

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
UNITED STATES FORCES, EUROPEAN THEATER
APO 178

UNITED STATES

v

Friedrich SALZMANN,
Wilhelm ANDING,
Albert SINGER, and
Walter SCHNEIDER
All German Nationals.

Case No. 12-1299

REVIEW AND RECOMMENDATIONS

1. TRIAL: The four accused were tried at Ludwigsburg, Germany, between 5 April 1946 and 24 April 1946 by a General Military Government Court, appointed by paragraph 10, Special Orders No. 84, Headquarters, Seventh United States Army, APO 758, dated 25 March 1946.

2. FINDINGS: The offense involved was:

CHARGE: Violation of the laws of war.

Particulars: In that Friedrich SALZMANN, Wilhelm ANDING, Albert SINGER, and Walter SCHNEIDER, German Nationals did at or near Nordheim, Germany, on or about 1 October, 1944, wrongfully, willfully, and deliberately aid, abet, and participate in the killing of three members of the U.S. Army, whose exact identities are unknown, each of whom was then captured and a surrendered prisoner of war in the custody of the then German forces.

Plans to
the Charge and Specification

FINDINGS
as to the Charge and
Specification

SALZMANN, Friedrich	NG	G
ANDING, Wilhelm	NG	G
SINGER, Albert	NG	G
SCHNEIDER, Walter	NG	G

3. SENTENCE: The court, by at least two-thirds vote of the members present at the time the vote was taken, concurring, sentenced the accused Friedrich SALZMANN to death by hanging by the neck until dead; the accused Wilhelm ANDING to life imprisonment commencing forthwith at such place as may be designated by competent military authorities; the accused Albert SINGER to death by hanging by the neck until dead; and the accused Walter SCHNEIDER to life imprisonment commencing forthwith at such place as may be designated by competent military authorities (R 362). This case was tried by a court appointed by the Commanding

General of the Seventh U.S. Army. The record of trial has been forwarded to the Commanding General, United States Forces, European Theater for final action (paragraph 8d, Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", dated 14 October 1946).

4. DATA AS TO ACCUSED: Friedrich SALZMANN is a German national, 61 years of age, living at Meiningen, Germany. He is married and has two children. He has been a Captain of the police since 1935 and at the time of the offense was stationed at Meiningen, Germany (R 3, 73).

The accused Wilhelm ANDING, is a German national, 54 years of age, is married and has children. He lived at Meiningen, Germany, and was a merchant by profession. He was a soldier in World War I, from 1914 to 1918, entered the service again in 1942 and remained in the army until 1943 when he was discharged as a Master Sergeant because of his age. He was then drafted into the emergency service by the Landrat as a reserve policeman and served actively with the police force until the capitulation of Germany. At the time of the offense of which he was found guilty, he was serving under the accused SALZMANN in an administrative position (R 3, 139).

The accused Albert SINGER is 60 years of age, and a widower with one son. He was a member of the gendarmerie from 10 October 1916. He served twelve years in the German Army prior to World War II. At the time of the offense of which he was found guilty he was a Master of gendarmerie and was stationed in one of the suburbs in Meiningen, Germany (R 4, 198, 199).

The accused Walter SCHNIEDER is 53 years of age, a German national, and lived at Eckhardt, Kreis Meiningen, Germany. By occupation he was a painter. He is married and has seven children. During World War I he served four and one half years, and during World War II he served four years in the German Army. At the time of the offense of which he was found guilty he was stationed at Untermasfeld, Germany, as a member of the gendarmerie (R 4, 262, 263).

5. RECOMMENDATION: That the sentences of the four accused be approved and executed.

6. EVIDENCE:

a. For the Prosecution. The case for the Prosecution is based entirely on written statements, sworn and unsworn. Prosecution's Exhibits 5 through 10, including the pre-trial statements of the accused, were not allowed in evidence by the court until cross-examination.

According to information contained in Prosecution's Exhibits 1 through 4, on or about 1 October 1944 three unidentified American flyers parachuted to safety in the vicinity of Schwickershausen, Germany. They were taken prisoner and escorted to the office of the burgomeister, where they were interrogated, searched, and placed under the guard of the gendarmerie (P-Ex 1, 3, 4). The four accused arrived and accused SALZMANN ordered SINGER, together with SCHMID and ANDING to take the flyers away (P-Ex 3, 4). SALZMANN was outside the house when he gave the orders and THOMAS (the mayor of Schwickershausen) was inside. In about ten minutes SALZMANN went in a car in the direction of Nordheim (P-Ex 4). About an hour later SULLER and SCHNEIDER came to the burgomeister's house and SINGER reported that SCHNEIDER had been attacked by one of the flyers and that the three flyers had been shot. The witness could not remember whether ANDING was present (P-Ex 3). WEINER (mayor of Nordheim) was advised by SINGER that evening that the flyers had been shot while trying to escape. AMTHOR went to the woods and brought the bodies to the cemetery. Two had been shot in the chest and one in the chest and thigh. AMTHOR saw no wounds in the backs of the flyers, but they were lying in pools of blood and it was difficult to tell exactly how they had been shot (P-Ex 2).

The pre-trial statements of the four accused were introduced on cross-examination over the objection of Defense Counsel. In a sworn statement, written in his own handwriting and signed by him, SALZMANN stated that he was ordered by the Landrat of Meiningen to go to Schwickershausen, take charge of the flyers, send them in custody of policemen by the shortest possible route to Bibra, and deliver them to military authorities. SALZMANN questioned the Landrat as to why the military authorities could not pick up the flyers at Schwickershausen, and was told by the Landrat that he gave the orders and he wanted the flyers taken to Bibra. SALZMANN called for policemen and went with accused ANDING to Schwickershausen.

hausen. There he ordered SINGER to take the flyers by the shortest route to Bibra, went outside with SINGER and directed ANDING and SCHNEIDER to assist him and reminded SINGER of the rules governing the transportation of prisoners. Later SCHNEIDER returned with a bleeding head and torn jacket and reported that he had been attacked by one of the flyers; that during the struggle he was wounded and the flyer shot; and that when SINGER came to help him the other two flyers tried to escape and were shot. SCHNEIDER's report was later confirmed by SINGER (P-Ex 7). Another sworn statement, written in English, signed by SALZMANN, contains the following statements: "The Landrat told me expressly that these three flyers would be killed and it would be his responsibility", and "I did not order SINGER to kill the flyers, but I did repeat my conversation with the Landrat. I knew SINGER well enough to know that he would not carry out." In answer to questions SALZMANN said that he told SINGER "that if we did as the Landrat wished we would kill them" (P-Ex 8).

Two statements, one sworn and one unsworn, signed by SINGER and written in his own handwriting relate the following story: SINGER received an order from SALZMANN to take the prisoners, together with SCHNEIDER and ANDING, through the forest to Bibra. SALZMANN expressed himself in exactly the following words: "These three will be shot!" SINGER left with SCHNEIDER, ANDING, and the prisoners. At a distance of about 800 meters from the village SALZMANN came in his car, SINGER walked back to talk with him and SALZMANN told him to hold off the shooting until the party reached Nordheimer ground because he did not want to have anything to do with the burgomeister of Schwickerhausen. SINGER answered "Yes" but never intended to carry out the order. About 100 meters into the woods SINGER fired an accidental shot and the prisoners fled. SINGER fired a second shot, a pilot fell, and another pilot hit by ANDING fell. One prisoner ran into the woods, SCHNEIDER following, and after a short time SINGER heard three shots. When SINGER reached the pilot he was dead with wounds in his back and chest. When the three guards returned to the scene of the first shooting the pilot hit by SINGER was gone and the three started a search. SINGER heard SCHNEIDER call, turned and saw SCHNEIDER and the pilot fighting, waited until he saw the left side of the pilot's chest free, and then fired and the pilot

fell. SCHNEIDER then shot at the same pilot, who was apparently still alive. ✓
The third pilot lay about 70 meters further in the woods, dead with two wounds. SCHNEIDER and ANDING put the flyer's personal effects into a leather jacket and the three went toward Schwickershausen, where they met SALZMANN, who was waiting for them, together with the burgomeister. When SINGER started to report, SALZMANN motioned him away and said to SCHNEIDER, "Oh, a policeman let himself be attacked by prisoners". SINGER then reported but did not mention the accidental shot because he was afraid of being scolded (P-Ex 5, 6).

The sworn statement of ANDING, written in English, relates that accused SALZMANN ordered the other three accused to take the flyers through the woods to Bibra; that SALZMANN followed the party by car for a way; that SALZMANN got out of the car and ANDING lost sight of him; that it was possible that SALZMANN talked to SINGER but he did not see them because he was looking at a burning plane. The three flyers preceded the guards into the woods and as the party was going around a turn in the road ANDING heard a wild cry. One of the flyers jumped at SCHNEIDER's throat and the other two threw themselves to the ground. While ANDING and SINGER freed SCHNEIDER the other flyers fled. SCHNEIDER followed them into the woods, shouted that he had found them, and ANDING heard four shots. ANDING stated that he thought SCHNEIDER shot all three because SINGER was with him; that he did not see SINGER fire an accidental shot; that he (ANDING) did none of the shooting; and that he was not sure whether any shots were fired before the flyer struggled with SCHNEIDER (P-Ex 9).

A certified true copy of a statement of SCHNEIDER, written in English, relates that SCHNEIDER was walking behind SINGER, who called him to come up, and that as SCHNEIDER approached SINGER and ANDING fired two shots. Two pilots fell and the third ran into the woods. SCHNEIDER called to the running pilot to halt, fired and missed, followed him into the woods, and killed him. The three guards returned to the spot where the other two flyers were supposedly lying but they were not there. SCHNEIDER went into the woods to search, and a flyer jumped up and attempted to take SCHNEIDER's carbine, wounding SCHNEIDER in the struggle. SINGER approached, waited for an opening, and shot the flyer in the chest. The flyer fell and SCHNEIDER shot him while he was lying on the

ground. ANDING called that the third flyer had jumped up, and they heard a shot. SINGER had told ANDING and SCHNEIDER "As soon as they start running we will shoot them". SCHNEIDER did not hear an order of SALZMANN to kill the flyers. (P-Ex 12).

A certificate of an Army Captain, a member of the Medical Corps, that the Captain had examined three exhumed bodies, said to be those of the American flyers killed at Schwickershausen in October 1944, was introduced. Examination of the first body showed what appeared to be a bullet wound with point of entry in the left cheek; a small caliber projectile was attached to but did not penetrate the inferior portion of the left chest, posterior, with no point of entry or exit apparent. On the second body was a chest wound and a wound on the right thigh, posterior, and both wounds were apparently the point of entry of a small caliber projectile. On the third body was one chest wound apparently the point of entry of a small caliber projectile. The advanced state of decomposition obscured any other wounds which might have been present (P-Ex 13).

On cross-examination accused SALZMANN testified as follows: The Wehrmacht was located in Wehringen but there was no Wehrmacht in Bibrach (R 74). In order to get the prisoners to Bibrach it was necessary to march them through a third of the village of Schwickershausen (R 78). SALZMANN had heard of an order authorizing the killing of American flyers who parachuted down in Germany (R 83), but did not recall where he heard it (R 84). SALZMANN admitted making many of the statements contained in his pre-trial statement Prosecution's Exhibit 8, but denied ever saying that the Landrat had ordered the flyers killed or that he admitted the order to SINGER (see page 4 supra) (R 89-95).

The prosecution called William J. SALMANS, who, after stating his qualifications as an interpreter, testified that he participated in the investigation of the instant case; that SALZMANN was interrogated in his presence; that the statement was written in SALZMANN's presence and translated into German verbatim and read back to SALZMANN.

On cross-examination ANDING denied making some of the statements contained in his pre-trial statement Prosecution's Exhibit 9, but admitted making others (R 166-177). ANDING testified that he and SCHNEIDER were together and SINGER was

behind them when SALZMANN drove up while the transport was in progress (R 176).

b. For the Defense. Friedrich SALZMANN: The accused, SALZMANN, gendarmerie Kreisführer, elected to testify in his own behalf in substance as follows:

The Landrat gave SALZMANN two orders: first, to go to Schwickershausen and mobilize a landwacht gendarmerie to search the woods for fugitive flyers; and second, in compliance with an order of the Wehrmacht, to transport three flyers who had already been captured, by the shortest route to Bibra (R 49). SALZMANN telephoned SINGER to pick up SCHNEIDER, and then drove with BINDING, in a car from Schwickershausen (R 50). On arrival at the office of the mayor, THOMAS, he found the mayor, a gendarmerie member, and two or three landwacht members (R 51). SINGER arrived and SALZMANN repeated the two orders of the Landrat. SALZMANN had first intended that SINGER should start the search for the fugitive flyers, but because there were no gendarmes in Schwickershausen he had to use SINGER for the escort of the flyers and to wait for the arrival of gendarmes to start the search (R 53). After stating twice that he and SINGER left the office and went outside, SALZMANN, on being questioned, said "No, nobody else left with SINGER when SINGER left-- the mayor left with us." (R 55). SALZMANN met the transport about 15 minutes after SINGER left the office and called "Keep your people together." SINGER apparently did not understand and took several steps back. SALZMANN again told him to keep the party together (R 57, 58). SALZMANN gave instructions only to SINGER (R 115). About forty-five minutes later SALZMANN heard that a police official had been wounded, went to the edge of the woods to happen, and met SCHNEIDER, who was bleeding profusely and had a torn coat. SCHNEIDER told SALZMANN that a pilot had suddenly taken his weapon, that a fight had developed between the pilot and SCHNEIDER; that the pilot had thrown him to the ground and SINGER had been compelled to use his weapon; that the other two pilots fled and had been shot while trying to escape. SCHNEIDER said that SINGER and BINDING had probably gone in the direction of Nordheim, a town on the road between Schwickershausen and Meiningen. Later SINGER gave an identical report of the shooting (R 59, 60). The Wehrmacht had issued orders that all captured flyers would be removed immediately from the respective villages to prevent assaults.

✓ Bibra is six to seven kilometers from Schwickershausen on the way to Meiningen. The Wehrmacht was to take over the flyers in Bibra. The Wehrmacht in Meiningen could not pick up the flyers because they (the Wehrmacht) had left town (R 61, 63, 46). SALZMANN had no car at his disposal. The Landrat prohibited the use of cars for transporting prisoners (R 99). SALZMANN made no effort to obtain a car. It was customary for the Wehrmacht to transport prisoners by automobiles (R 105). At the time of the incident SALZMANN did not know that the shortest way to Bibra led through the woods. SALZMANN's pre-trial statement, Prosecution's Exhibit 8, was read to him before he signed it but he did not understand the writing (R 64). He signed the statement but requested that it be written in German (D 66).

WILHELM ANDING:

The accused ANDING elected to testify in his own behalf in substance as follows:

9 ANDING took his pistol and carbine when he left for Schwickershausen but had no ammunition for the carbine (R 140) and SCHNEIDER gave him five rounds of ammunition for his carbine (R 144). The party was taking a break at a bend in the road when ANDING turned and saw one of the flyers rushing towards SCHNEIDER. The flyer had SCHNEIDER about the neck and had his arms about him (R 145). ANDING tried to assist SCHNEIDER, and then SINGER came up and the flyer let go. SCHNEIDER's cheek was bleeding and his jacket torn. In the meantime the other flyers had escaped. The flyer from whom SCHNEIDER had been liberated ran in the woods (R 146). Two shots were fired up to that time. ANDING saw SCHNEIDER fire one of the shots (R 148). ANDING heard three or four more shots, and that of the flyers had been shot when ANDING saw the other two guards again (R 149). ANDING returned alone to the scene of the plane crash; later he saw SALZMANN on the road outside Schwickershausen, but did not report to him because either SINGER or SCHNEIDER had been there (R 151). ANDING returned the five rounds of ammunition to SCHNEIDER in ANDING's office in Meiningen several days later. ANDING was not informed of any orders of SALZMANN but if the order to kill the flyers had existed the flyers could have been shot long before they were (R 152). SCHNEIDER left the courtyard with the transport but neither ANDING nor SCHNEIDER

were present when SALZMANN gave orders for the flyers to be transported to Bibra (R 157). ANDING's statement, Prosecution's Exhibit 9, does not contain all the information he gave the interrogator and several things were not correctly recorded (R 184). ANDING has no reason for assuming that SCHNEIDER shot all three of the flyers (R 186).

ALBERT SINGER:

Accused SINGER elected to testify in his own behalf in substance as follows:

SINGER and SCHNEIDER, enroute to Schwickershausen, stopped at the scene of the plane crash, about 500 meters from the burgomeister's house, and SINGER proceeded alone. In the office of the burgomeister, SALZMANN gave SINGER an order to take the three pilots through the woods over the mountain to Bibra where they would be picked up by the Wehrmacht, and to take SCHNEIDER and ANDING along. SINGER did not know the shortest route to Bibra (R 200). SINGER received another order from SALZMANN, "Those three will be shot." Later in the presence of the commander of the gendarmerie at Thuringen, SALZMANN said that he only said if the Landrat had his way the men would be shot. SINGER just heard the words "Those three men will be shot", but the possibility exists that SALZMANN did quote the Landrat. SINGER did not object to the order but told himself that he did not intend to carry it out. ANDING and SCHNEIDER did not hear the order and SINGER did not relay it. They would have had to wait for the fire command anyway (R 201). SCHNEIDER joined the transport at the scene of the plane crash. Later SALZMANN came up and SINGER went back about 30 to 40 meters to meet him. SALZMANN told SINGER to shoot the pilots in the Nordhin district because he did not want to have anything to do with the burgomeister of Schwickershausen (R 202). SINGER pointed out to the guards that upon attempted escape they were to use their weapons (R 203). The party came to a place where the shrubbery was about a meter high and it became necessary to walk in single file. SINGER took his carbine from his shoulder and a shot was fired accidentally. The pilots fled (R 204). The other two guards were at SINGER's right and SINGER heard one or two shots fired at his right just before he fired another shot, and he saw two pilots fall to the ground and remain there. SINGER cannot state whether ANDING fired, but he knows ANDING was aiming. SCHNEIDER went after the third pilot and SINGER fired

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By authority of JAG 14

one shot at him but did not hit him (R 205). SINGER heard two or three shots and SCHNEIDER yelled that he had hit him. This pilot had one shot in the thigh and one in the chest. The guards returned, found the other two pilots gone, and started a search. SINGER heard SCHNEIDER yell, turned, and saw SCHNEIDER and a flyer struggling (R 206). SINGER waited until he saw the left side of the flyer's chest and fired. The pilot collapsed and SCHNEIDER fired at the flyer. The third flyer was lying dead about three or four meters north, but SINGER does not know who shot him (R 207). The three returned to Schwickershausen, where they met SALZMANN. SINGER did not report because SALZMANN waved to him to not say anything right there and when SALZMANN saw SCHNEIDER with his cheek bleeding and torn uniform he asked SCHNEIDER what had occurred (R 208). Only two cars were available in Schwickershausen (R 209). It was strictly forbidden to use vehicles for the transport of war prisoners (R 210).

On being questioned by defense counsel for SALZMANN, SINGER stated that he believed that the defense of superior orders could be offered in mitigation, but that he could not go without punishment (R 211). SINGER admitted that he had made several statements between 5 and 14 May, different from the long unsworn statement dated 24 May, Prosecution's Exhibit 6, but that he made the original statement deliberately to keep from being arrested before the funeral of his wife who had died on the day he was first interrogated (R 212-216). SINGER further said that he saw ANDING aim and believed at the time he made the statement (Prosecution's Exhibit 5) that ANDING had fired, but after hearing ANDING's denial during the trial he could not maintain the statement. When the three guards were returning through the woods ANDING said that he had fired upon one of the flyers and SCHNEIDER said, "Yes, I also did" (R 217). In 1938 there was a difference between SINGER and SALZMANN over a matter of a transfer which was later cleared up (R 225). The three guards talked briefly about the incident on the return trip from the woods and it was agreed that the story of the accidental shot would be omitted, and that in case anyone should question them they would tell about the attack on SCHNEIDER and the escape of the prisoners (R 256).

WALTER F. SCHNEIDER:

Accused Walter F. SCHNEIDER elected to testify in his own behalf in substance

On the day of the death of the flyers SINGER left SCHNEIDER at the scene of the plane crash outside Schwickershausen. When SINGER and ANDING passed with the pilots by the burning plane SINGER ordered him to go along (R 264). SCHNEIDER was about two meters away from one flyer and the others were walking ahead slowly when the flyer grabbed SCHNEIDER by the shoulder and shook him. SCHNEIDER told the flyer to hurry and catch up with the others. He did not take the attack too seriously because he knew the flyers were very nervous. SCHNEIDER turned around but the flyer grabbed him again, and in that moment ANDING came running towards him. SCHNEIDER told ANDING to leave the flyer alone, that the flyers were excited. As they started out again a shot was fired, and only SINGER could have fired the shot. Two flyers were in front of SINGER and ANDING, and SCHNEIDER had started to the right side of the party with his flyer. SCHNEIDER's flyer ran around a bend and the other two were running. SCHNEIDER yelled "Halt", fired a warning shot, followed the flyer into the shrubbery, and after chasing him for some time and waving to him to go to the edge of the woods, fired a second shot and the flyer fell (R. 266, 267). This flyer had a bullet wound in the chest and also in the thigh. SCHNEIDER met the other two guards and the three returned to a point where the first shot had been fired, found the flyers gone and started searching. SCHNEIDER saw a pilot under a pile of trigs (R 268) and attempted to get the pilot to go with him, but the pilot grabbed his rifle and a struggle ensued. During the struggle SCHNEIDER heard SINGER talking behind him then heard a shot fired and the pilot fell. SCHNEIDER was scared by the shot and so excited that he shot at the flyer, but does not know whether he hit him. SCHNEIDER heard ANDING and thinks he heard a shot but does not know exactly whether one was fired or whether ANDING fired it. ANDING came up and said that the third flyer was down (R. 269). As they left the woods SINGER suggested that they not mention the accidental shot, but SCHNEIDER replied that he could only tell what he knew. That was all that was said between them. SCHNEIDER went toward the plane and the others took another route. As he passed the plane SCHNEIDER met SALZMANN and reported to him that he had been attacked by the pilot and that they had used their weapons (R. 270).

On cross-examination by Defense Counsel for SALZMANN, SCHNEIDER stated that prior to his arrest he did not hear of an order from SALZMANN to shoot the flyer (R 273). On cross-examination by defense counsel for ANDING, SCHNEIDER said that he loaned ANDING five rounds of ammunition at Schwickershausen, near the plane, and that ANDING returned five rounds two or three days later in Weiningen. Ammunition had to be accounted for in those days (R 274). SCHNEIDER stated that he did not give the answers as shown in Prosecution's Exhibit 12 (R 287).

SCHNEIDER's pre-trial statement, Defense Exhibit 'C', was introduced by defense counsel for ANDING. SCHNEIDER acknowledged the signature to be his, but said that the document was not read to him (R 293-295). He said that he did not make the statement contained in the document, "At the time these orders were given I was occupied with something else and did not hear Captain SALZMANN give the order, but, during a conversation I had with SINGER, SINGER told me that SALZMANN told him (SINGER) that these three men were to be killed before we got to Bibra." SCHNEIDER's statement, Defense Exhibit 'C', contains a statement that SCHNEIDER firmly believes that ANDING and SINGER each fired a shot which felled two of the American flyers, and a statement that SINGER told him that he was to shoot the flyers if they attempted to escape.

7. JURISDICTION:

Particulars alleged a violation of the laws and usages of war which was committed before 9 May 1945 by enemy nationals against members of the United States Armed Forces at a time when a state of war existed between Germany and the United States of America. Accordingly, the court which was specially appointed to hear the case had jurisdiction of the persons and subject matter in accordance with previous decisions of this office in similar cases. (See United States v. Clemens TEGAND, November 1945; United States v. Richard DRAUZ, April 1946).

8. DISCUSSION:

The circumstances surrounding the dispatch of the transport are sufficient to involve accused SALZMANN in this crime. SALZMANN admittedly ordered the other three accused to march the flyers to Bibra by the shortest route. In the pre-trial statements of SINGER and ANDING and in testimony of SINGER on the stand, both accused stated that SALZMANN ordered them to take the flyers through the

woods to Bibra, a town located only a few kilometers away on the road which SALZMANN traveled in returning to Meiningen by car. Both SINGER and SALZMANN on the witness stand denied that they knew the shortest route to Bibra; however there is no evidence in the record concerning the manner in which they obtained information about the shortest route. SALZMANN by his own testimony knew that the party was going through the woods, because he testified that he talked to them near the scene of the plane crash after they had traveled a road different from the good road to Bibra (See map, Defense Exhibit A). It does not appear reasonable that a transport of this nature would be taken over an unknown route through a wooded area when it could be taken over a well-known road a distance of only six to eight kilometers. SALZMANN stated that he had no car at his disposal, and at the same time testified that he came from Meiningen to Schwickershausen in an automobile. The testimony that the Landrat prohibited the use of automobile for transport of prisoners may be viewed with doubt, especially when considered with testimony that the Wehrmacht used cars for this purpose. SALZMANN stated that prisoners were transported from Schwickershausen to Bibra in compliance with orders issued by the Wehrmacht that all prisoners would be removed from the respective villages for their own safety. This statement may well be viewed with suspicion in view of the statement in SALZMANN's handwritten pre-trial statement in which he said that he asked the German way the Wehrmacht could not pick up the flyers at Schwickershausen. The testimony before the court that the prisoners were marched through one third of the village with either two or three guards, while allegedly enroute to Bibra, does not indicate a great concern for the safety of the flyers. There was no evidence that the flyers were in any danger from the civilians and it does not appear reasonable that the immediate transport of the prisoners was more important than the organization of a search for fugitive flyers. SALZMANN testified contradictorily that there was no Wehrmacht in Bibra, and that the Wehrmacht in Meiningen were not in a position to pick up the flyers immediately, but that the flyers were to be turned over to Wehrmacht in Bibra. In addition to these circumstances, SINGER, in two statements and on the witness stand, testified that SALZMANN gave him an order that the flyers would be killed; SCHNEIDER in a pre-trial statement (Defense Exhibit C),

related that SINGER told SCHNEIDER that SALZMANN had told him (SINGER) that those three men were to be killed before the party got to Eibra. According to the testimony and the statements of the four accused, SALZMANN had an opportunity, both in the office of the burgomeister and later when the transport stopped at the scene of the plane crash, to give orders to SINGER without being overheard by the other two accused. In an effort to discredit SINGER's testimony against SALZMANN it was brought out that SINGER had some cause in 1938 for feeling that he had been mistreated by SALZMANN, and that SINGER felt that his punishment might be mitigated because he elected to tell the story involving SALZMANN. It does not appear that either of these reasons are compelling enough to cause SINGER to involve SALZMANN in such a serious offense, especially in view of the fact that the admission that there was an order to kill the flyers makes the story of an attempted escape less credible. There was sufficient evidence before the Court to establish the guilt of SALZMANN.

The stories concerning the individual parts played by SCHNEIDER, ANDING and SINGER in the killing of the flyers are many and varied. However, there can be no doubt that these accused actually participated in the killing of the three flyers, and the court was justified in disbelieving the various exculpating versions by the accused concerning the manner in which the killings were accomplished. SCHNEIDER and SINGER admittedly killed at least one of the flyers each and in pre-trial statements they accused ANDING of having participated in the killing. It is true that SCHNEIDER and SINGER did not testify at the trial that they saw ANDING fire a shot. However, SINGER stated that he retracted the testimony of his pre-trial statement because he heard ANDING on trial testify that he did not fire a shot. All of the testimony and the certificate of a military physician who examined the exhumed bodies indicates that all of the flyers suffered chest wounds and one had a wound in the cheek. The location of these wounds is inconsistent with any theory that the flyers may have been shot while running from the guards. There was ample evidence before the court to sustain a verdict that SCHNEIDER, ANDING and SINGER were guilty of the charge and particulars.

9. DEFICIENCY:

There was sufficient evidence before the court to establish beyond

reasonable doubt that the four accused were guilty of the charge and particulars. There were no errors or irregularities which affected any of the substantial rights of the accused.

The pre-trial statements of the four accused and the testimony offered at the trial present an abundance of conflicting evidence. The stories of the four accused are contradictory and confused in relating even unimportant details, and there is complete confusion in the statements and testimony concerning the events at the scene of the killing and immediately following the killing of the flyers. It was the province of the Court, as a fact finding body, to reconcile the conflicting evidence if possible, on the theory that each witness had spoken truthfully; if that was impossible the court had the power to reject such testimony it found to be unworthy of belief and give such weight to the testimony of the various witnesses as it saw fit. (See Wharton's Criminal Evidence, Volume II, 11th Edition, Section 884).

The defense of superior orders was not in so many words offered by any of the accused. SALEMANN in a pre-trial statement admitted, but on the stand denied that he repeated orders of the Landrat that the flyers would be killed. SINGEL in his pre-trial statement and his testimony alleged that orders were given but not carried out. After it was determined that the flyers were deliberately killed, this evidence presented an issue of superior orders. It is stated in an International Military Tribunal decision, page 16830, that:

"The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible."

In the light of the evidence before the court, it may fairly be said that moral choice was possible in the case of each of the accused. It was also pointed out that in other cases of a similar or analogous nature, previously tried and reviewed by this office, the defense of superior orders had been more strongly presented and argued, and has been denied as a defense. It is admitted that the facts of this case, had such a defense been seriously urged, would have required a finding that superior orders did not constitute a defense or even a mitigating circumstance.

The record does not show that a legally trained officer was sitting on the

court in the present case; however, the question concerning the jurisdiction of a court in a war crime case in which no legally trained officer was appointed was settled recently when it was held that failure to appoint a legally trained officer for a General Military Court was not prejudicial error (U.S. v. Wilhelm HEENE and Wilhelm MATTHAEI, July, 1946). In any event, an action remanding the case for rehearing because no legally trained officer was present would be based on a technicality in view of the fact that there is nothing in the record to indicate that the lack of a legally trained officer in any way prejudiced any rights of the accused.

The court sustained an objection of defense counsel to the admission of statements of witnesses residing in the Russian Zone of occupied Germany (Prosecution's Exhibits 1-4), on the ground that no evidence was before the court to show that an effort had been made to present the witnesses to the court. Prosecution, after consulting higher headquarters, reported to the court that it had been ascertained that in this case, as usual, all reasonable efforts were made to secure these witnesses from the Russian Zone. A further objection of defense counsel based on the original premise, was overruled by the court. A technical requirement that a letter from the proper authorities be produced each time a statement of a witness is introduced in a war crime case as proof of the fact that all reasonable efforts have been made to secure the presence of the witness at the trial would impose an unnecessary burden upon the prosecution and serve to make the procedure in war crime cases unnecessarily cumbersome without giving an additional protection to the accused. Further, the Deputy Theater Judge Advocate for War Crimes stated in a letter, file AG 000.5, subject: "Admissibility of Reports of Investigation in the Trial of Suspected War Criminals" dated 6 October 1945, "numerous factors may make it impracticable in many cases to secure the personal presence of witnesses, and, in such cases, the trial should not be needlessly delayed nor should admissible evidence be excluded by reason of their absence."

At the time the prosecution rested the defense counsel for one of the accused announced that he did not desire to take advantage of the technical possibility opened by the Prosecution's resting, that is, to move the court to acquit the

accused because of lack of evidence produced by the prosecution. The case presented by the prosecution prior to the time the prosecution rested was sufficient to establish a prima facie case that three American flyers had been killed and that the four accused participated in the killing. The exhibits offered by the prosecution were admitted later in the trial, and all of the evidence before the court, including testimony of the accused, was sufficient to warrant the court finding that the four accused were guilty of the charge and particulars beyond reasonable doubt. Therefore, the failure of the defense counsel to move for a directed verdict is not important.

The court erred in not admitting the properly authenticated pre-trial statements of the accused when first presented by the prosecution. It is well-settled that such statements are admissible in war crimes cases. (Letter, Deputy Theater Judge Advocate for War Crimes, supra). In view of the fact that this failure to admit the statements at the proper time did not prejudice the rights of the accused, but, in fact, was the result of the insistence of defense counsel for the accused, it presents no grounds for reversal.

Defense counsel objected strenuously to the admission of all statements of the accused, and particularly those statements written in English and translated to the accused in German prior to signing. However, it is clear that statements of this type have evidentiary value and are admissible. (Letter, Deputy Theater Judge Advocate for War Crimes, supra).

It is noted that the statement of accused SCHNEIDER, dated 2 June 1946, Prosecution's Exhibit No. 12, is a true copy of a statement, certified by an Officer. No explanation was requested by or given to the court as to the admissibility of the original statement. However, the statement was allowed in evidence after an agreement was reached between the prosecution and defense counsel, after the accused SCHNEIDER had admitted signing a statement on 2 June 1945. Under the procedure set up for the trial of War Crimes cases the "best evidence rule", as applied in Anglo-American courts, is not applicable; however, it is clear that the best evidence reasonably available should be presented to the court. In view of the fact that this document was admitted by agreement of the defense and in view of the further fact that there was sufficient evidence before the court to sustain the findings without consideration of this document, the

Admission of the statements of SALZMANN (Proc. Ex. 8) and SCHNEIDER (Defence Ex. C), was strenuously objected to by defense counsel for SALZMANN, and pages of the record were taken up with evidence on the part of defense counsel to prove that these two statements were not authentic. Both witnesses denied making certain statements contained in the two documents which are written in English and admittedly signed by the respective accused, and an effort was made to show that a proper procedure was not followed in obtaining the statements. On cross-examination of AALMANS, interpreter at the investigation when the statement of SALZMANN was taken, a strenuous attempt was made to discredit AALMANS as an interpreter; however the court was justified in believing that these two pre-trial statements were appropriately taken. Likewise, an effort was made to discredit all of SINGER's two pre-trial statements on the thesis that SINGER admittedly had made two or three contradictory statements prior to the time the two statements were made. However, the court as a fact finding body was at liberty to give credit to any part of SINGER's statement and testimony in the light of all of the evidence before the court in connection with these statements and it is not the province of the reviewing authority to disturb such a finding in the absence of compelling reasons therefor.

Defense counsel objected to some of the statements of accused on the basis that they were statements of accomplices. The letter of the Deputy Theater Judge Advocate for War Crimes, subject: "Admissibility before a Military Government Court of extra-judicial Statement of co-accused", dated 10 November 1945, supports the admissibility of statements of the co-accused in war crimes cases stating, "it is clear that a statement made out of court by one accused is admissible before a Military Government Court against all accused to the same extent as any other hearsay evidence".

The appointment of a General Military Court and proceedings thereof were in compliance with the provision of letter, Headquarters, United States Forces, European Theater, subject: "Trial of War Crimes and Related Cases", dated 17 July 1945, in effect at that time, and pertinent Military Government directives and instructions. The accused SALZMANN was represented by an American defense counsel and the three other accused were represented by three German attorneys in addition to the regularly appointed defense counsel. A fair and impartial

trial was held, challenges for cause were permitted, and accused were advised of their rights. The trial was held with impartiality and adequate opportunity was given to each accused to present any matters in his defense which he might desire. Two thirds of the members of the court present concurred in the findings and sentences.

10. SENTENCE:

A General Military Court may impose any lawful sentence including death or imprisonment for life in proper cases. The maximum punishment for all war crimes is death although a lesser punishment may be imposed. In this case, the court sentenced two of the accused to life imprisonment and two of the accused to death by hanging on the basis of evidence presented sufficient to find all four guilty of aiding, abetting and participating in the unlawful killing of three American flyers. Evidently the court did not feel that the evidence established sufficient culpability to warrant the death sentence for two of the accused. All four accused participated in the same crime and it is difficult to determine the exact extent of the culpability of each accused. It is true that evidence presented shows that accused SINGER and SALEMANN, both of whom were sentenced to death, were in a position of leadership not exercised by accused WINDIG and SCHNEIDER. However, this fact alone is not considered to be sufficient to establish that a death sentence would not have been warranted in the case of each accused. Even though the Court may have erred in not imposing a death sentence on each accused, it does not follow that in war crimes cases the sentences should necessarily be equalized; therefore the sentences in this case should not be disturbed.

11. CLEMENCY:

Seven Petitions for Clemency were filed on behalf of accused Albert SINGER attesting to his good character and reputation. One of these petitions, dated 14 June 1946, is by a Mrs. Anna STEINER, an alleged victim of Fascism, a sister-in-law of accused, who declared that the SINGER family brought food to her at a great risk to themselves after she had lost her job because of her non-Aryan descent. Another petition, dated 14 June 1946, by Fritz GRUNSTEIN, a man of Jewish descent, states that SALEMANN always behaved decently toward him, and that he had known this accused as a decent and respectable man. A letter by SINGER's

brother-in-law, Arthur OPPEL, dated 10 June 1946, states that OPPEL is thoroughly convinced that SINGER did not commit the action with which he is charged. Another dated 15 June 1946 by Herbert TAUBER, an alleged victim of Fascism, states that SINGER's sister-in-law, Mrs. OPPEL had always been anti-fascist, but in spite of that was always on the best of terms with SINGER; that Mrs. OPPEL had often told him that her brother-in-law had always had difficulties with his superiors because he was not radical enough. One, dated 13 June 1946, by Max GROSS, a retired Landrat, related that the service instructions given by his successor, which in the course of the war became more and more reckless, caused SINGER incessant internal conflicts and that SINGER longed for the end of the war so that he could retire. One, dated 15 June 1946, by one RASCHMAN, the leader of the district police, related that SINGER was considered a conscientious and honest official, that he did not agree with the view of the former chief magistrate GOMLICH in Weiningen that all culpable escaping prisoners of war and eastern laborers were to be shot while trying to escape, and that SINGER did not act according to this instruction; that it was known to the writer that SINGER released two arrested eastern laborers in order to prevent shooting them "while trying to escape". An official Certificate, dated 18 June 1946, signed by WEHRHANSAL, Burgomaster, Chief of the town-section of Halba, states that SINGER was always a good comrade to the inhabitants within the community and that he had a good reputation. A petition for commutation of the death sentence to life imprisonment, dated 10 May 1946, filed by accused SINGER states that the killing of the flyers was not premeditated; that it was the result of the accident that the accidental shot would not have been fired if the orders had not been issued; that pilots would probably not have fled and the use of firearms would have been unjust and uncalled for; and further, that the transport of the prisoners could have been made on the good road, because after all the distance of the good road would not have been any greater than the route through the forest which was unfamiliar to them. However, they were ordered to take the latter route. SINGER further stated that the long unsworn statement of 24 May 1945 (Proc. Ex. 6), was a true statement; that if he had stuck to his original statement the story would have appeared to be more credible, but that he gave the 24 May 1945 statement because he wanted to tell the truth. He stated that he had

an opportunity to leave the country, but that it did not occur to him to do so because he had a clear conscience and therefore nothing to fear; that for six years he had gotten along very well with 125 eastern workers and 25 French prisoners of war who worked in his area; and that he did many good turns. He further stated that he joined the party on 1 May 1943 as millions of others did; that conditions were such at that time that there was actually hope for the German future; that none of the Germans believed that they would end up in a situation such as the present. He never participated in a Reich Day or parade; he did not purchase a Party uniform, and he worked with energy and pride in doing his share for the benefit of people in need. He stated that in 41 years of service he had never given cause for punishment and that "I cannot believe that now I should conclude my reproachless life with a death sentence that I have not deserved".

A Petition for Clemency on behalf of accused SALZMANN dated 19 June 1946 was filed by his daughter, Ruth, speaking for her 58 year old mother and her sister stating that according to the character of her father he was not able to commit the crime of which he was found guilty; that he should therefore be spared the supreme penalty so that any wrong involved would not be beyond repair at some future time. Transmitted with the petition of the daughter was an affidavit taken at Meiningen 4 June 1946 signed by Albin MITTELSDORF, Anton BANE, Ernst HERBERT, Fortunato ZANETTI, and Walter WITTRUPP. This affidavit contains statements to the effect that SALZMANN is a decent, dependable and kind man; and that he would under no circumstances commit murder on defenseless prisoners of war. In a statement dated 5 June 1946 one Adolf SCHMIDT, a subordinate of SALZMANN at Meiningen, affirms that SALZMANN never permitted cruel treatment of prisoners of war. A certificate dated 18 June 1946 signed by Joh. HAPPEL, Ludwig MEIER, Heinrich BUCKERT, Jacob DETSCH, and Christof GEOB, contains the statement that SALZMANN is a truthful, orderly man and comrade of the best character. A petition dated 13 June 1946 was filed by Johannes FUSSEIM, senior pastor, retired, from Meiningen, stating that at one time SALZMANN was elected to the representative body of the church, consisting of the pastor, the chairman, and representatives of the church; and that in this capacity he had to take care of the ecclesiastical, moral, and social attendance of a community of about 3,000 inhabitants. He

further stated that he never had cause to doubt SALZMANN's love of the truth or his words; that in later life he visited SALZMANN's family and that he did not find any cause to change his judgment about him. There is an affidavit dated 13 June 1946 from Max GROSS, a retired Landrat in Meiningen, stating that SALZMANN was recommended by his former superiors in office as a calm, conscientious official; that his behavior was always correct, well-considered and resolute; that he was inclined to mildness in difficult situations, and that he could not imagine his giving an unscrupulous order to kill a defenseless prisoner of war. A petition dated 16 May 1946 by accused SALZMANN pleads for commutation of the death penalty to life imprisonment, stating that he was sentenced to death on the false statements of accused SINGER who was his subordinate from 1935 and who had a strong hatred against him; that he reproached SINGER one day during an interrogation in the presence of ANDING, and that SINGER answered: "I cannot change my statements as I have sworn to them. They will get at me for having committed perjury"; that he is able to prove by witnesses that he did not talk to SINGER in private at the office of the burgomeister, but that since the district of Meiningen was in the Russian Zone those witnesses could not be called. He further states that he could bring witnesses to confirm the fact that he never allowed prisoners of war to be assaulted. He states that owing to complaints on the part of the population he had very often to take steps against SINGER, and that this led to the transfer of SINGER in the last year, and that SINGER now holds him responsible for the transfer. He says he had known of the hatred of SINGER for the last few years and that he would have been "crazy" to give SINGER such an order. He further states he can say with a clear conscience that no such order was given to him by one of his superiors.

A Petition for Review dated 1 May 1946 filed by Maximilian KOESSLER, District Counsel for SALZMANN and a Petition for Review dated 2 May 1946 filed by Dr. [redacted], German Defense Counsel for SINGER present no questions not covered elsewhere in this review.

12. CONCLUSION:

It is believed that the sentences of the four accused should be approved.

Forms of action designed to carry the foregoing recommendations into effect, should they meet with approval, are submitted herewith.

NORA G. SPRINGFIELD
1st Lt., WAC
Post Trial Section

Having examined the record of trial, I concur.

C. E. STRAIGHT
Colonel, JAGC
Deputy Theater Judge Advocate
for War Crimes