

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

9 March 1948

UNITED STATES)

v.)

Case No. 12-3193-B

Georg BAUMANN, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 17 September 1947 to 10 October 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

CHARGE 1: Violation of the Laws and Usages of War.

Particulars: In that Georg BAUMANN, Heinrich BAUMANN, Franz BUCHLER, Norbert ENDRES, Oswald GUNDELACH, Albert HAMMER, Kurt HANS, Karl HELLMUTH, Otto HELLMUTH, Andreas INGEBRAND and Richard SCHULZE, German nationals, between the 7th 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 and usages of war and pursuant thereto, did, wrongfully encourage, aid, abet, order and participate, 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, abuses, tortures and indignities.

Case No. 12-1034-1

CHARGE 2: Violation of the Laws and Usages of War.

Particulars: In that Georg BAUMANN, Heinrich BAUMANN, Oswald GUNDELACH, Albert HAMMER and Richard SCHULZE, German nationals, did, at or near RUPPERTSHUTTEN, Germany, on or about 12 September 1944, wrongfully encourage, aid, abet and participate in the killing of four members of the United States Army, who were then and there unarmed and surrendered prisoners of war in the custody of the then German Reich.

Case No. 12-2701 (12-1462)

CHARGE 3: Violation of the Laws and Usages of War.

Particulars: In that Josef BUCHLER, Norbert ENDRES, Kurt HANS, Karl HELLMUTH, Otto HELLMUTH, Andreas INGEBRAND and Richard SCHULZE, German nationals, did, at or near BAD NEUSTADT, a.d. SAALE, Germany, on or about 29 September 1944, wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, who was then and there an unarmed

CHARGE 4: Violation of the Laws and Usages of War.

Particulars: In that Kurt HANS and Richard SCHULZE, German nationals, did, at or near SOMMERSHAUSEN, Germany, on or about 18 March 1945, wrongfully encourage, abet and aid in the killing of a member of the British Royal Air Force, who was then and there an unarmed and surrendered prisoner of war in the custody of the then German Reich.

(The BUCHLER whose Christian name appears as "Franz" in the particulars of Charge I, and the BUCHLER whose Christian name appears as "Josef" in the particulars of Charge II, is one and the same person, and his correct full name is "Franz Josef BUCHLER". (R 9))

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 sometimes be used herein-after to facilitate reference to the various accused.)

FINDINGS

1.	<u>ACCUSED</u>	<u>NOT GUILTY</u> <u>GUILTY</u>		<u>SENTENCES</u>
		<u>OF</u> <u>CHARGES NOS.</u>	<u>OF</u> <u>CHARGES NOS.</u>	
1.	BAUMANN, Georg	II	I	2 years, commencing 15 February 1946
2.	BAUMANN, Heinrich		I, II	Death by hanging
3.	BUCHLER, Franz Josef		I, III	10 years, commencing 14 April 1945
4.	ENDRES, Norbert		I, III	Death by hanging
5.	GUNDELAICH, Oswald		I, II	Death by hanging
6.	HAMMER, Albert		I, II	Death by hanging
7.	HANS, Kurt	III	I, IV	Death by hanging
8.	HELLMUTH, Karl	III	I	3 years, commencing 9 June 1945
9.	HELLMUTH, Otto		I, III	Death by hanging
10.	INGEBRAND, Andreas		I, III	Death by hanging
11.	SCHULZE, Richard	II, III	I, IV	Death by hanging

IV. SUMMARY OF EVIDENCE:

1. Common Plan and Design: On 10 August 1943, a secret order in letter form was transmitted by Heinrich Himmler, Reichsfuhrer der SS and head of the German Police, through channels to the Regular Police and the

Security Police. This order contained a provision that the gausleiters would be advised that the police would not interfere in any clashes between the German population, on the one hand, and captured English and American flyers, on the other. This letter order was marked secret, was signed by Himmler, and directed the transmission of the contents thereof orally to subordinate offices (R 550; P-Ex 36).

The following spring the Goebbels editorial on the subject of Allied flyers appeared in the Voelkischer Beobachter, 29 May 1944. After denouncing Allied flyers as terrorists who murdered defenseless women and children, the editorial asserted that these flyers were not entitled to any protection from either Wehrmacht or police, if an aroused German population took retaliatory measures. Also the editorial contained an ominous hint that the Germans could find ways and means to defend themselves against criminals (R 477; P-Ex 35).

The day after the Goebbels editorial was published, a secret letter was issued by the Nazi Party Chancellory emphasizing that no measures had been taken by police against German civilians who participated in retaliatory actions against enemy flyers. All Party officers down to and including ortsgruppenleiters were to receive this information in secret (R 408; P-Ex 34).

On 20 June 1944 the Reich Foreign Office, by letter, advised the Chief of the High Command that in general it agreed with the measures intended. These measures, as outlined in detail in the letter, constituted a scheme to deny Allied flyers the rights of prisoners of war under the Geneva Convention and contemplated that they would be killed. This communication is also marked "Secret" (R 578; P-Ex 37).

2. Organization of German Police: Himmler, as Reichsfuhrer 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 comprised 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 Reichsfuhrer SS and an office in the Ministry of the Interior under Himmler as Chief of the German Police. The Security Service was the intelligence agency of the Security Police. This change, above referred to, necessitated the appointment of certain high police officers to supervise the work of the Order Police and Security Police 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 the Order Police and of the Security Police. 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 the Order Police and the inspectors of the Security Police to the positions of befehlshaber der ORPO (BDO) and befehlshaber der SIPO und des SD (BDS).

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. By virtue of his rank and position, he was the "Little Himmler" in his 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.

Kaltenbrunner was in charge of the Reich Security Head Office (RSHA). General Wunnenberg, who was immediately under Kaltenbrunner in the Reich Security Head Office, was in charge of the Ordnungspolizei (ORPO, i.e., Order Police). General Naumann, who was also immediately under Kaltenbrunner in the Reich Security Head Office with the title of Inspector of the Security Police and Security Service, was in charge of the Sicherheitspolizei (SIPO, i.e., Security Police). The late General Griphon as Inspector of the Order Police controlled the operations of the commanders of the Order Police, i.e., regular police of the various gaue. Accused BUCHLER was the commander of the rural police in Gau Mainfranken. Jagdkommandos (pursuit details) composed of members of the Criminal Police, the Gestapo, and regular police, functioned under the direction of the Criminal Police. The duties of these pursuit details included apprehending and killing Allied fliers (R 29, 30, 282-284, 303, 368; P-Exs 15, 16, 28, 29, p 3).

3. Chain of Command:

a. Generally: Himmler, as Reich Minister 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 Reich Security Head Office, in charge of the Chief of the Security Police and Security Service, General Kaltenbrunner, and to the Head Office, Order Police, in charge of 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 Leaders.

b. Positions of Accused: Accused SCHULZE in Kaltenbrunner's office supervised the Criminal Police apprehension agencies for Germany (R 768, 836, 847). Immediately under Kaltenbrunner was General Naumann, Inspector of the Security Police and Security Service. Accused HANS was in command of the Criminal Police for Gau Mainfranken with head offices at Wurzburg (R 795, 796, 807). Accused HAMMER and Heinrich BLUMANN were on the staff of accused HANS (R 264; P-Ex 27). Accused GUNDELACH and Georg

BAUMANN were members of the staff of the Gau Mainfranken Gestapo with head offices also in Wurzburg (R 29, 303, 872; P-Exs 15, 28, D-Ex 3).

In the Nazi Party chain accused Otto HELLMUTH as gauleiter of Gau Mainfranken was directly under the head of the Nazi Party, Hitler's deputy, Bormann (R 32, 530; P-Ex 18). That accused's office was in the charge of Karl HELLMUTH (R 586, 587, 590). Accused INGEBRAND as kreisleiter of Neustadt a.d. Saale was answerable directly to Gauleiter Otto HELLMUTH (R 61; P-Ex 22). Accused ENDRES was in charge of accused Kreisleiter INGEBRAND's office.

The Minister of Interior for Bavaria was answerable directly to Himmler in his role as Minister of the Interior. Next in the chain of this command were the Governor Presidents, including accused Otto HELLMUTH, Governor President of Gau Mainfranken (R 29, 530, 531; P-Ex 15). Accused BUCHLER, commander of the rural police for Gau Mainfranken was answerable directly to accused Otto HELLMUTH in his capacity of Governor President of that gau (R 934).

4. Geographic Background - Place Names: The Court may well have taken judicial knowledge of geographical facts as follows: Gau Mainfranken, the area where the offenses involved herein took place, was a part of Wehrkreis XIII, a military geographical subdivision of the Reich. The remaining two gaue within this wehrkreis were Gau Oberfranken and Gau Niederbayern. Within the Gau Mainfranken the principal city was Wurzburg, headquarters of the Criminal Police and Gestapo. The three incidents covered by Charges II, III and IV occurred within Gau Mainfranken. They took place in the vicinities of Neustadt a.d. Saale, Ruppertshutten, and Sommershausen and will hereinafter be referred to by their place names.

5. Incidents:

a. Ruppertshutten. On about 12 September 1944, four members of an American bomber crew bailed out in the vicinity of Ruppertshutten, Germany, and were captured by members of the local pursuit detail. Accused Heinrich BAUMANN took one flyer into the woods and shot him. Accused HAMMER took a second flyer into the woods and shot him. HAMMER then returned to the site of an old camp where the two remaining flyers were in

custody of accused GUNDELLACH. These two flyers were shot by GUNDELLACH and Heinrich BAUMANN.

b. Neustadt. On about 29 September 1944, an American flyer bailed out in the vicinity of Neustadt, a.d. Saale, Germany, and was immediately captured. He was taken to the police station at Bastheim, where he was placed in the custody of Hoffmann, a rural policeman now deceased. Accused INGEBRAND, the local kreisleiter, upon being summoned to the police station, picked up his deputy, accused ENDRES. After interrogating the flyer, Hoffmann and accused INGEBRAND and ENDRES put him into a car, ostensibly to drive him to Schweinfurt. After going a distance of two kilometers, accused INGEBRAND ordered that the car be stopped. All three then got out of the car. They took the flyer up the road and shot him. The killing was accomplished in compliance with orders by accused Otto HELLMUTH, the superior of INGEBRAND and ENDRES, and in compliance with orders by a subordinate of accused Otto HELLMUTH, accused BUCHLER. The latter was the superior of gendarme Hoffmann.

c. Sommershausen. On about 18 March 1945, a British flyer bailed out in the vicinity of Sommershausen, Germany. After being captured he was taken to the town hall. Axt, now deceased, and Weber, now imprisoned in the British Zone, pursuant to orders by accused HANS, took the flyer to the bank of the Main River, where they shot and killed him. They threw his body into the river. Accused HANS, in turn, had received his orders concerning the treatment of captured Allied flyers from accused SCHULZE. Accused HANS' deputy, Koemann, went to Berlin to receive these orders.

6. An item hereinafter referred to as "Statement" is in the form of extrajudicial sworn testimony, unless otherwise indicated.

V. EVIDENCE AND RECOMMENDATIONS:

1. Georg BAUMANN

Nationality:	German
Age:	48
Civilian Status:	Unknown
Party Status:	Nazi Party
Military Status:	None

Flea:

NG Charges I, II

Findings:

G Charge I; NG, Charge II

Sentence:

Two years from 15 February 1946

Evidence for Prosecution: The accused was a member of the Wurzburg Gestapo (R 29, 872; F-Ex 15, D-Ex 3). He was assigned to a pursuit detail organized for the purpose of apprehending a group of American flyers who had bailed out in the vicinity of Ruppertshutten, Germany (R 186, 303; F-Ex 28, pp 2, 3). The pursuit detail received orders to shoot all Allied flyers apprehended by it (R 282-284, 303, 368; F-Exs 28, 29, p 3). Other members of the detail were accused Heinrich BAUMANN, GUNDELACH, and HAMMER (R 186, 187). The pursuit detail was guided to the spot where the airplane had crashed and where one flyer had already been captured, Ruppertshutten incident (R 223). This flyer was taken to site of an old camp where two other flyers were taking care of a fourth flyer who was wounded (R 264; F-Ex 27). As directed by Bluehm, the accused went with him back to where the airplane had crashed to verify the expected arrival of an air force emergency squad and to be in readiness to serve as a messenger (R 274, 275).

Evidence for Defense: The first flyer was shot by accused Heinrich BAUMANN (shown post in the discussion of his participation in the case). During the time that the other three flyers were shot, the accused was in the company of Bluehm, at a substantial distance from the scene of the shooting (R 295, 296). The accused left the site of an old camp at the time Hohloch did and was not there when Hohloch returned there shortly after hearing the shots (R 249). Accused HAMMER corroborates the fact that the accused had no opportunity to kill any of the three remaining flyers (R 264; F-Ex 27).

Sufficiency of Evidence: The Court was warranted from the evidence, particularly that connecting the accused with membership in and participation with the pursuit detail which killed four American flyers, in the finding of guilty. The sentence is not excessive.

Petitions: A Petition for Review was filed by Captain Emanuel Lewis, defense counsel, and Dr. Hans Zwehl, German associate counsel, undated.

Petitions for Clemency were filed by wife of accused, Katharina Baumann, 24 October 1947 and 1 December 1947.

Recommendation: That the findings of guilty and sentence be approved.

2. Heinrich BAUMANN

Nationality:	German
Age:	37
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Unknown
Flea:	NG Charges I, II
Findings:	G Charges I, II
Sentence:	Death by hanging

Evidence for Prosecution: The accused, a criminal secretary with the Murburg Criminal Police (R 369; I-Ex 31), was assigned to the pursuit detail which left Murburg for Ruppertshütten on about 12 September 1944 to look for American flyers, Ruppertshütten incident (R 184, 218). One flyer, who had been captured near the crashed bomber, was taken to site of an old camp where the remaining three flyers were held (R 223, 264; I-Ex 27). One of these flyers had a bandaged head and was unable to lift himself off the ground (R 264; I-Ex 27 p 8). The other two complained of internal pains (R 303; I-Ex 28 p 3). They were all searched and found to be unarmed (R 242).

Two witnesses testified that before any shooting took place the accused took one flyer into the woods and slapped him in the face (R 227, 253, 271). After bringing this flyer back the accused took a flyer into the woods and shot and killed him. The victim made no attempt to escape (R 303; I-Ex 28 p 6). The gunshots were heard by Hohloch, who later saw the flyer's dead body (R 229, 230, 233). The accused then returned and, according to a Statement by accused GUNDELICH, shot two more flyers (R 303; I-Ex 28). In his Statement, the accused admitted shooting one flyer, but alleged that he attempted escape (R 369; I-Ex 31). The accused told Koenn that four flyers had been shot while attempting to escape (R 186). Accused HANS testified that the accused admitted shooting

flyers, although HANS could not recall whether the number shot was two or three (R 832). It was common talk at the office of accused HANS where the accused worked that the accused had shot two flyers (R 187). After shooting his second flyer the accused asked accused GUNDELACH to shoot one. The latter, according to his Statement, refused (R 303; I-Ex 28 p 6).

Hohloch testified that, when the accused returned after shooting his first flyer, he told accused Georg BAUMANN that he and the others were cowards without initiative (R 231). Ehrbacher testified that the kreis-leiter of Lohr telephoned an order to the effect that the prisoners should not be brought to Lohr (R 747) because they might come to harm (R 751, 752). The accused in his Statement stated that the flyer he had shot died (R 369; I-Ex 31). This was confirmed by Hohloch (R 233). The flyers were American, according to the accused's Statement (R 369; I-Ex 31 p 3). It is not certain that the accused was present at the Criminal Police meeting where accused HANS announced that no more flyers would be taken prisoner, but that they would be shot to death (R 280, 281).

Evidence for Defense: The accused declined to testify. In his Statement, he admitted shooting one flyer, but insisted that the flyer tried to escape. He stated that the flyer had indicated a desire to relieve himself; that thereupon he stepped aside with his prisoner some 40 to 50 meters; that the flyer made a threatening gesture and started to run; that he shouted for the flyer to stop; that when his shout was unheeded, he shot him twice in the head with a 7.65 mm pistol; and that as a result the victim was killed instantly. The accused further stated that, when he returned to the site of an old camp, he found accused GUNDELACH and HAMMER together with the remaining three flyers. They were dead, although not at the same spot where they had been. The pertinent orders were for the pursuit detail to apprehend the flyers and turn them over to the nearest army unit. He further stated that he did not recall any order to shoot flyers, nor any conversation pertaining thereto during the trip to Rupprechtshutten (R 369; I-Ex 31).

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

Petitions: A Petition for Review was filed by Captain Emanuel Lewis, defense counsel, and Dr. Hans von Zwehl, German associate counsel, undated. Petitions for Clemency were filed by Dr. Berger, 16 October 1947; F. Reinheimer, 15 October 1947; Ursula Baumann, 1 December 1947; Heinrich Neumeier II, 22 October 1947; Adolph Seisser, 25 November 1947; firm of A. Schum Sons, 8 December 1947; Hermann Buettner, undated; Hans Scheyhing, 3 February 1947; and Georg Hoeppel, 28 October 1947.

Recommendation: That the findings of guilty and sentence be approved.

3. Franz Josef BUCHLER

Nationality:	German
Age:	57
Civilian Status:	Police Officer
Party Status:	Unknown
Military Status:	SS Major
Plea:	NG Charges I, III
Findings:	G Charges I, III
Sentence:	10 years, commencing 14 April 1945

Evidence for Prosecution: The accused, a Major in the rural police and a member of the SS, was the highest ranking official of the rural police in Gau Mainfranken (R 934). He exercised administrative and disciplinary control over the rural police (R 936). He was also a staff officer of the protective police, a branch of the Order Police (R 935). He was subject to the authority of the Governor President, accused Otto HELLMUTH (R 29, 935; P-Ex 15). The Criminal Police could send directives to the rural police (R 937) which had the force of orders (R 960).

In the summer of 1944, the accused presided at a regular meeting of the rural police leaders (R 116) at which accused HANS, head of the Wurzburg Criminal Police, was guest speaker (R 939-941). The accused testified that the plain import of the speech by accused HANS was that enemy flyers had bombed nonmilitary targets ; that they were outside the pale of international law; and that no more enemy flyers would be taken prisoner (R 946). This is corroborated by the Statement of Schmitt (R 930; D-Ex 7) and by a statement of the accused (R 170; P-Ex 25). In this statement the accused admits that accused HANS gave a secret order at the meeting of the rural police leaders. However, the accused specifically denied passing the order on, but admitted it was possible that he had conceded the existence thereof to his subordinates. He also admitted that the rural police, the Criminal Police and the Gestapo had orders to cooperate with each other (R 170; P-Ex 25 p. 6). In his unsworn pretrial statement, Schmitt stated that the accused directed the rural police leaders to act according to the new orders, namely, to inform the Criminal Police in all future cases (R 715; D-Ex 1).

Hoffmann, who later participated in the killing involved in Charge III as the police officer from Bastheim, was present at the meeting where the accused and accused HANS gave instructions as to the killing of flyers (R 118).

Koemm testified that when he went to a meeting in Berlin, he was told by accused SCHULZE, a member of Kaltenbrunner's staff, to inform the rural police of the orders to kill flyers (R 863, 865). Kupfel, a former inspector of rural police, testified that the accused was his superior (R 696); that he attended the rural police leader's meeting; and that instructions were given that protection would not be extended to enemy flyers, although he could not recall who gave the order (R 697, 698). He transmitted the order to his subordinates (R 700). Rheinhardt testified that rural police leader Hermann also passed on the order to his subordinates (R 345, 346). Dufey, a former police inspector and subordinate of accused Otto HELLMUTH and of the accused (R 878), testified that about lunch time of the day of the rural police leaders' meeting some of them came into his office and told him that now flyers were to be shot (R 878, 879).

Bachmann testified that he heard the accused in a telephone conversation tell someone that he did not want to hear reports of captured flyers (R 161, 163-166). Burger testified that the accused confirmed the secret order after accused HANS addressed the meeting (R 72).

In his statement, the accused admitted transmitting the Himmler non-interference order (R 550; P-Ex 36) to his subordinates (R 170; P-Ex 25). The accused admitted in his testimony that after accused HANS left the meeting he discussed the order with his subordinates, one of whom said he was afraid of reprisals (R 970). He also admitted writing a statement while he was in detention to the effect that all the policemen present understood accused HANS to mean that no more prisoners would be taken (R 979). This is corroborated by Kupfel, a former police inspector (R 705).

The secret order was duly carried out by a member of the rural police. In the Neustadt incident Hoffmann, a rural policeman under the jurisdiction of the accused, was involved in the killing of an American flyer. In his Statement, Hoffmann admitted knowing about the secret order (R 32; P-Ex 19).

INGEBRAND drove off with the flyer, who had been at the Bastheim police station in Hoffmann's custody; that accused INGBRAND ordered the car stopped two kilometers beyond Bastheim; and that Hoffmann and accused INGBRAND then took the flyer out of the car and shot him (R 33; P-Ex 20). Accused INGBRAND, according to the testimony of Leinger, told her that he, Hoffmann and accused ENDRES shot and killed the flyer (R 46). (Hoffmann subsequently committed suicide (R 149)).

Evidence for Defense: The accused testified that the meeting of rural police leaders held in the summer of 1944 was a regularly scheduled one at which accused HANS had requested permission to speak (R 939, 940). The accused had no idea what his subject would be (R 941). The original orders had been for police to apprehend the flyers and take them to the nearest air base or, if that was not possible, to notify the Wehrmacht (R 942, 943). Accused HANS told those at the meeting that terror flyers were outside the protection of international law; that weapons were to be used immediately in the event of any attempt to escape (R 946); that no steps could be taken against flyers, if the air corps had been informed; that the pursuit detail was available for apprehending; that its ultimate commitment was to be determined by him; and that the presence of flyers in the neighborhood was to be reported to the Criminal Police immediately. Accused HANS also announced the Himmler non-intervention order at the meeting (R 947, 948). The accused further testified that after accused HANS finished his speech, he, the accused, told his men that the only duty remaining was for the rural police to notify the Criminal Police when flyers were reported (R 949, 950). No suggestion was made that flyers would no longer be turned over to the air force or the Wehrmacht, nor that the pursuit detail would be used for killing (R 951). The accused denied that he ever held a telephone conversation in which he said he wanted no more reports on flyers. He maintained that his men had arrested and turned over more than 100 flyers to the Wehrmacht or to the air force (R 951, 952). He investigated the Neustadt incident and was convinced of Hoffmann's innocence

(R 957). He never heard of the rural police in his gau killing any flyers (R 957). His men had no orders to kill flyers (R 953).

Nine former subordinates of the accused testified that he never gave a direct order to shoot flyers (R 712, 719, 729, 734, 893, 930-932; D-Exs 6, 7, 8, 9, 10), although two of them, Holzheimer (R 719) and Erbacher (R 734), were evasive and forgetful. Two witnesses testified that they never heard of the rural police receiving any order to shoot flyers (R 764, 927). Koemm and Marthaler testified that the Criminal Police could not give orders to the rural police (R 199, 654). Burger and Kupfel testified that they were not reprimanded by the accused for turning flyers over safely to the Wehrmacht or to the air force (R 97, 701, 702). Character evidence for the accused was given in the form of one unsworn and four sworn statements, all to the effect that accused was a just and impartial superior (R 891, 715, 932, 892, 931; D-Exs 1, 4, 5, 8, 9).

Sufficiency of Evidence: His participation in the execution of the common design is clear. It is also clear that the flyer killed in the Neustadt incident, in which a subordinate of the accused participated, was killed in conformity with standing instructions by the accused. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Captain Emanuel Lewis, defense counsel, undated. No Petitions for Clemency were filed.

Recommendation: That the findings of guilty and sentence be approved.

4. Norbert ENDRES

Nationality:	German
Age:	48
Civilian Status:	School Teacher
Party Status:	Nazi Party since 1 October 1930
Military Status:	SA
Plea:	NG Charges I, III
Findings:	G Charges I, III
Sentence:	Death by hanging

Evidence for Prosecution: The accused, a member of the Nazi Party and of the SA, was deputy to accused Kreisleiter INGEBRAND at Neustadt a.d. Saale (R 33; P-Ex 20). Sometime during 1944, the accused was told by accused INGEBRAND that the gauleiter, accused Otto HELLMUTH, had ordered that all enemy flyers landing on German soil be killed. A few days prior to 29 September 1944, the date of the Neustadt incident, accused Karl HELLMUTH who was the secretary of the kreisleiter told the accused that the orders of the Reich leaders must be executed and that the kreisleiter was personally responsible (R 33; P-Ex 20, p. 4). On the day of the incident an American flyer had been captured and interned at the jail in Bastheim, in the custody of Hoffmann. Hoffmann then brought the flyer to the Neustadt jail (R 32; P-Ex 19). Following a telephone call by Kepp to accused INGEBRAND, the latter picked up the accused and the two called for the flyer at Neustadt (R 121, 983, 984). The accused, Hoffmann and accused INGEBRAND then put the flyer into a car driven by Hoffmann (R 74, 123) and proceeded along the road to Schweinfurt (R 986). About a kilometer outside of Neustadt, according to Hoffmann's Statement, the accused ordered the car stopped. The accused and accused INGEBRAND took the flyer about 150 to 200 meters from the car and shot him to death (R 32; P-Ex 19).

Leinger testified that accused INGEBRAND told her that the accused and Hoffmann jointly shot the flyer (R 46) during an attempt to escape (R 49). The victim was an American named Burleigh (R 33; P-Ex 20, p. 6). After the killing and pursuant to orders by accused ENDRES and INGEBRAND, a gravedigger Bordorff, together with an associate, buried the flyer in a field. They had been told to inter the body in Saurzel Ditch (R 37-40). Bordorff saw at least five bullet marks on the uniform near the chest. The uniform, as directed by the kreisleiter, was removed and delivered to the police (R 40). The accused told Hoffmann to enter "shot while trying to escape" in his report (R 32; P-Ex 19).

In a letter to his son 22 July 1944, the accused referred to the bombing of Schweinfurt and expressed his regrets that they had not been able

to catch a few Americans and do away with them. He asserted that they would not take any more prisoners. He also indicated his devotion to Nazism and his hope that his boy will be no different (R 372; P-Ex 33).

Evidence for Defense: The accused declined to testify. In his Statement, he stated that accused INGEBRAND called him at his home; that he was ordered to get a pistol and come along on the trip to get a flyer; that when the car stopped outside Neustadt, Hoffmann and accused INGEBRAND got out of the car; and that when he attempted to get out accused INGEBRAND shoved him back in again. He further stated therein that he did not do any shooting, but saw Hoffmann and accused INGEBRAND both shooting at the flyer (R 33; P-Ex 20b, pp. 4, 5). Kuehreich, former assistant gauleiter, testified he thought the accused had a good reputation with the population (R 489).

Sufficiency of Evidence: It is established that the accused knowingly and willingly participated in the killing of the flyer. As to his weak contention about superior orders, it appears that his desire to please and cooperate with superiors in vital Nazi organizations was superior to other considerations. 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 Captain Emanuel Lewis, defense counsel, undated, and Dr. Hans Fritz von Zwehl, German associate counsel, 24 December 1947.

Petitions for Clemency were filed by Leonard Voll, 15 September 1947; Amelie Klameth-Buehler, 20 October 1947; Josef Englert, 12 December 1947; Elfriede Endres, wife of accused, 23 December 1947; Marga Klein, 15 January 1948; Dr. Hans von Zwehl, 25 January 1948; and Amelie Klameth, 27 February 1948.

Recommendation: That the findings of guilty and sentence be approved.

5. Oswald GUNDELACH

Nationality:

German

Age:

43

Civilian Status:	SD since 1942 or 1943; Policeman
Party Status:	Nazi Party since 1 May 1937
Military Status:	Unknown
Plea:	NG Charges I, II
Findings:	G Charges I, II
Sentence:	Death by hanging

Evidence for Prosecution: The accused was a member of the Nazi Party and the Security Service (SD) and was assigned to the Wurzburg Gestapo (R 303; P-Ex 28). He was detailed to the pursuit detail which left Wurzburg for Ruppertshutten on about 12 September 1944 to look for parachuted American flyers, Ruppertshutten incident (R 186, 216, 218, 303; P-Ex 28). The detail included accused Georg BAUMANN, of the Gestapo, and accused Heinrich BAUMANN and HAMMER, of the Criminal Police (R 184, 218). On the road toward Ruppertshutten, Bluehm remarked to the accused that the orders were not to take the flyers as prisoners, but to shoot them to death (R 283, 284, 303; P-Ex 28, p. 7). After the pursuit detail arrived at the area where the crash had occurred, four flyers were rounded up and taken to the site of an old camp (R 223, 226, 264; P-Ex 27).

In his statement, the accused stated that one flyer had a bandage around his head and the others were complaining of internal pains (R 303; P-Ex 28). Accused HAMMER stated in his statement that one of the flyers was wounded; that he wore a head bandage; that he tried to lift himself up; but that he made the flyer remain lying (R 264; P-Ex 27, p. 8). All the flyers were searched and found to be unarmed (R 242, 303; P-Ex 28, p. 4). Accused Heinrich BAUMANN then took one of the flyers into the woods and shot him to death (R 303; P-Ex 28, p. 6).

At this time Hohloch heard shots coming from the direction of the site of the old camp (R 233, 234). Hohloch returned to the site of the old camp and saw one of the other flyers lying in a place other than where they had formerly been. The accused, together with accused HAMMER and Heinrich BAUMANN were there (R 234, 235). Accused Heinrich BAUMANN stated in his statement that when he returned from the search which followed his killing

the first flyer he saw the other three flyers lying dead; that they were not at the same place where they had been; and that the accused and accused HAMMER were the only ones who had remained there (R 369; P-Ex 31, p. 3). Hohloch then saw the four bodies loaded onto a truck (R 236, 237).

Bluehm heard two pistol shots from the direction of the camp, while he was returning from the patrol (R 298). Upon reaching the camp, he learned that all the flyers had been loaded onto a wagon, although at that time he did not know they were dead. He then took the road toward town and saw accused Heinrich BAUMANN together with the accused, about 100 to 150 meters along the way (R 276).

Accused HANS testified that the name of the accused was mentioned to him in the report by Bluehm as a participant in this mission of the pursuit detail (R 832, 833). Koemm testified there was talk in the Wurzburg Gestapo office that accused had shot one flyer (R 187).

In his Statement, accused HAMMER stated that almost immediately after he had shot his flyer he heard a shot from the camp and that about three to five minutes later he heard three or four more shots. He then returned to the camp and saw the accused together with accused Heinrich BAUMANN and two dead flyers. Accused Heinrich BAUMANN then told him that he and the accused had shot the two flyers during an attempt to escape (R 264; P-Ex 27, pp. 14, 15). In his statement the accused stated that he understood that accused HANS had ordered the killings and had specified the woods as the place therefor (R 303; P-Ex 28, p. 7).

Evidence for Defense: The accused declined to testify. Hohloch testified that, when he reached the camp about five to eight minutes after the shots were fired, he saw the accused there, but without any weapon in his hand (R 247). Bluehm testified that, before he left with accused Georg BAUMANN to go back to the airplane, he saw the accused go down the road to watch for an anticipated air force emergency squad (R 296). Hohloch and accused Heinrich BAUMANN both asserted that the flyers were lying dead at a spot other than the one where they had last seen them alive (R 248, 369; P-Ex 31). In his statement, the accused stated that

he was about eight to ten meters away from accused Heinrich BAUMANN when the latter took one flyer into the woods and shot him; that then the other two members of the Criminal Police took one into the woods and shot him; that accused Heinrich BAUMANN then returned and shot his second man; that he asked the accused to shoot the fourth flyer, but that the accused refused to do so, whereupon accused BAUMANN shot the fourth flyer; and that the prisoners made no show of resistance nor any attempt at escape (R 303; P-Ex 28, pp. 5, 6).

Sufficiency of Evidence: It is clear that the accused, a Gestapo agent, knowingly and willingly participated in the killings involved in Charge II. Whether he actually fired a shot which killed one or more of the flyers is not vital. He may have aided more by performing other functions. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Captain Emanuel Lewis, defense counsel, and Dr. Hans von Zwehl, German associate counsel, undated.

Petitions for Clemency were filed by Luise Gundelach, wife of accused, 10 November 1947; Catholic Pastor, Johann Keller, 22 October 1947; Heinrich Leier, Canon of the Episcopal Church, Wurzburg, 19 October 1947; Ludwig Huegel, 21 October 1947; Dr. Sales Hesse, Director of Benedictine Abbey, 22 October 1947; Franz Wagner, 11 November 1947; Kurt Groetsch, 2 November 1947; Emil Karl, 3 November 1947; Hilde Seidel, 20 November 1947; Kurt HANS, 4 November 1947; Margarete Freiburger, 3 November 1947, by accused, 21 December 1947; and Joseph Briendmann and 98 others, 20 October 1947.

Recommendation: That the findings of guilty and sentence be approved.

6. Albert HAMMER

Nationality:	German
Age:	38
Civilian Status:	Policeman, Criminal Police
Party Status:	Nazi Party since 1 May 1937
Military Status:	SS Second Lieutenant
Plea:	NG Charges I, II

Findings:

G Charges I, II

Sentence:

Death by hanging

Evidence for Prosecution: The accused was a member of the SS and of the Nazi Party (R 264; P-Ex 27). He was a member of the staff of accused HANS as commander of the Criminal Police for Gau Mainfranken and assigned to the pursuit detail which left Wurzburg for Ruppertshutten on about 12 September 1944 to look for parachuted American flyers, Ruppertshutten incident (R 184, 216, 217, 240, 264; P-Ex 27, p. 5). Included in the detail with the accused were accused Georg BAUMANN, Heinrich BAUMANN and GUNDELACH (R 184, 186, 218). After the detail arrived at the scene of the crash, four flyers were taken into custody and taken to the site of an old camp (R 223, 226, 264; P-Ex 27, p. 7).

In his Statement, the accused stated that one of the flyers was wounded and wore a head bandage. The flyer tried to lift himself off the ground, but the accused made him lie still (R 264; P-Ex 27, p. 8). All the flyers were searched and found to be unarmed (R 242). Hohloch had asked the accused what disposition was to be made of the flyers and was told that they would be killed (R 230). After one of the flyers had been shot by accused Heinrich BAUMANN (R 303; P-Ex 28, p. 6), the accused told Hohloch to accompany him and another flyer into the forest (R 231, 232). After they had gone about 100 meters into the forest, the accused sent Hohloch to see whether the flyer Heinrich BAUMANN had shot was dead. Up to that point, the accused's captive had made no attempt to escape (R 232). Hohloch had gone about 15 to 20 meters when he heard a shot behind him. He turned around and saw that the flyer was lying on the ground and that the accused had his pistol in his hand (R 232, 233, 260). The flyer had a bullet hole in his head and was dead (R 232, 233).

Two witnesses testified that the accused had told them he had shot a flyer during an attempt to escape (R 205, 206, 831). In his Statement, the accused made no mention of taking the flyer into the woods. He stated that, when he stooped to pick up a white cellophane box lying on the ground, the aviator ran away; that he ran after the flyer calling upon

him to stop; and that in order to prevent the escape, he drew his pistol; and that although it was growing dark, he shot the flyer in the back of the head from a distance of 12 to 15 meters (R 264; P-Ex 27, p. 11). The accused was aware of the non-interference order (R 264; P-Ex 27, p. 3). The flyers were American. They wore American uniforms and were interrogated in English by the accused (R 264; P-Ex 27, p. 8). This is corroborated by the Statement of accused Heinrich BAUMANN (R 369; P-Ex 31, p. 3). In the same Statement, BAUMANN stated that, when he returned, following his killing of the first flyer, he saw the other three flyers lying dead at a different spot and that the accused and accused GUNDELACH were the only ones who were there at the time he left and they were the only ones present upon his return (R 369; P-Ex 31, p. 3).

Evidence for Defense: The accused declined to testify. Koemm testified that the accused said he was sorry he had to shoot the flyer because he had relatives in America (R 205, 206). He also testified that he did not believe the accused was present at a meeting of the pursuit detail held shortly before the incident in question, where the treatment of flyers was discussed (R 207). Bluehm testified that the accused offered cigarettes to some of the flyers (R 292).

In his Statement, the accused stated that he shot one flyer while he was attempting to escape (R 264; P-Ex 27, p. 11).

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

Petitions: A Petition for Review was filed by Captain Emanuel Lewis, defense counsel and Dr. Hans von Zwehl, German associate counsel, undated. Petitions for Clemency were filed by Maria Hammer, wife of accused, 15 October 1947 and 15 November 1947; Christian Bluem, 9 November 1947; Andreas Kityk, 17 October 1947; Sofie Polleter, 14 October 1947; Miranda Laubender, 17 November 1947; Anna Warmuth, 13 November 1947; Margarete Freiburger, 10 November 1947; Oswald GUNDELACH, 31 October 1947; Georg Hoepfel, 28 October 1947; Georg BAUMANN, 1 November 1947; and Kurt HANS, 4 November 1947.

Recommendation: That the findings of guilty and sentence be approved.

7. Kurt HAMS

Nationality:	German
Age:	36
Civilian Status:	Police Officer
Party Status:	Nazi Party since 1 March 1932
Military Status:	SA, 1932-1933; SS Sergeant, 1938; Captain, 1944
Plea:	NG Charges I, III, IV
Findings:	G Charges I, IV
Sentence:	Death by hanging

Evidence for Prosecution: The accused was a member of the Nazi Party, the SA and the SS. He was in command of the Criminal Police at Wurzburg for Gau Mainfranken (R 795, 796, 807). In his statement, Axt, now deceased, stated that the accused was a fanatical Nazi and SS man (R 370; P-Ex 32). Marthaler, a former criminal commissar serving under the accused, testified that he was in charge of the Wurzburg Criminal Police for two and a half years prior to the arrival of the accused in the summer of 1944. During that period the orders provided for captured flyers to be turned over to the Wehrmacht (R 632, 633). Pursuant to instructions from Berlin, Marthaler sent Koemm to Berlin to attend a meeting. When Koemm returned he informed Marthaler that accused SCHULZE had announced that flyers would thereafter be treated as criminals and shot, providing they were not already in the custody of another agency. Marthaler further testified that he left the detail of notifying the accused about the order to Koemm (R 634, 635).

The accused in his testimony admitted that in a prior case he had testified that Koemm transmitted the order to him; that the reason for the order was that the Allies made war against women and children; and that it was necessary to treat flyers as criminals and for the police to kill them (R 813, 814). He conceded the truth of his prior testimony (R 814). He admitted that it was his understanding that the orders were for flyers to be treated as criminals, unless they were already apprehended or unless the Wehrmacht or air force had been informed (R 809, 810). The

accused admitted that he saw a certain danger in this order (R 808).

Schmitt, a former rural police lieutenant, testified that the order came from the Reich Security Head Office (R 710, 714). The accused, at his own request, addressed a meeting of rural police leaders of Gau Mainfranken (R 829). Four witnesses testified that the accused announced the order at the meeting and that they came away with the understanding that flyers were to be treated as criminals and shot (R 282, 705, 712, 733). Bluehm testified that the accused confirmed the order, noted the necessity for discretion in its execution, and made it clear that no more prisoners would be taken (R 282). Hager testified that the order was for flyers to be turned over to the Criminal Police and not the Wehrmacht (R 310). Koemm testified that he neither recalled going with the accused to accused BUCHLER's office to transmit the Berlin order (R 858-860) nor recalled whether he actually went there (R 862). He affirmed that during a discussion of the case at Dachau, the accused told him that they had been at BUCHLER's office together and asserted that Koemm had a bad memory (R 863, 864). Erbacher testified that the accused said the pursuit detail could be called upon to apprehend flyers (R 733, 734). Marthaler testified that the pursuit detail was reinforced by officials of the Order Police and the Gestapo (R 637). The accused told his audience that he would determine from time to time when the pursuit detail would be called into action (R 314).

Riese testified that the Criminal Police could not give orders to the rural police, but could make a request. Such request was not technically binding, but it would be something akin to military disobedience not to carry out the request (R 335, 336). The Criminal Police was tied in with the Party, inasmuch as promotions in higher brackets were recommended through the Party channels (R 660). Riese, whose assignment in Gau Middle Franken was similar to that of the accused in Mainfranken, also testified that he never bothered to obtain the secret order; that he never relayed it; and that there was no pressure from his superiors to put flyers to death (R 320, 321, 325, 327, 340, 341).

About 18 March 1945, a British flyer whose name was probably Huges, bailed out near Sommershausen and was taken into custody, incident Sommershausen (R 343-344). Weber, a former criminal secretary supervisor with the Wurzburg Criminal Police stated in his Statement that the secret order was transmitted by the accused through official channels (R 369; P-Ex 30 pp. 2, 3). Rheinhardt testified that Weber told him that the accused ordered the killing of the flyer in the Sommershausen incident and told him that the flyer should be considered to be a spy (R 348). Axt, a former criminal secretary with the Wurzburg Criminal Police, stated in his Statement that the accused ordered the pursuit detail to shoot captured flyers (R 368; P-Ex 29 p. 3). Weber and Axt, acting pursuant to the order, took the flyer from the custody of Rheinhardt at about 1300 hours of the same day. Axt and Weber took the flyer from the jail to the bank of the Main River and shot him. Axt fired one shot at the flyer from a distance of five to seven meters, whereupon the flyer fell. They then threw him into the river. Axt then fired one or more additional shots at the flyer. When Axt reported the shooting to the accused the latter indicated his approval (R 346, 368, 369; P-Ex 29 pp. 7-10; P-Ex 30). Both Weber and Axt were tried by the British Government for the illegal killing of the flyer involved in Charge IV. They were found guilty. Axt was sentenced to death and executed in November 1946. Weber was sentenced to imprisonment for 20 years and is at present confined in Wehr Prison (R 27, 28; P-Ex 12).

Evidence for Defense: The accused testified that he had become a Nazi because of poverty (R 794-796). He recalled the rural police meeting in August or September 1944, at which he had been guest speaker (R 796, 797). He summed up the gist of the order given by him as providing that many prisoners of war were posing as Allied flyers (R 798), as were German deserters (R 799); that both groups were committing crimes; and that they were to be treated as criminals (R 799, 800). He also told the meeting about the Himmler non-interference order and announced that the old orders would govern the police (R 800). He further told his audience that the weapon should be used in the event of escape to prevent crime and that

the pursuit detail was available in extreme cases (R 800). He further testified that Koemm brought an order back from Berlin. However, he did not personally disseminate it (R 801). He further testified that Axt was not present at the meeting and did not know about the order (R 802). Axt told him of shooting an enemy agent during an attempt to escape (R 804). He denied informing accused BUCHLER of the secret order (R 814). His assertions that Koemm had done so in his presence and that accused BUCHLER had informed him he already had the order from a different source were not correct (R 815, 816). He maintained that he had transmitted the order only to Criminal Police members of the pursuit detail (R 818). He denied receiving the order from accused Karl HELLMUTH and explained his Statement to the contrary by testifying that he had not been allowed to correct certain parts thereof (R 821-823). The reason he did not punish accused Heinrich BAUMANN and HAMMER and the late Axt was that he had no such authority at the time (R 824, 825).

Adelheid Hans, wife of the accused, testified that he was not in Wurzburg between 19 or 20 September 1944 and 29 or 30 September 1944 (R 667, 668). Riese testified that disobedience of the order by the accused would have brought severe punishment (R 332, 333). Hager testified that flyers already turned over to the Wehrmacht could not be touched by the Criminal Police (R 315). Four witnesses testified that Axt could not have telephoned Wurzburg because telephone cables had been damaged by bombing (R 616, 621, 647, 868). Wienand, a former member of the Criminal Police, testified that the accused had a good reputation as an official and a man (R 623).

Sufficiency of Evidence: That the accused participated in the common design alleged in Charge I and that he was a moving force in and ordered the killing of the victim involved in Charge IV is clearly established. In regard to the testimony concerning superior orders, the Court might well have concluded that the accused's desire to co-operate with and please his superiors was stronger than other considerations; that he did not relay the order under any immediate compulsion; and that he failed to meet the burden of proof required by pertinent authorities discussed in Section

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

Petitions: Petitions for Review were filed by Captain Emanuel Lewis, defense counsel, and Dr. Hans von Zwehl, German associate counsel, undated; Dr. Roemer, a German lawyer, 26 November 1947, 27 October 1947 and, 22 February 1948. Petitions for Clemency were filed by Adelheid Hans, wife of the accused, and six others, 10 October 1947; Adelheid Hans, 20 November 1947; Franz Fraunholz, 13 October 1947; Hilde Seidl, 17 October 1947; Burkhard Keck, 24 October 1947; Johann Weber, 3 November 1947; and Miranda Laubender, 17 November 1947.

Recommendation: That the findings of guilty and sentence be approved.

8. Karl HELLMUTH

Nationality:	German
Age:	45
Civilian Status:	Dentist
Party Status:	Nazi Party
Military Status:	Unknown
Plea:	NG Charges I, III
Findings:	G Charge I; NG, Charge III
Sentence:	3 years from 9 June 1945

Evidence for Prosecution: The accused was a member of the Nazi Party and was in charge of the office of accused Otto HELLMUTH, Gauleiter for Gau Mainfranken. He was secretary of the gau. His duties included correspondence and the making of reports (R 586, 587, 590). Accused INGEBRAND stated in a Statement that in the summer of 1944 the accused told him that the order to kill captured flyers was not being effectively executed but must be carried out. Accused INGEBRAND further stated therein that the accused had called him on the telephone several times to complain about his failure to adhere to the order. He insisted that captured flyers be killed (R 61; P-Ex 22). Accused ENDEMS stated in his Statement that accused INGEBRAND told him, shortly before the Neustadt incident, about the criticism leveled at him by the accused (R 33; P-Ex 20B p. 4). Accused HANS stated in his statement that during the summer of 1944 he was called to the gau headquarters where the accused informed him that American flyers were to be treated as murderers and that the order came from the Party (R 603; P-Ex 38 pp. 4, 5).

The accused admitted in his testimony that he had heard by radio about the Goebbels article and that possibly he may have later read about it in the newspapers (R 604). He discussed it with the deputy gauleiter, and with the gauleiter, accused Otto HELLMUTH (R 605).

Evidence for Defense: The accused testified that he never heard of the Party giving any order to shoot flyers or that the Criminal Police ever received any such order. He did not see the Bormann circular nor did he order accused INGEBRAND to shoot flyers (R 586, 587). He denied that he had any authority to give orders to accused INGEBRAND and that he ever did so. He also denied that he was ever ordered to do so by the gauleiter (R 598). He denied criticizing accused ENDRES for being lenient and asserted that he did not know him personally (R 598, 599). He further testified that he had never discussed the treatment of flyers with accused Otto HELLMUTH; that he never heard of the non-intervention order; and that he did not know about the pursuit detail (R 599). Secret matter never passed through his hands (R 609). He never met accused HANS before coming to Dachau (R 599). Accused INGEBRAND testified that he was no longer sure that the voice he heard on the telephone was that of the accused (R 995). Four witnesses testified the accused was good natured. One testified that he was soft, and another testified that he was quiet, soft and good-hearted (R 437, 452, 520, 583, 676, 765). Two witnesses testified that he was quiet and correct (R 458, 459, 681). One testified he was not fanatical (R 464).

Sufficiency of Evidence: It is clear that the accused as a principal assistant to the gauleiter of Mainfranken relayed orders and assisted in enforcing the same and thereby aided in the execution of the common design. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Captain Emanuel Lewis, defense counsel, and Dr. Hans von Zwehl, German associate counsel, undated. No Petitions for Clemency were filed.

Recommendation: That the findings of guilty and sentence be approved.

9. Otto HELLMUTH

Nationality:	German
Age:	51
Civilian Status:	Dentist
Party Status:	Nazi Party since 1927; gauleiter
Military Status:	None
Plea:	NG Charges I, III
Findings:	G Charges I, III
Sentence:	Death by hanging

Evidence for Prosecution: The accused was a member of the Nazi Party and gauleiter of Gau Mainfranken (R 32, 530; P-Ex 18). In addition he was Governor President and Reich Commissioner for Defense for Gau Mainfranken (R 29, 530, 531; P-Ex 15). As a gauleiter he was a member of the Leadership Corps, his appointment having been confirmed in 1928 by Adolph Hitler (R 530). In this capacity, he was in the Party direct chain of command immediately under Martin Bormann, leader of the Nazi Party, and the superior of accused INGEBRAND and ENDRES, kreisleiter and deputy kreisleiter, respectively, of Neustadt a.d. Saale (R 29; P-Ex 15). As Governor President for Gau Mainfranken, the accused was, successively, under the jurisdiction of Heinrich Himmler, Reich Minister of the Interior, and under the Minister of Interior for Bavaria. In this capacity he was the superior of accused BUCHLER, commander of the rural police for the gau (R 29, 567, 913, 935; P-Ex 15).

A secret letter from the Nazi Party Chancellory, 30 May 1944, emphasized that Anglo-American terror flyers were murdering women and children and that no police measures had been invoked to prevent or punish lynchings. The content of this directive was to be orally transmitted down as far as the Ortsgruppenleiter (R 408; P-Ex 34).

Wahl, former gauleiter of Schwaben, testified that he received the Bormann letter and filed it (R 512, 513) because certain bad elements might have used it as a basis for wrongdoing (R 514). The accused admitted that he knew of the Himmler non-interference order (R 550; P-Ex 36) issued on 10 August 1943, but asserted that he did not hear of it until toward the end

of 1944 (R 550).

In his Statement, accused INGEBRAND stated that either in the autumn of 1943 or in the spring of 1944 the accused told a gathering of his subordinates that Allied flyers stood outside the pale of international law and were to be killed on the spot (R 61; P-Ex 22). Accused ENDRES stated in his Statement that accused INGEBRAND had told him that the accused directed that all enemy flyers setting foot on German soil be shot and killed. Accused ENDRES also stated therein that this order was given to him personally by accused Karl HELLMUTH, chief of staff of the accused (R 33; P-Ex 20 pp. 3, 4). In his testimony, accused Karl HELLMUTH confirmed a remark in his Statement to the effect that the accused expressed his approval of an article in a newspaper which advocated extermination of captured flyers. At a meeting of the principal gau officers the accused expressed an opinion that the Germans were too humane as compared with the Japs and that captured flyers were to be killed (R 592).

Repp testified that in November 1944 a nine man crew bailed out in the vicinity of Heufurth. At that time the accused expressed the determination that on that occasion the Criminal Police and not the Wehrmacht would get the flyers (R 125). Werthmann, describing the Ruppertshutten incident, testified that after the plane crashed, Frau Schirmer, wife of a forester, told him that the kreis headquarters at Lohr had telephoned directing that the flyers be captured and killed (R 874). During his testimony, accused INGEBRAND refused to answer a question as to whether the gauleiter had told him flyers were to be killed (R 992, 994, 999). In the Neustadt incident accused INGEBRAND and ENDRES, together with Hoffmann of the rural police, carried out the gauleiter's orders by killing the flyer (R 32, 33, 61). P-Exs 19, 20, 22).

Evidence for Defense: The accused testified that he was a veteran of World War I and a friend of Hitler following 1920 (R 527-529). He was the recipient of numerous Party awards (R 542). He became a gauleiter for Gau Mainfranken in 1928 and Governor President thereof in 1934 (R 530). In 1942 he was appointed Reich Commissioner for Defense for Gau Mainfranken (R 531).

The accused further testified that the orders received from the Party directed that captured flyers be turned over to the Wehrmacht, but the police were also to be notified, inasmuch as the local air force was too busy to search for flyers (R 532). When the Wehrmacht was not available, the flyer was to be turned over to the police (R 537). The accused never received any different order. He did not receive an order to treat flyers as criminals, either from the Party or from any other agency (R 532, 533). He never directed any of his subordinates to shoot flyers (R 533). He made it his business to open his own mail and he never saw the Bormann circular. Reports of air raids, chiefly for economic purposes, were made up for his signature and sent forward through Party channels (R 533-535). He further testified that, in his capacity of gauleiter, only Hitler and not Bormann could give him orders (R 541) (Stuckart contradicted this (R 423)). As Governor President and Defense Commissioner he was subordinate to the Minister of the Interior, Himmler (R 542). He never heard of the non-intervention order until toward the end of 1944 (R 549, 550) and never discussed it with anyone (R 552) because he could not imagine a killing resulting from a civilian attack on a flyer (R 554).

The accused further testified that he never heard of the Neustadt incident until after the capitulation (R 536). He never discussed the Goebbels article and never interpreted it to his kreisleiters (R 554, 555). He never discussed the subject of terror flyers (R 556). He could not remember whether he had expressed his approval of the Japanese killings of captured flyers (R 561-563). He never heard of the pursuit detail, although he did know of an attack commando which existed in September 1944 (R 564, 565). He never heard of the Ruppertshutten incident, even though his deputy had, and never heard of an order by the kreis headquarters directing the killing at Ruppertshutten (R 568, 569). He also denied knowing about accused INGEBRAND's involvement in the Neustadt incident. Similarly, he did not know about the Sommershausen incident (R 570, 571). He contradicted accused INGEBRAND's Statement that the accused transmitted the secret order (R 574). He denied telling Ropp to have accused Karl HELLMUTH notify the

Criminal Police and that he told him to keep the air force from finding captured flyers (R 575, 576). The accused further testified that the gau inspector, an agent of his, never investigated a flyer case (R 580).

Fourteen witnesses testified that they were in a position to hear of any secret order. Some never heard of it. Others never heard of it being transmitted through Party channels. Still others never heard of the accused ordering its enforcement (R 413, 419, 435, 436, 443, 444, 462, 463, 480-483, 509, 510, 515, 516, 582, 583, 671, 672, 674, 678-680, 764, 767; D-Ex 2). However, two of these witnesses missed one or more of the gau meetings (R 438, 443, 444). Kuehreich, a former assistant of the accused, testified that very often the name of the gauleiter was falsely used as a source of orders (R 488, 489), but the witness seemed to be suffering from a poor memory (R 489-491). Gumbert, former mail clerk at the headquarters, testified that the office received so much mail that the accused might have missed the Bormann circular (R 582).

Seven witnesses, former associates of the accused, testified that he was good natured and soft (R 463, 470, 480-483, 515, 525, 676, 764). Two testified as to his good character (R 520, 524), three gave vague references (R 458, 672, 681), and one testified as to his being a good employer (R 399, 400).

Sufficiency of Evidence: That the accused was a moving ~~major~~ force in the execution of the common design and that he generally and specifically ordered the killing of the victim involved in Charge III is clearly established. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Captain Emanuel Lewis, defense counsel, and Dr. Hans von Zwehl, German associate counsel, undated. Petitions for Clemency were filed by Erna Hellmuth, wife of accused, 25 December 1947; Wilhelm Apprich, parson, 13 November 1947; and Matthias Ebranfried, Bishop of Wurzburg, 23 October 1947.

Recommendation: That the findings of guilty and sentence be approved.

10. Andreas INGEBRAND

Nationality:

German

Age:	44
Civilian Status:	Unknown
Party Status:	Nazi Party with position as Kreisleiter
Military Status:	Unknown
Plea:	NG Charges I, III
Findings:	G Charges I, III
Sentence:	Death by hanging

Evidence for Prosecution: The accused as Kreisleiter of Neustadt a.d. Saale was a member of the Leadership Corps of the Nazi Party. In his Statement, the accused stated that he received from accused Otto HELLMUTH, the gauleiter, an order to kill enemy flyers. He also stated therein that on a number of occasions accused Karl HELLMUTH had censured him because the secret order was not being carried out (R 61; P-Ex 22). The accused informed accused ENDRES that the order would have to be carried out, according to the latter's Statement (R 33; P-Ex 20). Accused BUCHLER stated in his Statement that the accused complained to him about his failure to carry out the order (R 170; P-Ex 25).

Concerning the Neustadt incident, upon receiving a telephone call from Repp to the effect that Hoffmann had a flyer in custody and that the prisoner would have to be turned over to Neustadt, the accused expressed the hope that it would be only as a dead body (R 121). The accused, armed with a pistol, then picked up accused ENDRES, first making certain that the latter had his pistol (R 33, 984; P-Ex 20). When they called at the jail in Neustadt where the flyer was held, the accused was informed by Burger that there was no room there for the flyer (R 984). After questioning the flyer, the accused, Hoffmann, and accused ENDRES put the flyer in a car and started in the direction of Schweinfurt (R 33, 74, 123, 985, 986; P-Ex 20). About a kilometer from the jail, the accused ordered that the car be stopped and, according to the Statement of accused ENDRES, the accused and Hoffmann got out with the flyer. They both shot him, resulting in his death (R 33; P-Ex 20). After the shooting the accused hunted up gravedigger Borderff and told him to bury the body in the Saurseel Ditch (R 39). Thereafter,

the accused signed an authorization to bury the body of a parachutist "shot by me while fleeing" (R 55; P-Ex 21). The accused told Kirschner that he had shot a flyer (R 57). He informed Leinger that he, Hoffmann and accused ENDRES, jointly required the flyer to leave the car, walk a few paces and then all three shot the flyer dead (R 46), while he was attempting to escape (R 49). Herr testified that the accused told him he shot a flyer, but the witness thought that the accused was bragging (R 693). At an unspecified time after the killing the accused asked Borst not to betray him and told him that he had a false passport made out in case the Americans should come (R 150). Borderff, the gravedigger, testified that the flyer had bullet wounds in the region of the chest and higher and that he buried the body in a field (R 140).

Evidence for Defense: The accused testified that he was mistreated and beaten while confined in a cell in Bad Neustadt; that he was robbed following his arrest and while in the hospital in Bamberg; and that he was forced to give a Statement. He did not tell who beat or robbed him (R 983). He testified that at a place about 1000 meters outside Bad Neustadt the flyer indicated a desire to relieve himself that the car was stopped for that reason; that the flyer got out; and that Hoffmann yelled and shots were fired. The accused got out and saw the flyer lying dead, partly on the road, partly on the embankment and Hoffmann said, "He started to run right away" (R 985-987). The accused then hunted up Borderff and told him to see to the burial (R 988). The accused further testified that the reason he had previously assumed the blame was to cover Hoffmann and to assert his own authority. Therefore he had the burial certificate made out to indicate that he had shot the flyer (R 991). He conceded that the Statement he signed against accused Otto HELLMUTH was obtained without duress (R 992, 993), but refused to say definitely whether he had signed the Statement (R 993). He refused to answer questions as to whether accused Otto HELLMUTH had told him that flyers were to be killed (R 992, 994, 999). He attempted to recant the contents of his Statement to the effect (R 61; P-Ex 22) that accused Karl

HELLMUTH ordered him by telephone to carry out the secret order, saying that he was no longer sure of the voice (R 993, 995).

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

Petitions: A Petition for Review was filed by Captain Emanuel Lewis, defense counsel, and Dr. Hans von Zwehl, German associate counsel, undated. Petitions for Clemency were filed by accused's wife, Erni Ingebrand, and parents, Andreas and Maria Ingebrand, 16 October 1947; Catholic Pastorate of Bad Neustadt, 4 September 1947; and Burgermeister, 29 September 1947.

Recommendation: That the findings of guilty and sentence be approved.

11. Richard SCHULZE

Nationality:	German
Age:	48
Civilian Status:	Policeman
Party Status:	Unknown
Military Status:	Unknown
Plea:	NG Charges I, II, III, IV
Findings:	NG Charges II, III; G, Charges I, IV
Sentence:	Death by hanging

Evidence for Prosecution: The accused was Chief Government Counsel and Criminal Police Counsel of Criminal Police in Kaltenbrunner's Berlin office. In addition, as the latter's assistant he was in charge of all Criminal Police apprehension agencies for Germany (R 768, 836). From 1933 until 1943 he was chief of Gestapo in Darmstadt (R 847).

Koemm testified that a teletype message signed by the accused was sent to Criminal Police offices throughout Germany, summoning a representative of each to come to Berlin on about 20 July 1944 to receive a secret order (R 173). This was corroborated by an admission by the accused (R 837). Notes were allowed to be taken at the meeting (R 176, 842). Koemm also testified that the accused told the delegates to the meeting that captured British and American flyers were to be killed and that, if the populace did not do it, the police should (R 175, 176). He testified further that the accused directed the delegates to pass the instructions on

to the rural police (R 178, 865). Marthaler, predecessor of accused HANS as chief of Criminal Police at Wurzburg, testified that Koemm upon returning from Berlin told him about the secret order the accused had issued. (R 632, 634). In his Statement, accused HANS stated that Koemm advised him of the secret order upon his, Koemm's, return from Berlin. The order provided that all American terror pilots be treated as murderers and killed (R 603; P-Ex 38). This is largely corroborated by accused HANS' testimony (R 809, 810). Accused HANS also testified that Koemm said that the accused never told the delegates he was transmitting the order on behalf of someone else (R 825, 826). Koemm testified that he heard about the attempt on Hitler's life on the day of the meeting (R 865, 866).

The accused admitted in his testimony that he presided at the meeting; that he read the Goebbels editorial to the Criminal Police agents; that the Himmler non-interference order was read to them; and that he told them the police were to take no action, if the flyer was already in custody of the local police or an army unit or the proper authorities had already been notified (R 842, 843). He also told them that they were to use weapons, if the flyer resisted arrest or intended to escape (R 838). The accused admitted using the alias of "Ruscher" while moving around the country for a year after the collapse of Germany and until finally arrested by American authorities (R 853).

Evidence for Defense: The accused testified that he called the meeting in Berlin in compliance with orders by General Nebe, Chief of the Reich Criminal Police, in order to clarify existing orders for the benefit of the police (R 837). Nebe gave him specific instructions as to the subject matter of the meeting. He was to read the Goebbels editorial and the Himmler Decree and he was to inform the police about the limitations imposed, if a flyer were in custody. He told them when they might use their weapons and informed them that pursuit details were available (R 837-839). He did not explain in detail what the Criminal Police was to do about flyers (R 843). He also testified that the pursuit details were organized in 1943 and had dogs for searching (R 844). He denied that he ever told the group that captured flyers were to be killed (R 844, 845). He could not give orders

to gauleiters on the rural police, except to the latter when the commanding officers of Security Police and Regular Police issued a joint order (R 845). He denied telling the delegates to pass the order on to the rural police (R 846). The accused further testified that the order originated with General Nebe. Nebe disagreed with several policies of the Reich and did not care to have his ideas known, but ordered the meeting nevertheless (R 850-852). The accused conceded his awareness that Nebe, who participated in the plot against Hitler, is dead (R 852). He also testified that he did not discuss the Bormann circular and never heard of the lynch law (R 855). His office did not receive reports of shootings during attempts to escape. He did not know during which period the shootings were at their peak (R 856). He hid under an alias until May 1946 to avoid capture by the Russians (R 853, 854).

Sufficiency of Evidence: Regarding the testimony of the accused that he was acting under orders of his superior, General Nebe, he wholly failed to show that his participation in the offenses of which he was found guilty was under any immediate compulsion, or to otherwise meet the burden of proof required by the authorities pertinent to superior orders discussed in Section VI, post. The Court might well have concluded from the evidence that the accused issued orders to his subordinates throughout Germany to kill captured Allied flyers and that he participated to a major degree in the execution of the common design alleged under Charge I. The transmission of the order to kill Allied flyers from this accused, through Koemm, to accused HANS, and from HANS to Axt and Weber, was satisfactorily proved. He was a primary moving force in the killing alleged under Charge IV.

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

Petitions: Petitions for Review were filed by Captain Emanuel Lewis, defense counsel, and Dr. Hans von Zwehl, German associate counsel, undated; and Dr. Hans von Zwehl, 3 February 1948. Petitions for Clemency were filed by Renate Schulze, Gisela Schulze, Ingeborg Schulze, Gerhard Schulze and Baerbel Schulze, children of accused, 23 October 1947; Dr. Hans von Zwehl, 3 February 1948; by Walter Schmidt, 11 December 1947; by Wilhelm Deichsel,

30 October 1947; by Herbert Mann, 28 November 1947; by Max Smetana, 15 December 1947; by Hans Merten, 28 November 1947; by Hans Horstmann, 13 December 1947; by Hans Eichel, 20 November 1947; by Paul Linke, 5 December 1947; by Paul Fiedler, 4 November 1947; by Carl Kramer, 27 November 1947; by Franz Hahn, 1 December 1947; by Wolfgang Berger, 19 November 1947; by Horst Barth, undated; by Fritz Dietrich, 26 November 1947; by Adolph von Gablonz, 14 December 1947; by Margarete Schulze, 17 November 1947; by Gerde Lass, 27 December 1947; two by Aloisia Geiler, 22 October 1947 and 5 January 1948; by Else Markenbach and 19 others, 21 October 1947; Municipal Administration, Brextehude, 16 October 1947; and by W. Maurer, 17 October 1947.

Recommendation: That the findings of guilty and sentence be approved.

VI. QUESTIONS OF LAW:

1. Jurisdiction: The defense objected to the jurisdiction of the Court on the grounds (1) that some of the accused involved in the killing which formed the basis of Charge IV had been tried by the British Army of the Rhine, and (2) because the victim of the killing was a British subject (R 22, 23). The Court properly overruled the objection (R 25).

A validly constituted court of an independent state derives its power from the state. A state is independent of all other states in the exercise of its judicial power, except where restricted by the law of nations (S.S. Lotus, France v. Turkey, 2 Hudson World Court Reports 23). Concerning punishment for a crime of the type involved in the instant case, it has been stated that the sovereign power of a state extends "to the punishment of piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed" (Wheaton's "International Law", Sixth Edition, Volume I, page 269). Recognition of this sovereign power is contained in the provision of the Constitution of the United States which confers upon Congress power "to define and punish offenses against the law of nations," (Winthrop, "Military Laws and Precedents", Second Edition, Reprint 1920, page 831).

Any violation of the law of nations encroaches upon and injures the interests of all sovereign states. Whether the power to punish for such crimes will be exercised in a particular case is a matter resting within the discretion of a state. However, it is axiomatic that a state, adhering to the law of war which forms a part of the law of nations, is interested in the preservation and the enforcement thereof. This is true, irrespective of when or where the crime was committed, the belligerency or non-belligerency status of the punishing power, or the nationality of the victims. ("Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pages 177-218; "Law Reports of Trials of War Criminals", by United Nations War Crimes Commission, 1947, hereinafter referred to as "Law Reports", Volume I, pages 41, 42, 43, 103; United States v. Klein, et al., Hadamar Murder Factory Case, opinion DJAWC, February 1946; United States v. Weiss, et al., Dachau Concentration Camp Case, opinion-DJAWC, March 1946; United States v. Becker, et al., Flossenburg Concentration Camp Case, opinion DJAWC, May 1947; United States v. Brust, opinion DJAWC, September 1947; and United States v. Otto, opinion DJAWC, July 1947.) A British court sitting in Singapore tried Tomono Shimio of the Japanese army and sentenced him to death by hanging for illegally killing American prisoners of war at Saigon, French Indo-China (Law Reports, Volume II, page 128).

Aside from the jurisdictional problem, it appears that the war crimes activities of British and American authorities, in so far as the trial of accused HANS is concerned, were properly coordinated as manifested by the letter from Headquarters, British Army of the Rhine, which forms a part of the record (R 27; P-Ex 12).

From its Petition for Review, it appears that the defense attacks the jurisdiction of the Court as to Charge I on the ground that it charges a common design to commit a war crime as a separate substantive offense. This question was considered by Military Tribunal III, Nurnberg, Germany, in its ruling on the defendants' motion against Count I of the indictment in Case No. 3, Military Tribunal III, Nurnberg, Germany, The United States of America v. Josef Altstoetter, et al. The pertinent part of this order

"Count I of the indictment in this case charges that the defendants, acting pursuant to a common design, unlawfully, wilfully and knowingly did conspire and agree together to commit war crimes and crimes against humanity as defined in Control Council Law No. 10, Article 2. It is charged that the alleged crime was committed between January 1933 and April, 1945.

"It is the ruling of this Tribunal, that neither the Charter of the International Military Tribunal nor Control Council Law No. 10 has defined conspiracy to commit a war crime or crime against humanity as a separate substantive crime; therefore, this Tribunal has no jurisdiction to try any defendant upon a charge of conspiracy considered as a separate substantive offense."

Without conceding that the jurisdiction of Military Government Courts is limited to the trial of those war crimes cases contemplated by Control Council Law No. 10, it is clear that this order has no application to the instant case because the charges and particulars thereunder do not allege a common design to commit a war crime as a "separate substantive crime." They allege that the accused participated "in a common plan or design to commit *** [violations of the law of war] *** in the subjection of *** [certain persons] *** to cruelties and mistreatment including killings ***" etc. Thus, the particulars under Charge I allege as an offense participation in the execution of a common design to commit described unlawful acts. They do not allege a common design as a "separate substantive crime."

The import of the ruling relied upon by the defense is clarified by the next to the last paragraph of the order which provides:

"Count I of the indictment, in addition to the separate charge of conspiracy, also alleges unlawful participation in the formulation and execution of plans to commit war crimes and crimes against humanity which actually involved the commission of such crimes. We, therefore, cannot properly strike the whole of Count I from the indictment, but, insofar as Count I charges the commission of the alleged crime of conspiracy as a separate substantive offense, distinct from any war crime or crime against humanity, the tribunal will disregard that charge."

The position of the defense is without merit.

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

2. Double Jeopardy: The defense entered a plea of double jeopardy on behalf of accused HANS (R 15, 20). In support of this plea, the defense

and particulars bottomed upon the killings involved in Charge II and urged that to try accused HANS on Charges I, II, and III would result in double jeopardy (R 20, 21). The Court properly overruled this plea (R 25). In so far as American municipal criminal law is concerned, the rule as to double jeopardy is of common law origin and is expressed in the Fifth Amendment to the Constitution of the United States thusly: "... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb ...". The test of identity of offenses is whether the same evidence is required to sustain them (Morgan v. Davine, 237 U. S. 632). It is to be doubted that an accused war criminal may meritoriously claim, as a matter of right, benefits of the Constitution of the United States or the common law. However, it is not necessary to consider that question herein.

Even if it be true, as argued by the defense, that accused HANS had theretofore been tried and acquitted on charges and particulars precisely like those in Charge II, an examination of Charge II and a comparison thereof with Charges I, III and IV reveal that the required test of identity of offenses is not met. The offense alleged in Charge I differs from the offense alleged in Charge II in two major respects, viz., as to time of commission and as to nature of the offenses. The offenses which form the basis of Charges III and IV were committed at times and places and involved victims other than those involved in Charge II. In addition, Charges I, III, and IV involve different or additional participants. It is obvious that there is substantial diversity of facts and circumstances as to each of the four charges, and that there is substantial diversity in legal character of the offenses alleged in Charges I and II.

3. Motion for Findings of Not Guilty: At the close of the prosecution's case the defense moved that findings of not guilty be made as to all the accused as to Charge I (R 373), and as a part of the same motion moved that findings of not guilty be entered as to Charges II, III and IV as to certain accused for the reason that the prosecution failed to establish a prima facie case (R 379, 384, 386, 388). It is not error for

a war crimes tribunal to overrule a motion for findings of not guilty made at the close of the case for the prosecution, if it believes that 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 Office of Military Government for Germany (US), 27 March 1947). In view of the evidence submitted by the prosecution, the Court did not err in requiring the defense to answer. The motion was properly overruled (R 396). A similar practice is followed in courts-martial (Paragraph 71, d, "Manual for Courts-Martial, U.S. Army", 1928).

h. Superior Orders. There is some evidence tending to show that accused ENDRES and SCHULZE committed some of their acts in compliance with superior orders. Moreover, that problem is present to a degree throughout the entire record. 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; Volume II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, opinion DJAWC, December 1945; United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, 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 No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rules of the Law", by Ernst Fraenkel; United States v. Bury, et al., opinion DJAWC, September 1945, United States v. Thomas, supra; United States v. Beck, et al., opinion DJAWC, December 1946; and United States v. Stroop, et al., (Superior Order Case), opinion DJAWC, September 1947).

5. Conduct of Trial: The accused were represented by competent American and German counsel. One member of the Court was a legally trained officer. Sufficient interpreters were provided at all times. Full right of cross-examination was extended throughout the trial. Each accused was given an opportunity to testify in his own behalf. Both the findings and the sentence as to each accused were approved by a two thirds vote of the members present. The trial was conducted with fairness to all accused.

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

VII. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

HERMAN PLATT
Attorney
Post Trial Branch

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

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