently transmitted it to the commander of the Order Police in his area. Later, at a conference held in his office, the order was read to the commanders of the Order Police and Security Police (R 98, 100; P-Exs 27A, 28A). He also discussed the order at a conference of the heads of the Order Police for Rhein-Westmark area held in Metz in 1944 (R 100; P-Ex 28A). At another conference held in his office in about October 1944, attended by accused TRUMMLER, commander of the Security Police, STROOP complained that the Order Police were not complying with Himmler's order (R 184—186, 202, 203, 215). He threatened to punish severely any members of the Order Police who protected captured flyers. At that time he directed that captured flyers should be turned over to the Security Police (R 126, 216). STROOP insisted upon strict obedience to his orders. In November 1944, he recommended severe punishment for a police official who gave aid to a captured flyer (R 129, 187). He also voiced approval of Goebbels' article published in a party newspaper inciting the German people against Allied flyers (R 92, 132; P-Ex 21). STROOP received his orders and directives from Himmler, Kaltenbrunner and Wunnenberg (R 199). In about September 1944, he received an order from Kaltenbrunner to the effect that captured parachuted flyers would be turned over to the SIPO and shot (R 96; P-Ex 26). He passed this order to the commanders of the Security Police, Regular Police and SS Colonels in command of SS Regiments (R 200, 201). During 1944 he received Bormann's order to the effect that no police action would be taken against the civilian population who lynched flyers (R 93, 201, 202; P-Ex 22). The Bormann order and all other principal orders were discussed by STROOP with commanders of the Order Police and Security Police (R 202).

STROOP passed these orders to agencies under his command. In the summer of 1944 it was known among police officials under his command in a kreis surrounding Koblenz that STROOP had passed down the noninterference order (R 227, 230; P-Exs 35A, pp. 14, 15, 37A, p. 7). In February 1945 this order was discussed in a conference of the commanders of the gendarmerie and schutzpolizei of the Koblenz area. It was agreed that captured flyers were to be turned over to the Gestapo and that the police should not interfere in clashes between the civilian population and the flyers (R 227; P-Ex 35A, pp. 15, 16). A written order from STROOP to the effect that all captured flyers be shot was also read at this meeting (R 230; P-Ex 37A, pp. 3—6). The shooting order and the order that flyers be turned over to the Gestapo were transmitted by STROOP to police presidents and police directors. This occurred in August or September 1944. These orders were marked "Secret" and were to be destroyed immediately after they were read (R 266, 267; P-Exs 56A, 57, p. 3). In June or July 1944, the shooting order was verbally transmitted by STROOP to the SS colonel in command of the Allgemeine SS in Saarbrücken (R 2127). In September 1944, at a conference of the leaders of the Allgemeine SS at his headquarters, STROOP reminded those present of the order to shoot flyers (R 2128, 2132).

During a police conference of the schutzpolizei of the Koblenz area in Wehrkreis XII held in August or September 1944 in Koblenz, those present were informed of the order issued by STROOP that flyers would be turned over to the Gestapo instead of the Wehrmacht. About two weeks later, the police officials received this order in writing, through channels, from STROOP's headquarters (R 230; P-Ex 37A, pp. 2-4).

As a result of these orders passed down by STROOP to the agencies under his command, captured American flyers were illegally killed by his subordinates. On or about 3 October 1944 three American flyers were turned over to a kreisleiter and another flyer was turned over to the Gestapo in compliance with these orders, in the Giessen area, incident number 3. These flyers were shot (R 267; P-Ex 57, pp. 3-5). On or about 19 October 1944, accused TRUMMLER ordered his subordinates to kill a captured flyer, incident number 4. This flyer was killed in conformity with the shooting order from Kaltenbrunner to TRUMMLER (R 2173). An order in the same form as the Kaltenbrunner order was also passed by STROOP to TRUMMLER (R 2161, 2169). In December 1944, after a captured flyer was killed near Wiesbaden pursuant to an order from TRUMMLER, the latter telephoned STROOP and informed him of this fact, incident number 5 (R 312; P-Ex 65A). On or about 15 February 1945 accused GIRKE ordered his subordinates to kill a captured flyer near Bensheim, Germany, incident number 6. GIRKE gave this order in conformity with a similar order received from TRUMMLER over the telephone (R 1449). The order to GIRKE originated from Kaltenbrunner and was transmitted by STROOP to TRUMMLER (R 2169-2176). In March 1945, an American flyer was killed by a member of the wehrwolf school in Wallrabenstein on orders from STROOP, transmitted by accused BEST, incident number 9 (R 616, 618; P-Exs 141A-143, p. 6).

Evidence for Defense: The accused testified under oath. He denied the receipt of any general order to kill captured enemy flyers (R 1954). He denied issuing any such shooting orders, as well as any connection with or knowledge of the incidents set forth in charges 3 through 10 (R 1977, 1978, 2006). He admitted receiving written orders concerning treatment of captured flyers, either from Himmler or from the main office of the Order Police (R 1953). The first order was received in 1944 to the effect that flyers were to be turned over to the Wehrmacht. Later, he received an order that flyers were to be turned over to the Security Police. In July or August 1944 he received the noninterference order (R 1954). He transmitted all these orders to his subordinates (R 1955). On one occasion, the accused TRUMMLER informed him that three or four flyers were killed while attempting to escape (R 1960). On another occasion, the accused expressed the opinion that captured flyers should be shot. This utterance was induced by the suffering and misery caused by incessant bombings (R 1976). He testified that he attended conferences with Himmler and Kaltenbrunner

but never discussed treatment of Allied flyers with either of them (R 1980—1982). Orders were received by him from Himmler, or direct from his headquarters, from Bormann and his staff, from the main office of the Order Police, and sometimes from the main office of the Security Police (R 1988, 1989). He transmitted all orders which he received (R 1989). He denied he ever saw an order issued by Keitel dealing with captured flyers (R 94, 1990; P-Ex 24). However, he admitted knowledge of an order issued by Hitler dealing with the same matter (R 89, 1991; P-Ex 17). The noninterference order received from Himmler in June or July 1944 was passed on by him to his subordinates at a conference attended by commanders of the Order Police and the Security Police (R 1992). He admitted receiving the Bormann order (R 93, 1994; P-Ex 22).

STROOP's chief of staff testified that he never saw an order directing that captured flyers be shot and particularly that he never saw any such order leave in the mail (R 2094). There was further evidence that the Gestapo headquarter in Frankfurt, the Higher SS and Police Leader in Wehrkreis IX, and the Police President of Saarbrücken never received any such shooting order (R 2115, 2325, 2332, 2333).

Sufficiency of Evidence: There is considerable evidence as to accused STROOP's membership in the SS and as to his being implicated in incidents numbers 3 through 6 and 9. The evidence is clear that the accused received orders regarding the illegal treatment of captured Allied flyers. It is also clearly established that these orders were transmitted by STROOP to all agencies under his command. It was proven that his subordinates, acting in conformity with such orders, illegally killed unarmed and surrendered American flyers throughout the area under his command, and the Court was warranted from the evidence concerning the vigorous manner in which he transmitted the various orders to all his agencies and his efforts to enforce them that he encouraged and provoked the killings involved in incidents numbers 3 through 6 and incident number 9.

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

Petitions: Two Petitions for Review were filed by Dr. Max Rau, German defense counsel, 19 April 1947, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1945. One of the petitions filed by Dr. Rau urges a new trial upon the ground that the accused was convicted upon the perjured testimony of accused TRUMMLER to the effect that he had received the shooting order from STROOP. The fact is that TRUMMLER did not so testify. He testified that he received the shooting order from Kaltenbrunner in Berlin at the time he was assigned to Wehrkreis XII. He further testified that STROOP gave an order during a conference which was identical in content. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. HANS TRUMMLER

Nationality: German
Age: 46
Civilian Status: Banking and Automobile Industry; Colonel, Security Police, 1 August 1937 to 1945; Commander of the Security Police and Security Service, Rhein-Westmark area, since 15 September 1944.
Party Status: Nazi party since 1928
Military Status: SS Colonel from 1 July 1935 to 1945; SA since 1928.
Plea: NG Charges 1 through 10
Findings: G Charges 1, 2, 4, 5 and 6;
NG Charges 3, 7, 8, 9 and 10
Sentence: Death by hanging

Evidence for Prosecution: Accused TRUMMLER was a member of the SS (R 239, 2155; P-Ex 42) and the SD (R 167, 213, 811, 2170). The accused was Commander of the Security Police and Security Service in the Rhein-Westmark area with the rank of SS colonel from 15 September 1944 (R 2154). He succeeded accused SOMANN (R 153). On one occasion he told the Gestapo chief of the Frankfurt office who was under his command that he thought it proper to shoot captured Allied flyers (R 157). In March 1945, a commissioner of one of the suboffices of the same Gestapo chief reported to the latter that accused TRUMMLER had ordered that captured Allied flyers be shot (R 157, 158). In December 1944, at a conference of the Security Service in Frankfurt, the head of the agency announced an order that all captured enemy flyers were to be rendered harmless on the spot (R 167, 168). The witness as to this believed the order came from TRUMMLER (R 169). Toward the end of the war, at meetings of inspectors, the accused said that all captured flyers turned over to or apprehended by the Gestapo were to be shot (R 181; P-Ex 84A, p. 2). The accused was also present at a conference with STROOP when the shooting order from Kaltenbrunner (R 96; P-Ex 26) was discussed. At that time STROOP said the order was to be strictly enforced (R 202, 203). The order that captured flyers were to be killed was known at the Gestapo headquarters and at the office of the Security Service in Koblenz. The witness who testified as to this thought that the order came from superior authority, accused TRUMMLER (R 228; P-Ex 36A). The Gestapo headquarters at Darmstadt, as well as other Gestapo headquarters, constabulary headquarters, and the offices of all other leaders under TRUMMLER's command, received the same order (R 383; P-Ex 106A, pp. 3, 4). In conformity with these orders transmitted by accused TRUMMLER, subordinates under his command illegally killed unarmed and surrendered American flyers.

In October 1944, the accused ordered Fraund, and accused FUHR and HOHLER to drive a captured American flyer in an official car toward Oberursel after darkness and shoot him at an opportune moment, incident number 4. They were also ordered to notify the local gendarmerie to arrange for the flyer's burial. After darkness, these three drove the flyer in the direction of Frankfurt. Near an inn on the Wiesbaden-Frankfurt road the flyer was killed. They then drove to Wallau and notified the local gendarmerie to bury the victim. Upon their return to Wiesbaden they reported the execution of the order to TRUMMLER (R 312; P-Ex 65A). The next day HOHLER made a written report to TRUMMLER to the effect that the flyer was shot while trying to escape. TRUMMLER then handed out a box of cigars (R 314; P-Ex 66A). The victim was identified as an American soldier, one Willard F. Perry (R 309; P-Ex 62).

On about 28 or 29 December 1944, an American flyer, believed to be Robert Garrison, parachuted to safety in the vicinity of Langenhain, Germany (R 270, 272). This flyer was taken to accused's headquarters located on Paulinenstrasse, Wiesbaden, Germany (R 280). TRUMMLER then ordered one Fraund and the accused FUHR, both employees of the Gestapo in Wiesbaden, to shoot the flyer that night after dark, incident number 5. Pursuant to this order, Fraund and FUHR drove the flyer toward Frankfurt, and on the Wiesbaden-Frankfurt road they both shot the flyer resulting in his death. They then notified the gendarmerie at Wallau to bury the body. They returned to Wiesbaden and reported the accomplishment of the mission to TRUMMLER. Thereupon, in their presence, TRUMMLER telephoned STROOP and informed him the flyer had been done away with (R 311, 312; P-Exs 64A, 65A).

On 15 February 1945, an unarmed and surrendered American flyer was shot by members of the Gestapo headquarters in Bensheim, commanded by accused, GIRKE and HELLENBROICH, in conformity with orders issued by the accused TRUMMLER, incident number 6 (R 387; P-Ex 107A).

Evidence for Defense: TRUMMLER testified that on 15 September 1944 he reported to Berlin and received the assignment of Commander of the Security Police and Security Service for the Rhein-Westmark area (R 2159). On 18 September 1944, in a conference with Kaltenbrunner concerning his new duties, the latter gave him an order that captured flyers were to be shot (R 2161). He later received a similar order from Major General Muller, Chief of Office No. 4, Reich Head Security Office (R 2162). Since these orders had been decided upon by the Reich government, he accepted them as legal orders (R 2161). He took over his duties at Wiesbaden on 20 September 1944 (R 2165). The accused STROOP held conferences of his subordinate commanding officers about once a week (R 2167). During these conferences, STROOP transmitted the order to the accused and others present, that captured

flyers were to be shot. This order was in the same form as the previous order the accused had received from Kaltenbrunner (R 2169).

He denied any guilt concerning charges 1, 2, 3, 7, 8, 9 and 10, but admitted full responsibility for the killings mentioned in charges 4, 5 and 6 (R 2169-2178). Regarding charge 4, he testified that on 19 October 1944, he was informed that the rural police had turned over a flyer. He telephoned the Gestapo chief in Wiesbaden, one Luckhard, and ordered a detail of two men to shoot him. Fraund and accused FUHR reported to him for this purpose, and he thereupon gave them the order to shoot the flyer. The shooting took place that evening and both Fraund and FUHR reported that the order had been executed (R 2171-2173). He testified that, if these men had refused to carry out his order, they would have been severely punished (R 2174). As to charge 5, he testified that on 30 December 1944 Luckhard reported to him that the rural police had turned over a captured enemy flyer. He ordered Luckhard to furnish a detail of two men to shoot the flyer. Fraund and FUHR reported for this purpose and he thereupon gave them an order to shoot the flyer. They returned that evening and reported that the order had been executed. On his order, the execution of this flyer was reported by telephone to STROOP's office (R 2174, 2175). Concerning charge 6, he testified that it was quite possible that on 15 February 1945, the accused GIRKE told him by telephone that the Gestapo headquarters in Darmstadt had a flyer and that he thereupon ordered the flyer shot (R 2176). He testified that had he failed to carry out Kaltenbrunner's order he would have been shot (R 2179). Throughout his testimony concerning incidents 4, 5 and 6, he emphasized that the victims were "terror flyers".

Sufficiency of Evidence: There is considerable evidence as to accused TRUMMLER's membership in the SS and SD and as to his being implicated in incidents numbers 4, 5 and 6. By his testimony, the accused freely admitted his part in the common plan and design to violate the laws of war; that he received the so-called shooting order from higher authority and transmitted the same to his subordinates; and that, in incidents 4, 5 and 6, he ordered his subordinates to kill unarmed and surrendered American flyers pursuant to the order. With regard to the evidence offered in support of his plea of superior orders, the accused failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post. While his actions may have been in conformity with orders from superiors, it appears that he willingly co-operated and it does not appear that his actions in incidents 4, 5 and 6 were under immediate compulsion.

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

Petitions: Petitions for Review were filed by Dr. Buerger, German defense counsel, 24 March 1947, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. A recommendation, 21 March 1947, was submitted by six members of the Court which heard

the case urging that his death sentence be commuted to life imprisonment because of his honesty and truthfulness in accepting full responsibility for his acts. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

3. OTTO SOMANN

Nationality:	German
Age:	47
Civilian Status:	Agriculturist. Security Service from 1936 to 1944; Inspector of Security Police and Security Service, Rhein-Westmark area from January 1943 to 28 July 1944; Inspector of customs police from 1944 to 1945.
Party Status:	Nazi party since March 1927
Military Status:	SS Colonel of police, date unknown; Allgemeine SS from 1937 to 1945; Waffen SS from August 1943 to November 1943
Plea:	NG Charges 1 through 10
Findings:	G Charges 1 and 2; NG Charges 3 through 10
Sentence:	4 years, commencing 30 May 1945

Evidence for Prosecution: Accused SOMANN was a member of the SS (R 239, 2246; P-Ex 43) and the SD (R 239, 2246; P-Ex 43). The accused was Inspector of the Security Police and Security Service with headquarters located in Wiesbaden, Germany, from January 1943 to the end of July 1944 (R 2246). During his tenure of office, the accused received orders directing illegal treatment of captured Allied flyers from the Nazi hierarchy. He passed down these orders to agencies under his command. In June or July 1944 at a conference held in his headquarters at Wiesbaden attended by all leaders of the Gestapo, Criminal Police and Security Service in the Rhein-Westmark area, he read the noninterference order from Himmler (R 155, 160). He directed that this order be made known to all the members of the Security Police and Security Service (R 155, 161). In discussing the noninterference order, he made a statement which could only be interpreted to mean that captured enemy flyers turned over to the Security Police were to be shot (R 104, 181, 383; P-Exs 30A, p. 3, 34A, p. 3, 106A, p. 4). After the publication of Goebbels' article in the summer of 1944 branding Allied flyers as murderers, SOMANN announced the order to shoot captured flyers (R 387; P-Ex 107A).

About August 1944, the accused or his successor transmitted an order to the police directors and police presidents under his command that captured flyers were to be turned over to the Gestapo (R 266, 267; P-Exs 56A, 57; p. 3).

Evidence for Defense: The accused, in his testimony, denied any guilt regarding the matters set forth in charges 3 through 10 (R 2268). He denied that he discussed or planned any violation of the laws of war with any of the other accused as alleged in charge 1 (R 2272, 2273). He testified that he was never involved in any of the criminal activities of the organizations declared criminal by the International Military Tribunal (R 2275, 2276). He testified that his duties were limited to inspection of the offices of the Security Police and Security Service (R 2254). At the time he took this assignment, several orders were passed down to him concerning treatment of Allied flyers. The original order was that captured flyers were to be turned over to the army. In the beginning of 1944, he received an order from "Amt" 4, Reich Head Security Office, that captured flyers in the hands of the Security Police were to be sent to Oberursel through the Gestapo at Frankfurt (R 2257). This order was received verbally and was transmitted verbally to the offices of the Gestapo, Criminal Police and Security Service in his area (R 2258). Toward the end of June 1944, he received the noninterference order (R 2258). This order was received from Himmler with instructions by Kaltenbrunner that it was to be transmitted verbally (R 2259). In June or July 1944, he transmitted this order to the chiefs of his agencies during a conference held in his office in Wiesbaden (R 2259). He denied that he ever made any explanation of this order which could be interpreted as an order to shoot captured flyers (R 2260, 2263). He admitted that he might have stated an opinion concerning this order which might have led to some misunderstanding (R 2264, 2265). He also admitted receiving an order in the middle of 1943 from Kaltenbrunner to the effect that enemy agents had to be turned over to the Gestapo for final decision (R 2266, 2267) and receiving one from Adolf Hitler to the effect that parachuted commando units, agents, etc., were to be killed on the spot (R 2268). During the time he held the position of Commander of the Security Police and Security Service, nor a single case of a murdered flyer was called to his attention (R 2268). The punishment for failure to carry out an order during war time was death (R 2272). All orders received by him from proper authority were transmitted to chiefs of Gestapo, Criminal Police and Security Service (R 2284). However he denied that he ever issued orders to his chiefs that captured flyers were to be shot (R 2289). During his tenure of office, no captured flyer was ever killed in the area under his command (R 2289).

Sufficiency of Evidence: There is considerable evidence as to accused SOMANN's membership in the SS and SD and as to his being implicated in the common plan and design to violate the laws of war. The evidence is clear that the accused received orders from higher German authority directing illegal treatment of captured flyers, which orders he transmitted to subordinates under his command. His participation in the common plan and design to violate the laws of war is thus established.

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

Petitions: A Petition for Review, 24 March 1947, was filed by Lieutenant Colonel William Berman, Chief Defense Counsel. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

4. ARTHUR FUHR

Nationality: German
Age: 37
Civilian Status: Chauffeur and mechanic; Secret State Police (Gestapo) from April 1937, with the rank of SS Master Sergeant since 1941; Security Service from 1939 to 1945
Party Status: Nazi party from 1931 to 1945
Military Status: SA from 1931 to 1932
Plea: NG Charges 1, 2, 4 and 5
Findings: G Charges 1, 2, 4 and 5
Sentence: Death by hanging

Evidence for Prosecution: Accused FUHR was a member of the SS (R 1143, 1183); the SD (R 239; P-Ex 44); and the Gestapo (R 239, 288, 298, 306, 1183, 1216, 1218; P-Ex 44). The accused was employed as a driver and mechanic at the Gestapo headquarters in Wiesbaden, Germany (R 1142).

On 19 October 1944, the accused, HOHLER, and one Fraund, employees of the same Gestapo headquarters, were ordered to report to accused TRUMMLER (R 1145, 1146). TRUMMLER ordered them to drive a captured American flyer after darkness in an official car in the direction of Frankfurt, shoot him at an opportune moment and direct the local gendarmerie to bury the body, incident number 4 (R 1147). After darkness, FUHR drove the flyer with HOHLER and Fraund in the direction of Frankfurt. On the road between Wiesbaden and Frankfurt, they stopped near an inn. HOHLER and Fraund got out of the car with the flyer, and while accused was turning the car around, he heard shots and saw the dead flyer two or three meters from the edge of the road. All three drove to Wallau and directed the gendarmerie to bury the body. They returned to Wiesbaden and reported to TRUMMLER that the order had been executed (R 312; P-Ex 65A). The flyer was buried in the cemetery at Wallau (R 296, 302, 304). The body was exhumed on 14 December 1945 and identified as that of an American soldier, Willard F. Perry (R 309; P-Ex 62).

On or about 30 December 1944, an American flyer, believed to be Robert Garrison, was brought to the Gestapo headquarters in Wies-

baden, Germany, incident number 5. After an unsuccessful attempt to interrogate him, accused FUHR was ordered to take him to the cellar of the headquarters (R 286, 312; P-Exs 61, pp. 13, 14, 65A). That afternoon FUHR and Fraund were ordered to report to accused TRUMMLER who ordered them to shoot the flyer after dark. That night FUHR drove Fraund and the flyer in the direction of Frankfurt and on the road between Wiesbaden and Frankfurt stopped the car near an inn. Fraund ordered the flyer out of the car and each fired a shot at him. The flyer collapsed, dead. They then drove to Wallau and directed the gendarmerie to bury the body. They returned to Wiesbaden and reported the accomplishment of the mission to TRUMMLER (R 311, 312; P-Exs 64A, 65A). The victim was later buried in the cemetery at Delkenheim, Germany (R 297). In December 1945 or January 1946, the body was exhumed (R 307). It was identified as that of an unknown American soldier (R 310; P-Ex 63).

Evidence for Defense: In his testimony the accused admitted that he participated in the incidents covered by charges 4 and 5 in substantially the same degree as indicated by the evidence for the prosecution (R 1145—1155). He testified that he assumed the orders he received from his superior, accused TRUMMLER, who held the rank of SS colonel, were proper and that he was duty bound to obey them (R 1157). Disobedience of such an order in war time meant death (R 1158).

Sufficiency of Evidence: There is considerable evidence as to accused FUHR's membership in the SS, SD and Gestapo and as to his being implicated in incidents numbers 4 and 5. The guilt of this accused is satisfactorily established. He admitted his guilt both in extrajudicial sworn testimony and from the witness stand under oath. His allegation that he thought the acts were proper is overcome by the very nature of the acts, the secret manner in which they were executed and the general intelligence one must infer that he of necessity possessed. By his compliance with the illegal orders to kill the unarmed and surrendered flyers involved in incidents 4 and 5, he took part in the common plan and design to violate the laws of war. His guilt under charge 1 is clear. With regard to the evidence offered in support of superior orders, it appears that he took a consenting part in the common design and incidents 4 and 5. The killings were accomplished at points remote from superiors and he is not shown to have acted under immediate compulsion. He failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

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

Petitions: Petitions for Review were filed by Dr. Richard Wacker, German defense counsel, 27 March 1947, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. A Petition for Clemency was filed by his parents, Wilhelm and Gertrude FUHR, May 1947.

Recommendation: That the findings and sentence be approved.

5. WILHELM HOHLER

Nationality: German
Age: 37
Civilian Status: Protective Police from 4 April 1929 to 15 March 1933; 6 March 1936 to 31 December 1937; Criminal Police from 1 January 1938 to 4 April 1945. Gestapo from September 1939 to 4 April 1945
Party Status: None
Military Status: None
Plea: NG Charges 1, 2 and 4
Findings: G Charges 1, 2 and 4
Sentence: Death by hanging

Evidence for Prosecution: Accused HOHLER served as a Gestapo agent from 1939 till the end of the war (R 239, 1093, 1094, 1114, 1133, 1134; P-Ex 45). On 19 October 1944, the accused, together with accused FUHR and one Fraund, were ordered to take a captured American flyer to Oberursel and shoot him, incident number 4 (R 1099—1101). According to the plan made known to the accused, the car was to be brought to a stop, the flyer asked to get out on some pretext and then shot. All three, together with the flyer, drove in the direction of Frankfurt. The car was stopped near an inn on the Wiesbaden-Frankfurt road. Fraund and the accused got out and asked the flyer to leave with them. FUHR turned the car around and several pistol shots were fired in rapid succession. The three then drove to Wallau and notified the gendarmerie to bury the body. The next day HOHLER made a written report of the incident to accused TRUMMLER to the effect that the flyer was shot by Fraund while attempting to escape. TRUMMLER then gave him a box of cigars to distribute among the members of the Gestapo in Wiesbaden (R 312, 314, 1937; P-Exs 65A, 66A, 146A).

Evidence for Defense: The accused took the witness stand and testified under oath. By his extrajudicial sworn testimony and by his testimony in court he insisted that he remained in the car at the scene of the killing (R 314; P-Ex 66A). Otherwise, his testimony was substantially to the same effect as the evidence for the prosecution (R 1099—1113). He admitted that the report he made to TRUMMLER to the effect that the flyer was shot by Fraund while attempting to escape was false (R 1126). He was of the opinion that the order received from an SS colonel was legal (R 1128). Refusal to obey the order would have meant death (R 1131). He admitted that his extrajudicial sworn testimony containing an account of his report to TRUMMLER was false (R 1937, 1940, 1941; P-Ex 146A).

Sufficiency of Evidence: There is considerable evidence that accused HOHLER served as a Gestapo agent from 1939 till the end of the war

and that he was implicated in incident 4. While the evidence is not too clear, the Court might well have concluded that he was a member of the Gestapo. The evidence clearly indicates that the accused was guilty of participating in the killing of an unarmed and surrendered prisoner of war as alleged in charge 4. He knew the flyer was to be killed according to a pre-established plan and played his part in carrying it out. Whether he fired the fatal shot is not shown by the evidence. However, it appears that he accompanied the others on the trip and actively participated throughout the incident. Acting jointly with the others he was liable for all the consequences that naturally flowed from their acts, i. e., all who join in a common design to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are responsible for a homicide committed by one of them while acting in pursuance of or in furtherance of the common design, although not specifically contemplated by the parties (*United States v. Hartgen, et al.*, October 1945, 29 *Corpus Juris*, Sec. 46, p. 1073). It was shown that he took a consenting part in the common plan and design to violate the laws of war as alleged in charge 1. With regard to the evidence offered in support of superior orders, it appears that he took a consenting part in and freely participated in incident number 4 at a point distant from superiors. It was not shown that he acted under any immediate compulsion and the Court would have been warranted in not giving weight to his testimony to the effect that he thought the order was legal and proper. Consequently, the accused failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

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

Petitions: Petitions for Review were filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947, and Dr. Trost, German defense counsel, 7 July 1947. Petitions for Clemency were filed by his wife, Luise Hohler, 22 March 1947; his parents, Mr. and Mrs. A. Hohler, 28 March 1947; Leonhard Wilke, 26 March 1947; Lena Fercke, 19 June 1947; Johannes Budde, 15 June 1947; Franziska Fourman, 24 June 1947; Erna Debus, 24 June 1947; Karl Rudolf, 6 June 1947; Luise Vogt, 21 May 1947; Maria Kobilhof, 27 April 1947; Lieselotte Pfeil, 30 May 1947; Edith Weckman, 9 June 1947; Wilhelm Wahn, 16 June 1947; Ernest Richhardt, 7 June 1947; Alexander Hoffman, 27 June 1947; Reinhard Breder, 14 July 1947; Karl Knapp, 8 June 1947; Angelika Seidel, 15 June 1947; Josef Kramer, 22 June 1947; Max Gerisch, 19 June 1947; Irma Kuhn, 19 June 1947; Georg Zammert, 19 June 1947; Mura Lenzen, 20 June 1947; A. Bruch, 4 July 1947; Fritz Schneider, 1 July 1947; Mateus Rudolph, 7 July 1947; Paula Schmidt, 24 June 1947; Sofia Drogmoller, 10 December 1946; Karl Hohler, 19 December 1946; Margarethe Romeis, 9 April 1946; Hans Schmitz, 30 August 1946; Josef Przybzla, 8 April 1946; Mr. and Mrs. Stein, 15 June 1947; Maria Lang, 20 June 1947; Bernhardini

Winkler, 20 June 1947; Natalie Noack, 20 June 1947; Elizabeth Horn, 18 June 1947; Jakob Schneider, 15 June 1947; and Johann Lutz, 20 June 1947.

Recommendation: That the findings and sentence be approved.

6. HANS EICHEL

Nationality:	German
Age:	56
Civilian Status:	Police Director at Offenbach, Germany since 1 July 1941, with the rank of Lieutenant Colonel
Party Status:	Nazi party since 15 December 1931
Military Status:	Colonel in SA
Plea:	NG Charges 1, 2, 7 and 8
Findings:	G Charges 1, 7 and 8 NG Charge 2
Sentence:	Death by hanging

Evidence for Prosecution: The accused was police director of the protective police, Offenbach, Germany, following 1 July 1941 (R 1664). In September 1944 at a conference of police officials in Offenbach, Himmler's noninterference order was read by Major Kuhlbeck, Commander of the Protective Police in Offenbach. The accused was his immediate superior (R 484; P-Ex 122, p. 3). The accused had issued orders that captures flyers were to be shot (R 585, 1690; P-Ex 133, p. 3).

On or about 22 February 1945, a captured American flyer was taken to the police station in Bieber, Germany, incident number 7 (R 441, 442). An identification card found on the person of the flyer indicated his name to be William Duke (R 457). In the police station the flyer was permitted to smoke (R 442). Shortly thereafter, the accused and accused KIWITT arrived (R 442, 460). At the sight of the flyer smoking, the accused tore the scarf from the flyer's neck and knocked the cigarette out of his mouth (R 442). Accused KIWITT and ALBRECHT testified that EICHEL ordered ALBRECHT to kill the flyer but that he refused (R 1514, 1602, 1603). Accused MOLLER testified that accused EICHEL gave him an order to shoot the flyer (R 470, 475, 1482; P-Exs 111A, 116, p. 3). EICHEL stated that he was considering putting the flyer on the radiator of his car and driving him through the town (R 470, 1515; P-Ex 112A). He directed that the flyer be brought before the crowd (R 484; P-Ex 122, p. 7). Outside the police station he vigorously incited the crowd against the flyer (R 470, 484, 1515; P-Exs 112A, 122, p. 5). Pursuant to the accused's order, accused MOLLER, together with accused ALBRECHT, GOEHRENDT, and a policeman by the name of Como walked the flyer to a forest in the vicinity of

Bieber (R 445, 446, 475; P-Ex 116, p. 4). In the forest, accused MOLLER shot the flyer twice, resulting in his death (R 470, 471, 1519, 1520; P-Exs 111A, 113A).

The same evening, an American flyer was taken to the police headquarters in Offenbach from the police station in Bieber by two policemen, Michel and Schneider, incident number 8 (R 1774, 1775). They reported to accused KIWITT, who reprimanded them for not having killed the flyer (R 1775, 1776). By his extrajudicial sworn statement KIWITT asserted that he ordered them to kill the flyer in conformity with a previous specific order relayed to him from accused EICHEL (R 585; P-Ex 135, p. 3). The flyer was shot to death an hour or so later near an air raid shelter on Bierbrauer Weg, Offenbach, by accused HAMMANN with the co-operation, if not the aid, of Michel and Schneider (R 507, 523, 524).

Evidence for Defense: The accused took the stand and testified under oath. He admitted that in the summer of 1944, he received Himmler's noninterference order either from Berlin or from the commanding officer of the regular police in Wiesbaden (R 1664). He testified that on 22 February 1945, he saw flyers parachuting to earth (R 1665). He left in his car, together with accused KIWITT, to check up on security measures (R 1666). He drove through the town of Bieber, where he was told that there was a flyer in the police station. He proceeded to the police station with KIWITT (R 1668). He saw the flyer in the police station but denied that he slapped the cigarette out of his mouth and testified that he merely took the scarf from the flyer's neck and laid it on the table, incident number 7 (R 1671). He told accused ALBRECHT to take the flyer to police headquarters stating that, "he will be bumped off anyway" (R 1672). He testified that he made this remark because the gauleiter had once said while surveying bomb damage that all flyers would be shot (R 1672). He did not consider this remark as an order but merely meant that others would do it because of the propaganda and the general feeling of the civilian population (R 1672, 1673). He also denied that he gave accused MOLLER an order to kill the flyer (R 1677). He further testified that a few hours later, on the same day accused ALBRECHT personally reported to him that the flyer had been shot while trying to escape. That evening he received a written report to the same effect (R 1684). He denied that he ever informed members of the police that captured flyers were to be shot (R 1690).

He also denied that he had anything to do with the orders given to the policemen Michel and Schneider concerning the captured flyer who was killed on Bierbrauer Weg, incident number 8 (R 1873). He admitted he was present in his command post near Bierbrauer Weg the evening of 22 February 1945 (R 1873). While at his command post, a policeman rushed in and told him about a parachutist. He then heard several shots and a wild chase ensued down the staircase toward his command post (R 1874). He ran out toward Bierbrauer Weg and saw three or four men carrying a corpse (R 1875). A person with whom he was not

familiar told him that he had shot the flyer while trying to escape. He later found out that the person in question was accused HAMMANN (R 1876).

Sufficiency of Evidence: The evidence, a substantial part of which is supported by his own admissions, indicates that the accused issued orders to his subordinates to kill captured flyers involved in incidents numbers 7 and 8 and that in conformity with these orders unarmed and surrendered American prisoners of war were killed by subordinates under his command. That he participated in the common design involved in charge 1 is also satisfactorily established.

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

Petitions: Petitions for Review were filed by Lieutenant Colonel William Beriman, chief Defense Counsel, 24 March 1947 and by Dr. Richard Wacker, German defense counsel, 27 March 1947 and 22 April 1947. Petitions for Clemency were filed by his son, Helmuth Eichel, 4 April 1947; Buchner, 25 March 1947; Dr. Frubauf and Dr. Kallab, 29 March 1947; A. Herold, 2 April 1947; Philipp Hechler, 4 April 1947; and one Schultheis, 28 March 1947.

Recommendation: That the findings and sentence be approved.

7. JOSEF JOHANN KIWIET

Nationality:	German
Age:	32
Civilian Status:	Captain, Order Police, Offenbach, Germany
Party Status:	Nazi party since 1 May 1933
Military Status:	None
Plea:	NG Charges 1, 2, 7 and 8
Findings:	G Charges 1, 7 and 8; NG Charge 2
Sentence:	Death by hanging

Evidence for Prosecution: The accused was a captain in the Order Police in Offenbach, Germany. One Major Kuhlenbeck was his immediate superior and accused EICHEL was his next higher superior (R 1589).

In January 1945, the accused knew of the existence of Himmler's noninterference order. He also knew of a direct order from Himmler to the effect that all captured flyers were to be killed by the police (R 473; P-Ex 114, p. 4). In about December 1944, he told a French deportee that captured American flyers were to be shot and a report then made that the flyer was shot while attempting to escape (R 495; P-Ex 124A). He also received an order from his superior, accused EICHEL, that captured flyers were to be shot (R 585, 1690; P-Ex 135, p. 3).

On about 22 February 1945, three American flyers parachuted to safety in the vicinity of Bieber, Germany (R 441, 473; P-Ex 114). One witness testified that at about 1400 on 22 February 1945 during an air raid in Offenbach, Germany, a police captain who was identified as Captain KIWITT, drove by his guard post and said, "All these flyers are going to be beaten to death"; and that just prior to this, the crew of a four motored bomber had parachuted to earth nearby (R 501, 502). The accused, together with accused EICHEL, went to the police station in Bieber, incident number 7. One of the flyers was already there (R 442, 460, 473; P-Ex 114). Accused ALBRECHT and four or five other policemen were also there (R 473; P-Ex 114, p. 2). The accused reprimanded the policemen and called them cowards, for permitting the flyer to remain alive. He told them that the pilot should be beaten (R 470; P-Ex 112A). He also instigated the crowd that had gathered outside the police station against the flyer (R 471, 473; P-Exs 113A, 114, p. 5). While still in the police station EICHEL, in the presence of KIWITT, ordered ALBRECHT to kill the flyer (R 1514, 1602, 1603). The flyer was taken out of the police station by accused ALBRECHT and two or three other policemen. ALBRECHT, the flyer, and the other policemen walked away. The accused then returned to his office in Offenbach. That afternoon a written report from ALBRECHT, to the effect that the flyer was shot while attempting to escape, passed through the office of the accused (R 473; P-Ex 114, p. 5).

During the evening of the same day another captured flyer was brought to police headquarters in Offenbach from the police station in Bieber in custody of policemen Michel and Schneider, incident number 8 (R 571, 572). They reported to the accused KIWITT, who reprimanded them for not killing the flyer while walking him six kilometers through the woods (R 572, 1775, 1776). KIWITT then ordered them to get out and kill the flyer (R 573, 1777). The accused, in his extrajudicial sworn statement, asserted that he ordered them to kill the flyer pursuant to a previous specific order relayed to him from accused EICHEL that the flyer be killed (R 585; P-Ex 135, p. 3). He testified in Court that he ordered them to kill the flyer after Lieutenant Alt told him that a major had ordered that the flyer be killed (R 1907). He further testified that, after the two policemen and the flyer left his office, he called up Major Kuhlenbeck to confirm the shooting order and that he received a confirmation of the order from the major (R 1908). Lieutenant Alt, in his extrajudicial sworn statement, said that the accused ordered the two policemen to shoot the flyer and that accused ordered him to accompany them and supervise the execution of the order (R 1689, 1690; D-Ex 19). Later that night this flyer was killed on Bierbrauer Weg, near an air-raid shelter, by accused HAMMANN with the co-operation, if not the aid, of Michel and Schneider (R 507, 523, 524). Policemen Michel and Schneider testified that nothing was said to them indicating this accused had received an order from a superior relative to the shooting of the flyer (R 1768, 1780).

Evidence for Defense: The accused took the stand and testified under

oath. He admitted that he grumbled a bit and made a few silly remarks in the course of the discussion concerning the flyer who was in the police station in Bieber on 22 February 1945 (R 1591). He testified he then left the police station and drove to Offenbach with the accused EICHEL. That afternoon he received a report from the police in Bieber that the flyer had been killed while attempting to escape (R 1593, 1594). During the evening of 22 February 1945, two policemen came to his headquarters in Offenbach with another captured flyer (R 1906). He asserted that he reprimanded them for not taking the flyer to a nearby anti-aircraft unit, and told the policemen to take the flyer to the police jail. He asserted that Lieutenant Alt, duty officer, who was present at the time informed him that a major had ordered that the flyer be killed. The accused admitted that he then ordered the policemen to shoot the flyer. He asserted that he ordered the policemen out of the office when they told him they would not carry out the order, but would return the flyer to Bieber (R 1907). Later the accused called Major Kühlenbeck, his superior, regarding the order. The major informed him that the order had to be carried out. During this conversation, the major also informed the accused that Lieutenant Alt should carry out the order (R 1908). Accused asserted that he sent Lieutenant Alt after the flyer and the two policemen with instructions to have the army pick up the flyer. The next morning he was notified by Lieutenant Alt that the flyer had been shot. He denied the existence of any orders in the headquarters of the Protective Police concerning the shooting of flyers (R 1909).

Sufficiency of Evidence: The accused received and passed on an order to kill illegally surrendered and unarmed flyers. He took a consenting and voluntary part in the common plan and design to violate the laws and usages of war and his guilt under charge 1 is thus established. His participation in incident number 7 warrants the findings of guilty, however, whether he was involved therein to a sufficient degree to warrant the death sentence is not free from difficulties. Concerning incident number 8, the appropriateness of the death sentence depends somewhat on whether the accused acquiesced in the assertion of the policemen that they would return the flyer to Bieber. In his testimony, he asserted that he acquiesced in the plan. However, his testimony conflicts with the testimony of Michel and Schneider on the question of his acquiescence in their refusal to shoot the flyer. Under the circumstances the Court would have been warranted in concluding that the accused ordered the flyer involved in incident number 8 shot pursuant to general orders issued prior to the capture of the flyer and that the accused did not indicate that he approved of the policemen's suggestion that the flyer be returned to Bieber, but that on the contrary he ordered them to get out of his office and kill the flyer. He played a vital and voluntary part in incident number 8.

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

Petitions: Petitions for Review were filed by Dr. Buerger, German

defense counsel, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Maria Kiwitt, wife, 20 April 1947; Anton Passmann, 25 April 1947; Otto Schmidt, 26 April 1947; Alfred Hild, 23 April 1947; H. Heinrichsbauer, 4, 11 and 24 April 1947; L. Nachstein, 10 April 1947; and Maria Kiwitt, sister, 28 July 1947.

Recommendation: That the findings and sentence be approved.

8. WILHELM ALBRECHT

Nationality:	German
Age:	57
Civilian Status:	First Lieutenant, Order Police and Chief of Police in Bieber, Germany
Party Status:	Nazi party since 1940
Military Status:	None
Plea:	NG Charges 1, 2 and 7
Findings:	G Charges 1 and 7 NG Charge 2
Sentence:	15 years, commencing 29 May 1945

Evidence for Prosecution: The accused was a first lieutenant of the Order Police and chief of police in charge of the police station in Bieber, Germany (R 475; P-Ex 116, pp. 2, 3). In September 1944 at a conference of police chiefs held in Offenbach, Himmler's noninterference order was read by his superior, Major Kuhlbeck (R 484; P-Ex 122, p. 3). On about 22 February 1945, three American flyers parachuted to safety in the vicinity of Bieber, Germany. One of them was captured and taken by a policeman to the police station in Bieber where he was searched by the accused and a policeman named Lueck (R 441, 442). An identification card found on the flyer indicated his name to be William Duke (R 437). Shortly thereafter, accused EICHEL and KIWITT arrived (R 442, 460). EICHEL, KIWITT, and ALBRECHT all entered ALBRECHT's office (R 475; P-Ex 116, pp. 2, 3). KIWITT testified that he did not enter the room, but that the door was open and that he heard most of the conversation (R 1592). Accused EICHEL then told ALBRECHT that the flyer must be killed. The latter replied that he would not do it whereupon EICHEL said, "Well then, somebody else will do it." (R 484; P-Ex 122, p. 4). ALBRECHT testified that he then went to change his uniform (R 1514). Accused MOLLER testified that EICHEL ordered him to kill the flyer (R 470, 475, 1482; P-Exs 111A, 116, p. 3). Accused ALBRECHT ordered accused MOLLER to get his steel helmet and weapon. ALBRECHT or MOLLER then took the flyer out of the police station. A policeman named Como followed them out (R 475, 1483; P-Ex 116, p. 4). MOLLER walked the flyer to a forest in the vicinity of Bieber (R 470; P-Ex 111A). ALBRECHT, together with

accused GOEHRENDT, followed them and they in turn were followed by policeman Como (R 445). It may be that ALBRECHT walked with rather than followed MOLLER (R 469; P-Ex 110A). Accused ALBRECHT and GOEHRENDT were armed with pistols (R 445, 475; P-Ex 116, p. 5). In the forest, accused MOLLER shot the flyer twice killing him (R 470, 471, 475; P-Exs 111A, 113A, 116, p. 4). Accused ALBRECHT then ordered Como to guard the body (R 447, 471; P-Ex 113A). The body was later buried in the cemetery in Offenbach (R 471; P-Ex 113A). Later that same day ALBRECHT ordered policeman Heberer to make a written report of the incident (R 484; P-Ex 122, p. 7). The body was disinterred on 27 February 1946, and the victim identified as an American, William A. Duke (R 482; P-Ex 121).

Evidence for Defense: The accused took the stand and testified under oath. He testified that on about 22 February 1945 a captured flyer was brought to the police station in Bieber. The flyer was an American, William Duke (R 1511, 1512). The accused ordered the policemen Lueck and Como to take the flyer to the headquarters of the Order Police pursuant to an existing order. Before the flyer was taken away, accused EICHEL and KIWITT arrived (R 1513). EICHEL and KIWITT reprimanded the accused for showing consideration to the flyer. Then EICHEL gave the accused an order to do away with the flyer. The accused replied that he would not do it to which EICHEL said that someone else would. The accused decided to go along with the flyer (R 1514). The accused ordered Como to go with the flyer and, when Lueck another policeman who the accused intended should go along failed to appear, the accused ordered accused MOLLER to go (R 1516). Outside the police station the accused saw accused GOEHRENDT and ordered him to go along to aid in keeping the people back (R 1518). MOLLER and Como walked some 20 to 30 meters in front of the accused (R 1518). The group walked to the forest and when MOLLER took the wrong path, that is a path into the forest and not the one to Offenbach, the accused ordered GOEHRENDT to run up and direct MOLLER as to the correct one (R 1518, 1519). At this point the accused stopped to talk to a passer-by, and while so engaged in a conversation, the accused heard two shots (R 1519). He ran toward MOLLER and asked him why he had shot the flyer. MOLLER told him the flyer tried to escape. The accused ordered Como to stand guard over the body. The accused and MOLLER returned to the police station (R 1520). Because of this incident he ordered the policemen under his command to take captured flyers to the air force instead of bringing them to the police station (R 1521). With the exception of the noninterference order issued by Himmler, the accused knew of no other orders regarding the treatment of flyers (R 1525).

Sufficiency of Evidence: If he was not ordered to accompany MOLLER to the scene of the shooting, he must have done so through a desire to assist or because of curiosity. Furthermore, the Court might well have concluded that the accused had no intention of taking the flyer to Offenbach.

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

Petitions: Petitions for Review were filed by Dr. Max Rau, German defense counsel, 4 April 1947 and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

9. HERMANN MOLLER

Nationality:	German
Age:	45
Civilian Status:	Clerk, Master Sergeant of the police in Bieber, Germany
Party Status:	Nazi party since 1937
Military Status:	None
Plea:	NG Charges 1, 2 and 7 by reason of insanity
Findings:	G Charge 7 NG Charges 1 and 2
Sentence:	Death by hanging

Evidence for Prosecution: The accused pleaded not guilty to the charges by reason of insanity (R 36). The Army psychiatrist who examined him at the request of the Court testified that there was no history indicating that the accused was at any time insane. He further testified that the accused was fully capable of understanding the proceedings of the trial (R 110). The psychiatrist testified that in his opinion the accused was sane on 22 February 1945, the date of the incident covered by charge 7 and that the accused was then able to distinguish between right and wrong (R 111). He further testified that the accused had a chronic, moderate tension state; that he was of average intelligence; and that the chronic tension had been present all his life (R 110).

The accused testified that on 22 February 1945, while a captured American flyer was in the custody of the police in Bieber, Germany, he was given an order, by accused EICHEL, to shoot the flyer. When he indicated his unwillingness to carry out the order, accused EICHEL threatened him with courts-martial. The accused then left the police station with the flyer accompanied by policeman Como. The accused was armed with a carbine. He walked to the woods with the flyer accompanied by accused ALBRECHT and GOEHRENDT (R 469, 474, 1482, 1483; P-Exs 110A, 115A, pp. 3, 4). Accused EICHEL vigorously denied giving the order to the accused and insisted that he had never seen him prior to being brought to Dachau and that the accused did not know him at that time (R 1675-1677). In the woods the accused fired two shots at the flyer, killing him (R 469-471, 474; P-Exs 110A, 111A, 113A, 115A). Como was ordered to guard the body. The accused

returned to the police station and later went to his home. While at home, a policeman appeared with a written report prepared at the police station, which the accused signed. The report was to the effect that the flyer had been shot while trying to escape (R 469, 474, 475; P-Exs 110A, 115A, 116, p. 5). The victim was buried in the cemetery in Offenbach (R 471; P-Ex 113A). The body was disinterred on 27 February 1946 and identified as that of an American, William A. Duke (R 482; P-Ex 121).

Evidence for Defense: The accused took the stand and testified under oath. His testimony was in most respects substantially to the same effect as the evidence offered by the prosecution. He denied knowledge of any general orders concerning the illegal treatment of flyers, but admitted receiving an order from the accused EICHEL to kill the flyer (R 1482). The accused testified that the order given to him by accused EICHEL was given while the two were alone in a room. This was stated by the accused to have happened immediately after ALBRECHT had asked for volunteers. The accused asserted that EICHEL told him he would be courts-martialed if he refused (R 1482). Failure on his part to carry out the order would have meant death (R 1488). Pursuant to the order, he, policeman Como and the accused ALBRECHT and GOEHRENDT walked the flyer toward the woods. Twenty meters in the woods, the accused fired two shots at the flyer, killing him (R 1484-1486). While at home later that day, he signed a written report, which had been previously prepared in the police station, to the effect that the flyer was shot while trying to escape. He admitted this report was false (R 1488).

Sufficiency of Evidence: That the accused participated in incident number 7 by firing the fatal shot is admitted by him. However, there is evidence from which the Court might have concluded that it was with some degree of reluctance that the accused participated after receiving an order from one greatly his superior. Furthermore, while the real purpose of ALBRECHT's accompanying the group to the scene of the shooting is not too apparent, the Court might well have concluded that he went to supervise or to assure effective execution of EICHEL's order. This presence of a superior during the shooting by a somewhat unwilling inferior created a degree of immediate compulsion. With regard to the evidence offered in support of superior orders, the accused met the burden of proof required by pertinent authorities discussed in Section VI, post, and proved that he acted under immediate compulsion to a comparatively small degree.

The findings of guilty are warranted by the evidence. The sentence is excessive.

Petitions: Petitions for Review were filed by Dr. Buerger, German defense counsel, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Rudolph Heckelmann and Philipp Krill, 25 March 1947; Anton Lippert and Anton Glas, both undated; Gustav Woell and three other persons, undated; and Josef Sommer, 24 March 1947.

Recommendation: That the findings and sentence be approved, but that the sentence be commuted to life imprisonment.

10. WILHELM FRIEDRICH GOEHRENDT

This accused was acquitted (R 2578).

11. PAUL NAHRGANG

Nationality:	German
Age:	46
Civilian Status:	Locksmith and Master Sergeant, Fire Protection Police, Offenbach, Germany
Party Status:	None
Military Status:	None
Plea:	NG Charges 1, 2 and 8
Findings:	G Charge 8; NG Charges 1 and 2
Sentence:	5 years, commencing 6 December 1945

Evidence for Prosecution: Accused HAMMANN and FAY were subordinates of this accused (R 583; P-Ex 134A). During the evening of 22 February 1945, accused GOEHRENDT turned over a captured American flyer to the policemen Michel and Schneider in the police station at Bieber, Germany, with instructions to deliver him to police headquarters in Offenbach, incident number 8 (R 571, 1771, 1775). In Offenbach the policemen reported to accused KIWITT, who ordered them to kill the flyer (R 573, 1777). The policemen indicated their refusal to carry out the order and suggested to KIWITT that they would return the flyer to Bieber (R 1777, 1907, 1908). During an air raid the two policemen with the flyer entered an air raid shelter area on Bierbrauer Weg (R 574, 1756). The air raid shelter area consisted of an open space with an underground shelter at one end. A stairway led to this underground shelter. With the exception of the main gate, the only one other exit from the area was on Bierbrauer Weg (R 500; P-Ex 126). A portion of the underground shelter was used by EICHEL as a command post. The guard at the main gate to the shelter area was informed by the policemen that they had a flyer who was to be shot (R 574, 575, 1778). The accused appeared from the guard room on the shelter area and was told that the policemen had a flyer who was to be killed (R 524, 525, 542). The accused called for accused HAMMANN who was sergeant of the guard, and both engaged in a whispering conversation (R 503, 525, 1848, 1867, 1868). The accused then called for accused FAY and informed him by whispering that the flyer had to be killed (R 525, 588, 1867, 1868; P-Ex 138, p. 2). FAY was then heard to say that this was a small matter and would get it fixed up right away (R 504). Accused EICHEL was in his command post at the

time of the incident (R 1873). FAY pushed and drove the flyer toward the stairway. This accused also accompanied FAY (R 504—506, 526, 588; P-Ex 138, p. 4). Accused FAY stated in his extrajudicial sworn testimony that, although the flyer was then surrounded by three or four policemen, the flyer hit him and started to run, whereupon FAY fired a shot into the air and yelled halt (R 588; P-Ex 138, pp. 4, 5). The guards heard the shot and then shouts to the effect that a flyer was escaping (R 506, 512, 526, 527). Accused HAMMANN took the guard's carbine, who was standing at the main entrance, and ran to the secondary exit, there being only one in addition to the main entrance (R 500, 513, 564; P-Ex 126). HAMMANN fired three shots at the flyer at close range, killing him (R 507, 1827). Two or three pistol shots were also heard (R 527). Accused NAIRGANG and HAMMANN were seen standing by the body of the victim very soon after the shots were fired (R 527, 530). The body was brought back by NAIRGANG, HAMMANN and others and laid in the air raid shelter area (R 507, 508, 583, 1851; P-Ex 134A). The next day a policeman assigned for duty at the air raid shelter told accused KIWITT that the policeman who had been assigned to kill the flyer acted cowardly and that he had to shoot the flyer. This policeman was identified as "Nartrat" (R 585; P-Ex 135, p. 4).

Evidence for Defense: The accused took the stand and testified under oath. He was the platoon leader of the extinguishing platoon and was stationed at the air raid shelter on Bierbrauer Weg (R 1748). During the evening of 22 February 1945, a police sergeant and one of the guards at the air raid shelter appeared in front of his office. The policeman told him he was seeking cover with a captured flyer. The accused called the accused HAMMANN, who was the sergeant of the guard. In the meantime the guard at the gate, one Zahn, told the accused that the policemen with the flyer had an order to shoot him but were not going to carry it out. When accused FAY appeared, this accused gave him the information he had received from the guard (R 1846—1848). FAY remarked while leaving that he was going to examine the situation. The accused then started to pick up his coat and boots to go out. A short time later he heard someone yell "halt" and a short time after that a shot. He ran into the yard where he heard another shot. Consequently, he went toward the secondary exit. On the way he heard that accused HAMMANN had fired at the flyer. He went to the spot where the flyer lay dead (R 1848—1850). Together with FAY and one Gunther, he helped carry the body to the garden (R 1851). He testified that he did not see accused HAMMANN at the spot where the flyer lay (R 1850) and was mistaken regarding the statement in his extrajudicial sworn testimony to the effect that he had seen him there (R 1851). He further testified that he had never heard of any general orders from higher authority concerning the treatment of enemy flyers (R 1852).

Sufficiency of Evidence: The Court might well have concluded that the flyer was shot during a simulated escape planned by the accused and others to give the killing a color of legality.

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

Petitions: A Petition for Review was filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

12. PHILIPP HAMMANN

Nationality:	German
Age:	51
Civilian Status:	Carpenter, Sergeant, Air Raid Police, Offenbach, Germany
Party Status:	None
Military Status:	None
Plea:	NG Charges 1, 2 and 8
Findings:	G Charge 8; NG Charges 1 and 2
Sentence:	15 years, commencing 12 May 1945

Evidence for Prosecution: During the evening of 22 February 1945, in Offenbach, Germany, two policemen approached the guard at the main gate to the air raid shelter area located on Bierbrauer Weg with a captured American flyer, incident number 8 (R 502). One of the policemen informed the guard that the flyer was to be killed (R 503). Accused NAHRGANG appeared from the guard room (R 503, 504, 524). The guard told what the policemen had said (R 525). NAHRGANG called for accused HAMMANN and they engaged in a whispering conversation (R 503, 525). Accused FAY was also called. He engaged in a short whispering conversation and then was heard to say, "That is only a small matter. We will get it fixed up right away" (R 525, 504, 1867, 1868). The accused FAY, with a pistol in hand, pushed and drove the flyer toward the stairway which led down in the direction of a bunker (R 526). The guards heard a shot and then shouts that a flyer was escaping (R 506, 512, 527). Accused FAY stated in his extrajudicial sworn testimony that, although the flyer was then surrounded by three or four policemen, the flyer hit him and started to run, whereupon FAY fired a shot into the air and yelled halt (R 588; P-Ex 138, pp. 4, 5). Accused HAMMANN ran past the guard at the main gate, grabbed the latter's carbine, and ran to the secondary exit to the air raid shelter area, there being only one in addition to the main entrance (R 500, 513, 564; P-Ex 126). This accused fired three shots at the flyer at close range, killing him (R 507, 1827). Two or three pistol shots were also heard (R 527). Accused NAHRGANG and HAMMANN were seen standing by the body of the victim very soon after the shots were fired (R 530, 555). NAHRGANG, HAMMANN, and others picked up the body and carried it to the air raid shelter area (R 507, 508, 555,

583; P-Ex 134A). Accused EICHEL appeared and HAMMANN reported that he had shot the flyer while attempting to escape (R 556, 588; P-Ex 138, p. 6).

Evidence for Defense: The accused took the stand and testified under oath. On 22 February 1945, he was sergeant of the guard of the air raid police stationed at the air raid shelter on Bierbrauer Weg (R 1822). While in his room, he heard some shots followed by shouts as a result of which he went outside (R 1823). He assumed that someone was escaping and, inasmuch as the individual could only leave by the secondary exit, he ran to that point (R 1824). Enroute he took a carbine from the guard at the main gate. When he arrived at a point a few meters from the secondary exit, the flyer ran out on the street (R 1825). He called, "Halt", several times. The man kept running and he chased him for 80 to 100 meters (R 1825). He then fired one shot at him from a distance of 40 to 50 meters. The man appeared to turn to the right to escape into the woods. He fired two more shots and the man disappeared from view (R 1827). When he arrived near where the victim fell, some others were carrying back his body. On the way back he met accused EICHEL and reported the incident to him (R 1828). The next day he appeared at the police headquarters in Offenbach and made a written report (R 1829). He further testified that he had never received any general orders from higher authority regarding the treatment of Allied flyers (R 1830).

Sufficiency of Evidence: The Court might well have concluded that the flyer was shot during a simulated escape planned by the accused and others in order to give the killing a color of legality.

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

Petitions: A Petition for Review was filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. A Petition for Clemency was filed by Margarete Hammann, wife of accused, 26 March 1947.

Recommendation: That the findings and sentence be approved.

13. BERNARD FAY

Nationality:	German
Age:	52
Civilian Status:	Skin and Leather Merchant; driver and machinist with Air Raid Protection Police, Offenbach, Germany
Party Status:	None
Military Status:	None
Plea:	NG Charges 1, 2 and 8
Findings:	G Charge 8; NG Charges 1 and 2
Sentence:	5 years, commencing 22 May 1945

Evidence for Prosecution: During the evening of 22 February 1945, two policemen brought a captured American flyer to the air raid shelter on Bierbrauer Weg, Offenbach, Germany, incident number 8 (R 571, 574). They informed the guard at the gate that the flyer had to be killed (R 574, 575). Accused NAIRGANG, platoon leader of the extinguishing platoon stationed at the shelter, appeared from the guard room. The guard gave him the information received from the policemen (R 524, 525, 542). NAIRGANG called for accused HAMMANN, sergeant of the guard, and engaged in a whispering conversation with him (R 503, 525). NAIRGANG then called accused FAY and told him by whispering that the flyer had to be killed (R 525, 588, 1867, 1868; P-Ex 138, p. 2). FAY said that this was only a small matter and it would be fixed up right away (R 504, 525). With a pistol in hand, which he received from one of the policemen, accused FAY pushed and drove the flyer in front of him toward the stairway which led down in the direction of a bunker (R 504, 506, 526). NAIRGANG and the policemen were with FAY (R 588; P-Ex 138, p. 4). At the stairway, a shot was heard followed by shouts that a flyer was escaping (R 506). Accused FAY stated in his extrajudicial sworn testimony that, although the flyer was then surrounded by three or four policemen, the flyer hit him and started to run, whereupon FAY fired a shot into the air and yelled halt (R 588; P-Ex 138, pp. 1, 5). Pistol and carbine shots were heard. The flyer was killed near the secondary exit by accused HAMMANN (R 500, 507, 527, 1827; P-Ex 126). Policeman Michel testified that he did not see the flyer hit anyone immediately prior to the time he began to run (R 1789).

Evidence for Defense: The accused took the stand and testified under oath. He testified that during an evening toward the end of February 1945, while in the guard house at the air raid shelter area on Bierbrauer Weg, he was awakened either by NAIRGANG or some other person and told that a captured flyer had to be shot (R 1792-1794). Upon inquiry as to who ordered the shooting, he was informed it had been ordered by accused EICHEI, who was the police director (R 1794). He suggested going to the police director whose command post was in the rear of the courtyard. He walked with the flyer, followed by the policemen, toward the stairway leading to the underground bunker. In front of the stairway he suddenly received a blow on his chest and fell backwards. He made a grab and had a pistol in his hand. He yelled "stop" and fired one shot in the air. He ran after the flyer and fell down the steps. He fired another shot in the air and continued up the street. He heard three or four shots. When he reached the spot where the flyer lay, he observed he was dead (R 1795).

Sufficiency of Evidence: The Court might well have concluded that the flyer was shot during a simulated escape planned by the accused and others in order to give the killing a color of legality.

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

Petitions: Petitions for Review were filed by Lieutenant Colonel

William Berman, Chief Defense Counsel, 24 March 1947 and by Dr. Max Rau, German defense counsel, 19 April 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

14. GEORG BEST

Nationality: German

Age: 39

Civilian Status: Engineer, NSV, 1936 to May 1945; Reichs Security Main Office, July 1935 to June 1943; Higher SS and Police Chief, France, October 1943 to November 1944; Higher SS and Police Chief, Rhein-Westmark area, December 1944 to May 1945

Party Status: Nazi party, 1 August 1932 to 8 May 1945

Military Status: Major and Commanding Officer of Wehrwolf school for Wehrkreis XII; Allgemeine SS (Major, 1 June 1931 to 8 May 1945); Waffen SS (Major, 5 December 1944 to 8 May 1945)

Plea: NG Charges 1, 2 and 9

Findings: G Charges 1, 2 and 9

Sentence: 15 years, commencing 8 May 1945

Evidence for Prosecution: Accused BEST was a member of the SS (R 239, 606, 1053; P-Ex 46). The accused was in charge of the Wehrwolf school for Wehrkreis XII (R 606). About 15 March 1945, one Buhlmann, an instructor in the Wehrwolf school at Wallrabenstein was ordered by accused GOSS, the director of the school, to kill a captured American flyer (R 605, 607, 990). GOSS gave this order in conformity with an order previously received from this accused to the effect that STROOP had ordered the flyer shot (R 617, 988, 989; P-Ex 142 A). Because of interference by civilians, the order was not carried out and the flyer was taken to Idstein (R 607, 991). Later, on 17 March 1945, BEST told GOSS that STROOP was quite angry over the failure to carry out the order and advised GOSS to keep Buhlmann out of sight should STROOP appear (R 609, 1001, 1063). About 18 March 1945, GOSS ordered accused MICHELY to shoot a captured American flyer, incident number 9 (R 1002, 1004). Thereupon accused MICHELY executed the order and made a written report (R 1005). The report was transmitted to accused BEST for STROOP (R 1005, 617; P-Ex 142 A). The order to kill the flyer carried out by accused MICHELY was given in accordance with an order previously transmitted by this accused that Allied flyers were to be shot. BEST passed on the order in conformity with an order from STROOP (R 616; P-Ex 141 A). In his testimony on the stand, GOSS

strongly implied that he directed the shooting solely because of the general order he had received direct from STROOP (R 1005, 1006).

Evidence for Defense: The accused took the stand and testified under oath. His testimony was substantially similar to the evidence introduced by the prosecution. He testified that he was assigned to the Higher SS and Police Leader, Rhein-Westmark area, as commanding officer of the Wehrwolf school for Wehrkreis XII in December 1944 (R 1053). On 15 March 1945, personnel in his office informed him that accused GOSS had called and left a message that he had a flyer in Wallrabenstein and requested orders from STROOP regarding the flyer (R 1061). The accused reported this matter to STROOP, who ordered the flyer to be shot (R 1062). Later that day the accused met accused GOSS and gave him the order (R 1062). Still later, but prior to incident number 9, GOSS reported to the accused that the order was not carried out due to interference by civilians. The accused so informed STROOP who was irritated about the failure to carry out the order. On 17 March 1945, the accused informed GOSS as to STROOP's reaction to the failure to carry out the order (R 1063).

The accused further testified that he knew nothing about the murder of the American flyer, which occurred on 18 March 1945, incident number 9, and denied that he had anything to do with the incident before the shooting (R 1063). He personally never gave an order to kill any prisoner of war but merely conveyed the one order from STROOP to GOSS (R 1064). He denied that he ever conspired with any of the other accused to commit violations of the laws of war (R 1066). He specifically denied any guilt under charge 9 (R 1066).

Sufficiency of Evidence: There is considerable evidence as to accused BEST's membership in the SS and as to his being implicated in incident number 9. The evidence as to the accused's guilt under charges 1 and 9 is clear. The accused failed to establish that he acted under immediate compulsion as an incident of superior orders to a material degree, thus failing to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

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

Petitions: Petitions for Review were filed by Lieutenant Colonel William Berman, Chief Defense Counsel and Dr. Buerger, German defense counsel, 24 March 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

15. ERWIN GOSS

Nationality:	German
Age:	41
Civilian Status:	Economist; adjutant to Gauleiter Sprenger, Frankfurt a/m, from 15 September to December 1942

Party Status:	Nazi party, 1939 to May 1945
Military Status:	First Lieutenant, Waffen SS from August 1944, and director of Wehrwolf school at Wallrabenstein, Germany, Cav. SS (Sergeant) 1938 to May 1945
Plea:	NG Charges 1, 2 and 9
Findings:	G Charges 1, 2 and 9
Sentence:	Death by hanging

Evidence for Prosecution: Accused GOSS was a member of the SS (R 239, 605, 606, 962; P-Ex 47). The accused was director of the Wehrwolf school in Wallrabenstein, Germany (R 605). About 15 March 1945, Buhlmann, an instructor in the school, brought in a captured flyer (R 605, 606). The accused called accused BEST for instructions regarding the flyer. BEST inquired of accused STROOP concerning such instructions and the latter ordered the flyer to be shot. BEST relayed the order to the accused (R 617; P-Ex 142 A). That evening the accused ordered Buhlmann to kill the flyer (R 607). Because of interference by civilians, the order was not carried out (R 990, 991). The flyer was then taken to Idstein (R 607).

About 18 March 1945, accused MICHELY captured an American flyer and brought him to the school in Wallrabenstein, incident number 9 (R 607, 608, 618; P-Ex 143, pp. 2, 3). That evening GOSS gave MICHELY an order to take the flyer to Idstein and shoot him on the way. MICHELY left with the flyer and returned later to report the accomplishment of the mission (R 608, 616, 618; P-Exs 141 A, 143, pp. 4, 5). GOSS gave this order to MICHELY in conformity with an order previously received from accused BEST to the effect that Allied flyers were to be killed. BEST received a like order from STROOP (R 616, 618; P-Exs 141 A, 143, p. 6). GOSS ordered Buhlmann and four others to take the body to the cemetery (R 608). The body was identified as that of an American, Jimmie R. Heathman (R 618; P-Ex 143, p. 5).

Evidence for Defense: The accused took the stand and testified under oath. He testified that in February 1945, at a conference held in Wiesbaden, accused STROOP told him that captured Allied flyers were to be shot (R 985). After he assumed charge of the school, he became familiar with Bormann's order, as well as Goebbel's propaganda relating to flyers (R 986).

About 15 March 1945 on his order, Buhlmann brought a flyer to the school (R 986, 987). The accused called BEST for instructions regarding the flyer. That evening BEST ordered the accused to shoot the flyer. The order was transmitted by BEST from accused STROOP (R 989). They both agreed upon Buhlmann as the person to carry out the order. GOSS then returned to Wallrabenstein and ordered Buhlmann to shoot the flyer. Later Buhlmann reported that he had failed to carry it out due to interference by civilians (R 990, 991). The flyer was taken to Idstein (R 991).

On 18 March 1945, accused MICHELY brought another captured flyer to the school on orders from the accused (R 1002, 1003). That evening he directed MICHELY to take the flyer to Idstein and shoot him on the way (R 1004). MICHELY left with the flyer and later returned and reported the execution of the order. Accused directed MICHELY to make out a report which was sent to STROOP through BEST. The flyer was shot on the direct order previously received by the accused from STROOP (R 1005, 1006). The accused denied that he conspired with any of the other accused to commit violations of the laws of war (R 1075, 1076).

Sufficiency of Evidence: There is considerable evidence as to accused GOSS' membership in the SS and as to his being implicated in incident number 9. Concerning incident number 9, there was no superior present requiring him to issue the order to kill the flyer. A few days before the accused had obviously not considered the general order to kill flyers too binding or he would not have inquired as to STROOP's wishes. A specific order was received in the former case directing the killing of the flyer, but no punishment was imposed for failure to carry it out. In the incident at hand no inquiry was made of any superior. It is apparent that it was STROOP's desire that all captured flyers be killed but it also appears that the accused's desire to please STROOP was stronger than other considerations and had that not been true a method of avoiding directing the killing of the flyer might well have been devised. Thus the accused failed to establish that he acted under immediate compulsion and failed to meet the burden of proof as to superior orders required by pertinent authorities discussed in Section VI, post.

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

Petitions: Petitions for Review were filed by Lieutenant Colonel William Berman, Chief Defense Counsel, and Dr. Buciger, German defense counsel, 24 March 1947; Dr. Trost, a German lawyer, 23 July 1947; and by accused, 28 June 1947. Three Petitions for Clemency were filed by Iringard Goss, wife of accused, 10 June 1947, 7 July 1947, and 1 August 1947; and one by Rudolf Velte and ten other former officers who served with him in the same regiment, undated.

Recommendation: That the findings and sentence be approved.

16. HEINRICH MATTHIAS MICHELY

Nationality:	German
Age:	33
Civilian Status:	School teacher
Party Status:	Hitler Youth (Technical Sergeant) May 1944 to November 1944
Military Status:	Waffen SS (Private) instructor at Wehrwolf school, Wallrabenstein, Germany. Waffen SS, (Private) November 1944 to May 1945 .1

Plea:	NG Charges 1, 2 and 9
Findings:	G Charges 2 and 9 NG Charge 1
Sentence:	Death by hanging

Evidence for Prosecution: Accused MICHELY was a member of the SS (R 1030, 1032; P-Ex 48). On 18 March 1945, the accused brought a captured American flyer to the Wehrwolf school in Wallrabenstein, Germany, incident number 9 (R 607, 608, 616, 618; P-Exs 141 A, 143, pp. 2, 3). That evening he received an order from accused GOSS to take the flyer to Idstein and shoot him on the way (R 616, 618; P-Exs 141 A, 143, pp. 4, 5). He left the school on foot with the flyer in the direction of Idstein. He directed the flyer on a little road off the highway and fired several shots, killing him. He returned and reported the execution of the order to GOSS. He kept and wore the flyer's bracelet which bore the name of Jimmie R. Heathman (R 616, 618; P-Exs 141 A, 143, pp. 4, 5). The flyer was buried in the cemetery at Wallrabenstein (R 618; P-Ex 143, p. 7).

Evidence for Defense: The accused took the stand and testified under oath. He testified he was an instructor in the Wehrwolf school, which was under the command of accused GOSS (R 1032). On 18 March 1945, upon GOSS' order, he brought in a captured American flyer (R 1031, 1036). That evening GOSS directed him to take the flyer to Idstein and shoot him on the way (R 1036). He executed the order and reported the same to GOSS. He further testified that he kept the flyer's bracelet (R 1038). Subsequently, he made a written report of the incident, which report was sent to Wiesbaden (R 1038). He testified that failure on his part to obey the order would have meant death (R 1042).

Sufficiency of Evidence: There is considerable evidence as to accused MICHELY's membership in the SS and as to his being implicated in incident number 9. The accused was not required to nor did he kill the flyer in the presence of a superior. The Court might well have concluded that the accused took a consenting part in the incident and that his desire to co-operate with and please his superior 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 VI, post.

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

Petitions: Petitions for Review were filed by Dr. Buerger, German defense counsel, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Anna Michely, mother of accused, 6 May 1947; Nikolaus Hiell, 12 and 25 May 1947; Wilhelm Eberle, 12 April 1947; Police Kommissar of Dudweiler, 10 April 1947; Parson Bersch, 29 July 1947; and Catholic Pastorship Relchingen — Hanweiler, 15 July 1947.

Recommendation: That the findings and sentence be approved.

17. LEONARD BRANNER

The accused escaped from confinement prior to being served with charges (R 19, 20). In conformity with Section 5—327.7, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, United States Forces, European Theater, 30 November 1945, his trial in absentia was commenced, but no attempts were made to make any findings or to impose any sentence as to the accused. The accused was the criminal secretary in the Gestapo office located in Giessen, Germany. In his extrajudicial sworn testimony, the accused admitted that on 3 October 1944, he killed a captured American flyer in Philosophen Forest on the order of his superior Kriminal-Rat Wintzer, incident number 3 (R 269; P-Ex 58 A).

18. JULIUS LASSAK

Nationality:	German
Age:	59
Civilian Status:	Railroad Inspector; Police Director, Protective Police, Giessen, Germany, 11 January 1944 to May 1945
Party Status:	Nazi party, 1925 to May 1945
Military Status:	Allgemeine SS (Colonel) 1926 to May 1945
Plea:	NG Charges 1, 2 and 3
Findings:	G Charges 1 and 2 NG Charge 3
Sentence:	3 years, commencing 6 May 1945

Evidence for Prosecution: The accused was a colonel in the Allgemeine SS and Police Director, Giessen, Germany (R 239, 870, 903; P-Ex 49). In August or September 1944, he received three orders regarding the treatment of captured enemy flyers. One order was received from accused STROOP and Gauleiter Sprenger to the effect that the police were to turn over captured flyers to the Gestapo. The second order was received from STROOP to the effect that captured enemy flyers were to be shot. The third order was received from the commanding officer of the Security Police and was to the effect that captured enemy flyers would be turned over to the Gestapo. These orders were all marked "Secret" and were to be destroyed upon acknowledgement. On about 3 October 1944, in the vicinity of Giessen, Germany, the accused, in conformity with the above mentioned orders, delivered a captured American flyer to the Gestapo with the belief that he would be killed under the order issued by accused STROOP. The flyer was reported to have been killed (R 266, 267, 269; P-Exs 56A, 57, pp. 2, 5, 58A).

Evidence for Defense: The accused took the stand and testified under oath. He admitted receiving the three orders concerning the illegal treatment of Allied flyers (R 875, 883, 884, 907). He denied ever passing

these orders to his subordinates or ordering them to mistreat or shoot captured Allied flyers or prisoners of war (R 890). He further testified that his statements in his extrajudicial sworn testimony regarding his knowledge that the flyer would be shot were made under duress and were not true (R 267, 891—893; P-Ex 57, p. 5). The accused contended that he was abused by unnamed CIC investigators during an interrogation in Camp No. 5, Natternberg, Germany, in August 1945, and again by a CIC investigator in Giessen, Germany, in early July 1946 (R 879—881, 884, 885). No attempt to test the truth of these assertions with the testimony of other witnesses was made. The accused also contended he was pressed against a wall and told not to lie during an interrogation in Wiesbaden, Germany, in August 1945, by a war crimes investigator, Mr. Zinn (R 924, 925). This was conceded on the stand by Mr. Coates, War Department civilian war crimes employee who was present acting as an interpreter (R 967). However, it appears that Mr. Zinn, the investigator in the Wiesbaden interrogation, expressed no general threats and merely admonished the accused not to lie (R 967—980). When Mr. Zinn pressed the accused against the wall Mr. Coates said to Mr. Zinn, "Joe, come back. Don't do a thing like this. We don't touch prisoners" (R 970).

Sufficiency of Evidence: There is considerable evidence as to accused LASSAK's membership in the SS and as to his being implicated in the common plan and design to violate the laws of war. While the testimony taken in Giessen was introduced, it was duplicated in most pertinent respects by the Wiesbaden extrajudicial sworn testimony. Although the action of the investigator at Wiesbaden is to be frowned upon, the Court might well have concluded that it was not such as to put the accused in fear of physical violence, particularly in view of the immediate admonition of Mr. Zinn by Mr. Coates in the presence of the accused, and that it was not shown that the accused was in such a state of fear as might induce him to state untruths.

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

Petitions: A Petition for Review was filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

19. FRITZ GIRKE

Nationality:	German
Age:	35
Civilian Status:	Lawyer; Gestapo, 1 December 1940 to May 1945; Chief of Gestapo office, Bensheim, Germany, 1944 to 1945
Party Status:	Nazi party 1 May 1937 to May 1945

Military Status: SS Major; SA (Staff Sergeant) 1 May 1933 to 1937
Plea: NG Charges 1, 2, 6 and 10
Findings: G Charges 1, 2, 6 and 10
Sentence: Death by hanging

Evidence for Prosecution: Accused GIRKE was a member of the SS (R 336, 1232, 1448) and a member of the Gestapo (R 163, 239, 326, 1448; P-Ex 50). He was chief of the Gestapo office located in Bensheim, Germany (R 326, 350). This office was originally located in Darmstadt. After the office was bombed out in September 1944, it was moved to Bensheim (R 335, 336). In August or September 1944, he received an order marked "Top Secret" from the Reichs Head Security Office directing the police to shoot captured Allied flyers. He made known the contents of this order to the men under his command (R 102; P-Ex 29A). This secret state order was then entered in a special book kept for that purpose (R 318, 319). He also knew of the two orders issued by Himmler, the noninterference order and the order that the police would turn over captured flyers to the Gestapo to be shot (R 181; P-Ex 34A, pp. 3, 4).

On two occasions, 15 February 1945 and 24 March 1945, incidents numbers 6 and 10, respectively, the accused gave orders to accused HELLENBROICH, STATTMANN, and RAAF, Gestapo agents under his command, to shoot captured flyers (R 387; P-Ex 107A). On 15 February 1945, the accused ordered HELLENBROICH, STATTMANN, and RAAF to kill a captured American flyer. Acting in conformity with directions by the accused, accused STATTMANN and RAAF walked the flyer to the woods outside the village of Bensheim where STATTMANN killed him with his pistol. The flyer was buried in the cemetery in Bensheim (R 374, 380; P-Exs 103A, pp. 2, 3, 101A). The body was disinterred on 2 April 1945 and identified as that of an American, Ray F. Hermann (R 358, 363; P-Exs 73, 90, pp. 11, 12).

Similarly, on 24 March 1945, he ordered accused HELLENBROICH to have accused STATTMANN and RAAF kill two captured American soldiers then in the Gestapo headquarters in Bensheim. HELLENBROICH relayed the order to STATTMANN and RAAF, who thereupon killed the two prisoners of war in the garden in the rear of the Gestapo building. Upon HELLENBROICH's order, the victims were buried in the garden by STATTMANN and RAAF. On 27 and 28 March 1945, the bodies were disinterred and identified as those of Americans, Lieutenant William H. Forman and Pfc. Robert T. McDonald (R 358, 374, 382, 383; P-Exs 73, p. 26, 103A, 105A, 106A, p. 1). The identifications were made from the pay books and other papers found on the bodies of the victims (R 369; P-Exs 94-98).

Evidence for Defense: The accused took the stand and testified under oath. He testified that he became the chief of the Gestapo in Darmstadt on 2 June 1944, with the rank of SS major (R 1443). He admitted that

he issued an order to HELLENBROICH in the middle of February 1945, to shoot a captured American flyer. He issued the order pursuant to a shooting order previously received by him from accused TRUMMLER, his superior. The shooting order was confirmed during a telephone conversation which the accused had with TRUMMLER immediately prior to the issuance of the order in question to HELLENBROICH (R 1449, 1450). He also admitted that on 24 March 1945 he gave HELLENBROICH an order to shoot two captured American flyers who were then in the Gestapo headquarters in Bensheim (R 1454, 1455). He later received a report that the mission had been accomplished and that the flyers were buried in the garden. He further testified that failure upon his part to carry out these orders would have meant death (R 1456).

Sufficiency of Evidence: There is considerable evidence as to accused GIRKE's membership in the SS and Gestapo and as to his being implicated in incidents numbers 6 and 10. No superior was present requiring the accused to issue the orders. They were merely issued in conformity with general instructions of a superior stationed at a distant point. Thus, the Court might well have concluded that the accused's desire to co-operate with and please superiors was stronger than other considerations; that he did not act under immediate compulsion; and that with regard to superior orders he failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

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

Petitions: A Petition for Review was filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Luzi Girke, wife of accused, 24 March 1947; the accused, 23 April 1947, and 2 July 1947; and Rudi Gabelmann, Heinrich Gabelmann and Martha Gelbrich, 23, 24 and 29 July 1947.

Recommendation: That the findings and sentence be approved.

20. HEINZ HELLENBROICH

Nationality:	German
Age:	31
Civilian Status:	Lawyer; Criminal Police (Criminal Commissar) 15 April 1932 to January 1935; Gestapo (SS Major) January 1935 to May 1945; Assistant Commander of the Gestapo headquarters, Bensheim, Germany
Party Status:	Nazi party, 1 May 1933 to May 1945
Military Status:	SS Major
Plea:	NG Charges 1, 2, 6 and 10
Findings:	G Charges 1, 2, 6 and 10
Sentence:	Death by hanging

Evidence for Prosecution: Accused HELLENBROICH was a member of the SS (R 239, 336, 1232, 1360, 2263; P-Ex 51) and a member of the Gestapo (R 239, 336, 1360; P-Ex 51). He was second in command in the Gestapo headquarters in Bensheim, Germany, and a principal assistant to the chief of that headquarters, accused GIRKE (R 326). Following 1943, various orders were issued by higher party and police authorities directing various types of illegal treatment of captured flyers. By virtue of these orders a plan was created to violate the Geneva Convention relating to the treatment of prisoners of war (R 104; P-Ex 30A, p. 5). On two occasions the accused ordered accused STATTMANN and RAAF, Gestapo agents under his command, to shoot captured American flyers.

On 15 February 1945, the accused ordered STATTMANN and RAAF to kill an American flyer then in the Gestapo headquarters in Bensheim, incident number 6. This was in conformity with a specific order he had received from accused GIRKE. After the flyer was killed, STATTMANN and RAAF reported the execution of the order to the accused. The accused ordered the body to be buried. It was buried in the cemetery in Bensheim (R 374, 380; P-Exs 103A, pp. 2, 3, 104A).

On 24 March 1945, in conformity with orders received from accused GIRKE, the accused ordered accused STATTMANN and RAAF to kill two American prisoners of war who were then in the Gestapo headquarters in Bensheim, incident number 10. In conformity with the order, STATTMANN and RAAF took both prisoners of war to the garden in the rear of the Gestapo building and shot them. The victims were buried in the garden (R 358, 374, 382, 383; P-Exs 73, p. 23, 103A, p. 4, 105A, 106A, pp. 1, 2).

Evidence for Defense: The accused took the stand and testified under oath. He testified that on about 15 February 1945 an American flyer was delivered to the Gestapo headquarters in Bensheim by the police from the Worms area. A report was received to the effect that the prisoner was a terror flyer who had strafed civilians (R 1365, 1366). Papers found on the flyer's person indicated his name to be Hermann (R 1368). The accused then reported the matter to accused GIRKE, who ordered the flyer to be shot in accordance with existing orders. The order was to be carried out by accused STATTMANN and RAAF in the vicinity of the woods near Bensheim. This accused so directed the two men. Sometime later they reported to him the accomplishment of the mission (R 1369, 1370).

During the evening of 24 March 1945, two flyers were delivered to the Gestapo headquarters in Bensheim, while the office was in the process of moving (R 1372). An interrogation report prepared by the unit which had delivered the flyers indicated that they were terror flyers who had strafed civilians (R 1374). The report also contained an endorsement by a major requesting that existing orders be carried out (R 1375). The accused reported the matter to GIRKE, who ordered that the flyers be shot. The accused then ordered STATTMANN and RAAF

to shoot the flyers in accordance with GIRKE's orders. He also informed the flyers that they were to be shot (R 1376, 1377). STATTMANN and RAAF left with the flyers. They later reported to him that the order had been executed (R 1378, 1379). He denied any guilt under charges 1, 6 and 10 (R 1386, 1418), but admitted that he was a member of the Gestapo (R 1418).

Sufficiency of Evidence: There is considerable evidence as to accused HELLENBROICH's membership in the SS and Gestapo and as to his being implicated in incidents numbers 6 and 10. The accused relayed orders to those who were to perform illegal killings in accordance with the directions of a superior of virtually the same rank who it appears was present. Under all the circumstances, including the evidence as to his rank and positions held in vital Nazi organizations, the Court might well have concluded that his desire to co-operate with and please superiors in those organizations was stronger than other considerations; that he did not act unwillingly or under the immediate compulsion of superior orders; and that with regard to superior orders the accused failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

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

Petitions: A Petition for Review was filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Klara Hellenbroich, wife of accused, 22 April 1947; Josef Hellenbroich, his father, 10 May 1947; and accused Fritz Girke, 2 July 1947.

Recommendation: That the findings and sentence be approved.

21. KARL FRANZ STATTMANN

Nationality:	German
Age:	37
Civilian Status:	Dental assistant; Security Service (Technical sergeant) February 1940 to May 1945; Gestapo (criminal assistant) 1 February 1945 to May 1945; Gestapo, criminal assistant in Gestapo headquarters, Bensheim, Germany
Party Status:	Nazi party, 1 May 1938 to May 1945
Military Status:	Allgemeine SS (staff sergeant) 17 September 1939 to February 1940; SA, April 1937 to September 1937 and 1 May 1938 to February 1945; SS Technical Sergeant
Plea:	NG Charges 1, 2, 6 and 10
Findings:	G Charges 1, 2, 6 and 10
Sentence:	Death by hanging

Evidence for Prosecution: Accused STATTMANN was a member of the SS (R 1230; P-Ex 52); a member of the SD (R 239, 1232; P-Ex 52); and a member of the Gestapo (R 239, 326, 327, 337, 1230, 1236; P-Exs 52, 67, pp. 3, 4). On about 15 February 1945, the accused, together with accused RAAF, received an order from accused HELLENBROICH to kill a captured American flyer who was then in Gestapo headquarters in Bensheim, incident number 6. The accused and RAAF walked the flyer to the woods outside the village, where this accused shot him to death. The victim was buried in the cemetery in Bensheim (R 358, 374, 380; P-Exs 73, pp. 10, 12, 103A, pp. 2, 3, 104A). On 24 March 1945, the accused and RAAF received an order from accused HELLENBROICH to kill two captured American prisoners of war who were then in the Gestapo headquarters in Bensheim, incident number 10. The prisoners of war were to be killed in the garden in the rear of the headquarters (R 382, 383; P-Exs 105A, 106A, pp. 1, 2). They took the two prisoners of war to the garden and shot them (R 358, 374, 382, 383; P-Exs 73, pp. 18—21, 103A, pp. 3, 4, 105A, 106A, p. 1). They reported the execution of the order to HELLENBROICH, who ordered the bodies buried. STATTMANN and RAAF thereupon buried the bodies in the garden (R 383; P-Ex 106A, pp. 1, 2).

Evidence for Defense: The accused took the stand and testified under oath. He testified that on about 15 February 1945, a flyer was delivered to the Gestapo headquarters by the rural police from the Worms area (R 1239). The rural police also transmitted a report that the flyer was a terror flyer (R 1243). The accused was ordered to report to accused HELLENBROICH, who told him that accused GIRKE had directed that the accused shoot the flyer in the woods in the vicinity of Bensheim (R 1244, 1245). The accused was ordered to take accused RAAF along (R 1245). The accused and RAAF walked the flyer to the forest where the accused shot him. RAAF also fired a mercy shot at the flyer (R 1247). They returned to Bensheim and reported the execution of the order to HELLENBROICH and GIRKE (R 1247, 1248). Shortly thereafter, the accused made a written report to the effect that the flyer was killed in accordance with orders. The victim was identified as Captain Ray Hermann (R 1248). During the evening of 24 March 1945, the accused was again ordered to report to HELLENBROICH. HELLENBROICH told him that GIRKE had ordered that the accused kill a captured American flyer then in Gestapo headquarters, in the back yard (R 1249, 1250). The accused took the flyer out to the garden and shot him (R 1250). Thereupon, he returned to the building and reported the execution of the order to HELLENBROICH (R 1251). Accused RAAF then came in and reported that he had also shot a flyer. RAAF was then ordered to bury the bodies in the garden (R 1251, 1259). The accused denied any guilt under charge 1 but admitted knowledge of some of the orders regarding the treatment of flyers which he had received at official meetings (R 1255, 1256).

Sufficiency of Evidence: There is considerable evidence as to accused

STATTMANN's membership in the SS, SD and Gestapo and as to his being implicated in incidents numbers 6 and 10. In view of the place where incident number 10 occurred, i. e., the close proximity of the superior, the question of whether mitigating factors are in favor of the accused is not free from difficulties. However, concerning incident number 6, the order required that the killing take place at a distant point with no superiors present. Under all these circumstances, including the responsible positions held by him in vital Nazi organizations, the Court might well have concluded with regard to the accused's state of mind in connection with incident number 6 that the accused's desire to co-operate with and please superiors in those organizations was stronger than other considerations; that he did not act unwillingly or under the immediate compulsion of superior orders; and that with regard to superior orders the accused failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

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

Petitions: A Petition for Review was filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Wilfriede Stattmann, wife of accused, 23 March 1947; Gustav Hartwig, 27 April 1947; Heinrich Werner and two other persons, 12 May 1947; Willy Krause, 22 April 1947; Heinz Neuberg, 17 April 1947; Werner Bunte, 11 April 1947; Imgart Bunte, 17 April 1947; Heinrich Tette, 9 April 1947; and accused Fritz Girke, 2 July 1947.

Recommendation: That the findings and sentence be approved.

22. MICHAEL RAAF

Nationality:	German
Age:	41
Civilian Status:	Member of police force; Protective Police (staff sergeant) 1 September 1924 to 1 January 1941; Gestapo (criminal secretary) 1 January 1941 to May 1945; criminal secretary in Gestapo headquarters, Bensheim, Germany
Party Status:	Nazi party, 1 May 1940 to May 1945
Military Status:	SS Master Sergeant
Plea:	NG Charges 1, 2, 6 and 10
Findings:	G Charges 1, 2, 6 and 10
Sentence:	Death by hanging

Evidence for Prosecution: Accused RAAF was a member of the SS (R 1245) and a member of the Gestapo (R 239, 324, 327, 337, 1293; P-Exs 53, 67, pp. 3, 4). The evidence introduced against the accused is the same in all pertinent respects as that introduced against accused

STATTMANN. Reference is hereby made to the evidence for the prosecution introduced against the latter accused.

Evidence for Defense: The accused took the stand and testified under oath. He testified that on about 15 February 1945, a captured enemy flyer was in Gestapo headquarters in Bensheim, Germany (R 1302). While he was in his office, the accused STATTMANN came in and told him that accused GIRKE had ordered the accused along on an execution. The accused and STATTMANN walked the flyer outside of the town in the direction of the woods (R 1303). In the woods, STATTMANN fired one shot at the flyer. Inasmuch as the victim still showed signs of life, the accused also fired a shot at him (R 1304). They returned to the office and reported the execution of the order to HELLENBROICH. On HELLENBROICH's order, the accused arranged for the burial of the body in the cemetery in Bensheim (R 1305).

During the evening of 24 March 1945, the accused and STATTMANN were ordered to report to HELLENBROICH in the guard room. Two captured American flyers were there. HELLENBROICH told the flyers that they were to be shot and then gave the accused and STATTMANN an order to shoot them in the garden next to the building (R 1307). He and STATTMANN each took a flyer and went in the direction of the garden where they killed them (R 1308). They then reported the accomplishment of the mission to HELLENBROICH, who ordered the accused to bury the bodies. He helped bury them in the garden (R 1309, 1310, 1314, 1315). He denied his guilt under charge 1 (R 1312).

Sufficiency of Evidence: There is considerable evidence as to accused RAAF's membership in the SS and Gestapo and as to his being implicated in incidents numbers 6 and 10. In view of the place where incident number 10 occurred, i.e., the close proximity of the superior, the question of whether there are mitigating factors in favor of the accused is not free from difficulties. However, concerning incident number 6, the order required that the killing take place at a distant point with no superiors present. Under all these circumstances, including the responsible positions held by him in vital Nazi organizations, the Court might well have concluded with regard to the accused's state of mind in connection with incident number 6 that the accused's desire to cooperate with and please superiors in those organizations was stronger than other considerations; that he did not act unwillingly or under the immediate compulsion of superior orders; and that with regard to superior orders the accused failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

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

Petitions: Petitions for Review were filed by Lieutenant Colonel Berman, Chief Defense Counsel and Dr. Buerger, German defense counsel, 24 March 1947. Petitions for Clemency were filed by Hanz Heizmann, 21 March 1947; Johannes Jorg, 1 April 1947; Josef Hammele and 32

other persons, 27 March 1947; Anny Kirchbach, March 1947; and accused Fritz Girke, 2 July 1947.

Recommendation: That the findings and sentence be approved.

VI. QUESTIONS OF LAW:

1. *Jurisdiction:* The Military Government Court which heard this case was properly constituted and had jurisdiction of the accused and the offenses. Near the outset of the trial the defense moved to quash the charges and particulars on the grounds that certain of the accused were members of the German armed forces at the time of the alleged offenses, that certain accused were not only members of the German armed forces at the time of the alleged offenses but also at the time they were captured, and that one was a member of the German armed forces not only at the time of the alleged offenses and his capture but also at the outset of the trial (R 30). It was argued in support of the motion that by virtue of the Geneva Convention, apparently the defense relied upon Article 63, the Court did not have jurisdiction of certain of the accused, that a trial of them by the Court under the prescribed procedure for Military Government Courts would be illegal, and that they were entitled to be tried by the same courts and under the same procedure as in the case of members of the armed forces of the capturing power (R 30, 31). This question arose in *United States v. Altfeldisch, et al.*, February 1947, known as the Mauthausen Concentration Camp case. The question was thoroughly discussed therein and was resolved in favor of the jurisdiction of the Court and reliance was placed upon the *Yamatshita* case, 66 Supreme Court Reporter 340. At page 350 the Court was considering Article 63 of the Geneva Convention which provides:

"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."

In disposing of the contention that the accused war criminal could not be tried before a Military Commission, the Supreme Court of the United States said:

"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."

The motion to quash was properly overruled.

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 crimes against 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, 15 November 1944, and paragraphs 346 and 347, as the latter is amended by said Change 1; *In re Yamashita*, supra; *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 the Mauthausen Concentration Camp case, supra).

2. *Membership in Criminal Organizations:* The accused STROOP, SOMANN, TRUMMLER, FUHR, HOHLER, BEST, GOSS, MICHELY, LASSAK, GIRKE, HELLENBROICH, STATTMANN, and RAAF were found guilty under charge 2 of membership in criminal organizations, i.e., the Gestapo, the SD, or the SS. Article 9 of the Charter annexed to the London agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis, provided that at the trial of any individual member of any group or organization the International Military Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization. Article 10 of the Charter provides that the declaration of criminality against an accused organization is final and cannot be challenged in any subsequent criminal proceeding against a member of the organization in national, military or occupation courts. In view of these provisions of the Charter, Law Number 10 of the Control Council of Germany, 20 December 1945, specifically recognized as a crime membership "in categories of a criminal group or organization declared criminal by the International Military Tribunal". Among others, the Tribunal found the Die Geheime Staatspolizei (commonly known as the Gestapo), Der Sicherheitsdienst des Reichsführer SS (commonly known as the SD), and Die Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the SS) to be criminal organizations. With regard to the three organizations, the Tribunal included all local Gestapo officials, all local SD representatives and agents, and all persons who had been officially accepted as members of the SS including members of the Allgemeine SS, members of the Waffen SS, members of the SS Totenkopf Verbände, and members of any of the different police forces who were members of the SS, when it appears that they became or remained members of any of the three organizations with knowledge that they were being used for the commission of war crimes, or who were personally implicated as members of those organizations in commission of such crimes, within the groups declared to be criminal.

3. *Motions:* After the prosecution had rested, the defense made several motions, the first being a motion on behalf of all of the accused to quash charge 1 and the particulars thereunder on the ground that it when read together with the particulars thereunder, disclosed more than one offense, i.e., conspiracy, assault, murder, etc., (R 635). This motion was properly overruled (R 647). The particulars under the charge are, in all pertinent respects, like the common designs alleged in *United States v.*

Weiss, et al., March 1946, known as the Dachau Concentration Camp case and the Mauthausen Concentration Camp case, supra. The prosecution aptly pointed out that only one offense is alleged which when reduced to its simplest terms is that the accused engaged in a common design to commit violations of the laws of war. It is true that formal words precede the vital ones stating the offense, which are descriptive for the Court and the accused as to roles the accused are alleged to have taken. Also formal words follow those stating the offense, which merely describe acts done pursuant to the common design.

The next motion by the defense sought findings of not guilty as to all the accused under charge 1 and the particulars thereunder for the reason that the prosecution "has failed to sustain its burden of proving the guilt of the accused beyond a reasonable doubt" (R 647). The evidence theretofore adduced by the prosecution, which linked the accused with a series of similar criminal acts, had established a prima facie case of concerted action as to those acts and that the incidents were but parts of a common whole. (See Wharton's Criminal Law, Volume II, page 1939.) It is not error for a war crimes tribunal to overrule a motion for a finding of not guilty made at the close of the case for the prosecution if it believes there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, US Forces, European Theater, 30 November 1945 and Section 501, page 409, "Manual for Trial of War Crimes and Related Cases", 15 July 1946). A similar practice is followed in Courts-Martial (Paragraph 71, d., "Manual for Courts-Martial, U.S. Army", 20 April 1943). The motion was properly overruled (R 653).

The third motion by the defense following the close of the prosecution's case sought findings of not guilty on behalf of accused EICHEL, KIWITT, ALBRECHT, MOLLER, GOEHRENDT, NAIIRGANG, HAMMAN, FAY, BRANNER, and HOHLER as to charge 2 and the particulars thereunder on the ground that the prosecution had "failed to prove beyond a reasonable doubt that they or any of them was a member of any of the organizations for the period in question as stated in the particulars as to charge 2". The motion was sustained as to all but accused BRANNER and HOHLER (R 665). A prima facie case having been established as to those two, the motion was properly denied as to them.

The fourth motion by the defense sought (R 655):

a. To strike certain exhibits from the record on the ground that the prosecution had failed to sustain its burden of proof that the accused or any of them had "conspired in any way wilfully and deliberately with any of the persons named in any of the exhibits".

b. To strike from the record all references to the Wehrwolf on the ground that the prosecution had failed to sustain its burden of proof that the organization was actually formed or that it participated in any war crime.

c. To strike from the record all references and testimony with respect to Stoll on the ground that the prosecution had failed to sustain its burden of proof to connect any of the accused with Stoll.

d. To strike a number of specified exhibits from the record on the ground that the prosecution had not sustained its burden of proof as to the confessions, i.e., that they were voluntary and obtained without duress.

In final analysis, the defense sought to strike the evidence covered by the first, second, and third portions of the motion on the ground that it was too remote, not directly related to the charges against the accused, and in fact involved crimes by individuals not named. While this is not a conspiracy, in Anglo-American practice concerning a true conspiracy, the evidence is permitted to take wide range and all facts or circumstances which taken together show a common plan or purpose are admissible (Underhill's *Criminal Evidence*, Fourth Edition, pages 1406—1409). In any event it is sufficient answer that tribunals trying violations of the laws of war may admit any evidence which they deem to have probative value, i.e., helpful in arriving at a true finding (In re Yamashita, *supra*, and Section 270, "Manual for Trial of War Crimes and Related Cases", 15 July 1946). It may have been the position of defense counsel that the evidence should have been stricken because it involved crimes by persons not identified in the charges. The common designs alleged in the Dachau and Mauthausen Concentration Camp cases, *supra*, did not identify by name or class all of the other numerous individuals who obviously participated in those huge mass atrocity operations. However, by the charges in those cases and in this one, the accused were fully apprised of the nature, character, and purpose of the common designs and the results effected in pursuance thereof, as well as the names of some of the individuals with whom they were alleged to have acted in concert.

As to the fourth portion of the motion, there is some authority in American criminal law to the effect that confessions are presumed to be voluntary and are admissible without foundation evidence in the absence of reason to suspect the use of violence, threats, torture, etc. (See 20 American Jurisprudence, Evidence, Section 536). The regulations in connection with the trial of war crimes cases by Military Government Courts in this Theater have never required such foundation evidence. In this connection it is of interest to note that Regulation 5 d (7) of the SCAP Regulations, supplemented by Rules of Procedure and Outline of Procedure for Trial of Accused War Criminals, issued by Headquarters, United States Eight Army, 5 February 1946, and amended by a letter of General MacArthur, 27 December 1946, provides that all confessions or statements of accused shall be admissible in evidence without any showing that they were voluntarily made, and, further, that, if it is shown that they were procured by means which the commission believes to have been of such character that the accused may have been caused to make a false statement, the commission may strike out or disregard any portion thereof as was so procured. While probably not binding on the Court

in the trial of this case, the "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended 1 February 1947, provides by subparagraph c (4), Section 270, that war crimes tribunals will not require foundation evidence to establish that sworn statements offered in evidence were voluntarily procured, but on the other hand will presume subject to be rebutted by competent evidence that the sworn statements were voluntarily made.

The Court did not err in overruling the fourth motion in its entirety and no injustice resulted to the accused (R 691).

The fifth motion made by the defense at the end of the prosecution's case was a motion on behalf of certain accused for findings of not guilty under charges 3 to 10, inclusive, and also for findings of not guilty of illegal killings as to certain accused under any of the 10 charges (R 692). It was properly overruled (R 716).

4. *Superior Orders*: As indicated in Section V, *supra*, accused TRUMMLER, FUHR, HOHLER, MOLLER, BEST, GOSS, MICHELY, GIRKE, HELLENBROICH, STATTMANN, and RAAF sought to justify their actions by offering evidence to show they 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. Dominikus Thomas, December 1945; United States v. Alfons Klein, et al., (Hadamar Murder Factory Case), February 1946; and French Republic v. Wagner, et al., Court of Appeals, 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 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 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 United States v. Bury, et al., September 1945, United States v. Dominikus Thomas, supra, and United States v. Beck, et al., December 1946).

5. *Special Findings*: In addition to the findings respecting each accused, the Court made special findings of fact regarding the existence in the Third German Reich, on and after 13 March 1940, of certain memoranda, directives, orders, decrees, and propaganda concerning the treatment by the German armed forces, police, and civilian population and the civilian population of countries occupied by Germany during World War II of Allied commandos, saboteurs, parachutists, and captured flyers (R 2595—2637). The findings are amply supported by documents and evidence adduced in the trial. It could be contended that the Court, in making these findings, exceeded the allegations in the charges, and particulars and that, therefore, the findings are improper. However, there is ample authority for additional findings by military courts (Winthrop's "Military Law and Precedents", Second Edition, Reprint 1920, at page 385, and the Mauthausen Concentration Camp case, supra). The Court may well have thought that its findings would clarify its views as to the evidence covered by the findings and that such clarification would aid in the trial of later cases involving the killing of surrendered flyers.

6. *Swearing of Court*: The Court overruled a motion by the defense to set aside the death sentences imposed on the ground that the members of the Court were not sworn (R 2587—2589). No error was committed. Members of Military Government Courts specially appointed for the trial of violations of the laws and usages of war are not sworn (Section 501, page 402, "Manual for Trial of War Crimes and Related Cases", 15 July 1946).

7. *Conduct of Trial*: The case was well and thoroughly tried and 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 convicted accused chose to do so. Both the findings and sentences as to each accused were approved by a two-thirds vote of the members present. The trial was conducted with fairness to all accused.

VII. CONCLUSIONS:

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

Accordingly, 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 STROOP, TRUMMLER, FUHR, HOHLER, EICHEL, KIWITT, GOSS, MICHELY, GIRKE, HELLENBROICH, STATTMANN and RAAF be approved and ordered executed; that the sentence to death by hanging as to accused MOLLER be approved, but commuted to imprisonment for life and as commuted ordered executed; that the sentences to imprisonment for life and as commuted ordered executed; that the sentences to imprisonment for fifteen (15) years as to accused ALBRECHT, HAMMANN and BEST be approved and ordered executed; that the sentences to imprisonment for five (5) years as to accused NAIIRGANG and FAY be approved and ordered executed; that the sentence to imprisonment for four (4) years as to accused SOMANN be approved and ordered executed; and that the sentence to imprisonment for three (3) years as to accused LASSAK be approved and ordered executed.

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

RONALD DADAMIO

2nd Lt., Inf.

Post Trial Branch

Having examined the record of trial, I concur
this 19th day of September 1947.

C. E. STRAIGHT

Lieutenant Colonel, JAGD

Deputy Judge Advocate
for War Crimes

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ACTION BY THE APPROVING AUTHORITY

All sentences were approved by the approving authority, but the death sentences of Hermann MOLLER, Wilhelm HOHLER and Heinrich MICHEL were commuted to imprisonment for life.

The Reviewing Authority was LUCIUS D. CLAY, General, U.S.A., Commander-in-Chief, European Command.
