

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

7 January 1948

UNITED STATES)

v.)

Georg ECKSTEIN, et al.)

Case No. 12-2404

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 8-17 October 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Georg ECKSTEIN, Ernst ITTAMEIER, Fritz STIEGLER, Johann Georg STURM, also known as Hans STURM, and Friedrich TIEFENBACH, German nationals, did, at or near WASSERTRUDINGEN, Germany, on or about 1 March 1945, wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On 1 March 1945, an American flyer, now believed to be Captain Jack MacNider Beckman, parachuted from his disabled plane, landed near Kroettenbach, Germany, and was immediately captured. He was taken to Unterschwaningen, Germany, where he was placed in jail in the custody of the police. On the same day he was taken from the jail by accused ECKSTEIN and STURM and others and transported to Wassertruedingen, Germany. The flyer was placed in the city hall jail and two conferences, in which all the accused and one Kattinger participated, were held in accused ITTAMEIER's office in the Kreisleitung. That night the flyer was taken from the city hall jail on the order of accused ITTAMEIER and transported a short distance to a side road by accused ECKSTEIN, STIEGLER, and STURM and Kattinger. The flyer was then beaten with spades by Kattinger and accused STURM. While lying on the ground, either dead or unconscious, accused ECKSTEIN shot the flyer. The flyer was then taken to a nearby woods and buried.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Georg ECKSTEIN

Nationality:	German
Age:	45
Civilian Status:	Mechanic
Party Status:	Nazi party from 1937; SA Medical Lieutenant
Military Status:	Volksturm Leader
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused was a member of the Volksturm (People's Army or Home Guard) at Wassertruedingen (R 50, 95) and, according to the testimony of the battalion commander in the Volksturm of Wittelshofen, was the highest ranking officer in the Volksturm of Wassertruedingen (R 50, 51). Witness Korn, a company leader in the Volksturm in Wassertruedingen, testified, and the accused stated in his extrajudicial sworn statement, that the accused was Kreisstabafuehrer in the Volksturm and, as such, held a superior office to that of Kettinger who was battalion adjutant (R 18, 95, P-Ex 184).

The accused stated in his extrajudicial sworn statement that on 1 March 1945 at about 1430 hours he went from the regimental headquarters to the Kreisleitung (Headquarters of Kreisleiter), and there he saw Kettinger who was a brother-in-law of accused ITTAMEIER. Kettinger told the accused to go to Unterschwaningen and get a flyer from the rural police there (R 18; P-Ex 184). The accused, accused STURM, and several other people went to the police station in Unterschwaningen and took the flyer into their custody (R 12, 17, 18, 19, 98; P-Exs 10, 16, 18A, 19A). They brought the American flyer to Wassertruedingen where they found accused ITTAMEIER, Kreisleiter and Mayor of Wassertruedingen (R 12, 17, 18, 19; P-Exs 10, 16, 18A, 19A). Accused ITTAMEIER interrogated the flyer. He then ordered the accused to take the flyer to the city hall and put him in jail (R 12, 18, 19, 21, 23; P-Exs 10, 18A, 19A, 22A, 24A). At about 1600 hours on the same day Kettinger, accused STURM, STIEGLER,

ITTAMEIER and the accused had a conference in accused ITTAMEIER's office. At the conclusion of the conference accused ITTAMEIER or Kattinger told all of them to come back that night (R 19, 20, 21; P-Exs 19A, 32A). All of the above mentioned persons returned to the Kreisleitung at about 1915 hours that night. Accused STURM stated in his extrajudicial sworn statement that accused ITTAMEIER took Kattinger into his office and as they came out accused ITTAMEIER said to Kattinger: "Do it well Karl; see that nothing will be heard of this affair." Kattinger replied: "All right, we will handle it" (R 19, P-Ex 19A). Accused STIEGLER stated in his extrajudicial sworn statement that accused ITTAMEIER told them that the flyer could only be taken out of the city hall at 2200 hours (R 21; P-Ex 22A). At 2200 hours on the same day Kattinger, accused STIEGLER, STURM, and the accused met at the city hall (R 18, 21, P-Exs 18A, 22A). The accused stated in his extrajudicial sworn statement that, at the city hall, Kattinger mistreated the flyer by hitting him with his fists and brutally kicking him (R 18, P-Ex 18A). They all got into Kattinger's car together with the flyer and, after stopping at Kattinger's house to pick up three spades (R 19; P-Ex 19A), drove a short distance out of Wassertruedingen in the direction of Oettingen. Kattinger stopped the car and everyone got out (R 18, 19, 21; P-Exs 18A, 19A, 22A). According to the extrajudicial sworn statement by this and two other accused, Kattinger walked ahead with the flyer, beating him with a spade as they went. The flyer fell to his knees and accused STURM hit the flyer over the head twice with a spade, using great force (R 18, 19, 20, 21; P-Exs 18A, 19A, 20A, 22A). The accused then drew his pistol and shot the flyer (R 18, 19, 21; P-Exs 18A, 19A, 22A). The accused admitted in his extrajudicial sworn statement that he fired one shot into the back of the flyer after he had examined the flyer, saw a deadly wound in his head and Kattinger told him to take out his pistol (R 18; P-Ex 18A). In their extrajudicial sworn statements, accused STURM stated that the accused fired three or four rounds into the neck of the flyer (R 19; P-Ex 19A) and accused STIEGLER stated that the accused bent over the flyer, turned on his flashlight, and fired one shot into the flyer's temple (R 21; P-Ex 22A). They then buried the flyer in a wood nearby

(R 13, 18, 19, 21; P-Exs 11, 18A, 19A, 22A). Kattinger later committed suicide (R 221).

Two former American investigators testified that they interrogated the accused and that his extrajudicial sworn statement (P-Exs 18, 18A) was his voluntary statement (R 563, 567).

Evidence for Defense: The accused testified that he was a member of the Volksturm and a medical lieutenant in the SA (R 325). He further testified that Kattinger gave him the order to pick up the flyer in Unterschwaningen (R 326). When they returned to Wessertroedingen they looked for accused Mayor ITTMEIER (R 328). They found accused ITTMEIER at the Kreisleitung (R 328). Accused ITTMEIER told the accused to take the flyer to the airfield after dark. The accused took the flyer to the city hall. About 2200 hours that day he went to the city hall (R 330). Kattinger was there. At Kattinger's request the accused went with Kattinger and the flyer (R 331). Accused STIEGLER and STURM went along. They were going to take the flyer to the airport Heuberg. They proceeded in the direction of Oettingen. They drove for about 20 minutes and then Kattinger stopped the car (R 332). They all got out of the car. The accused saw Kattinger make a hitting motion (R 333). The accused flashed his light on the ground and saw the flyer's skull was crushed and determined that he was dead. He testified that he could tell the flyer was dead because his eyes did not react to the light and he had had experience with dead people in his 20 years' experience in first aid (R 334). Kattinger ordered him to shoot the flyer so he did. They buried the flyer. The accused testified, contrary to his assertion in his extrajudicial sworn statement, that Kattinger was superior to him in the Volksturm (R 336). About 1000 hours the next morning he went to the Kreisleitung. Kattinger told accused ITTMEIER that the flyer was shot while trying to escape and had been turned over to the airfield at Heuberg (R 337).

Sufficiency of Evidence: The participation of the accused in the plan to kill the flyer, and the execution thereof, including his act of shooting the flyer, is clearly established. It is not established that the accused

acted at any time pursuant to orders of a superior. The weight of the evidence indicates that the accused was the superior of Kettinger, rather than vice versa. In any event, the Court might well have concluded that the accused did not act unwillingly but, on the contrary, cooperated in the furtherance of the entire plan to dispose of the flyer and that the accused, with respect to superior orders, failed to meet the burden of proof required by pertinent authorities discussed in Section V, post. There is nothing in mitigation.

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. Ernst ITTMEIER

Nationality:	German
Age:	64
Civilian Status:	Business man
Party Status:	Nazi party since 1925
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused was Kreisleiter of Dinkelsbuehl and had his office in Wassertruedingen (R 12, 17, 18, 19, 21, 23, 52, 64, 101, 103, 196, 212, 219, 225, 242; P-Exs 10, 16, 18A, 19A, 22A, 24A, 32A, 33, 34A); he was also mayor of Wassertruedingen (R 16, 84; P-Ex 18A). On 1 March 1945 a captured American flyer was brought to the Kreisleitung at Wassertruedingen at about 1600 hours (R 12, 17, 18, 19; P-Exs 10, 16, 18A, 19A). Accused STURM stated in his extrajudicial sworn statement that the accused interrogated the flyer, during the course of which he said, "Look at this guy, he has his grandparents in Braunschweig and he flies against German women and children, phooey" (R 19; P-Ex 19A). He then ordered that the flyer be placed in the jail at the city hall

(R 12, 18, 19, 21, 23; P-Exs 10, 18A, 19A, 22A, 24A).

Former First Lieutenant Blank of the German police testified that he called at the accused's office during the afternoon and requested that the flyer be turned over to his custody so he could be taken to the airport. The accused replied that the flyer would not be turned over but would be "taken care of by us." To a second request by the witness the accused consented but Kattinger protested. The witness made a third request and was refused by either Kattinger or the accused (R 259-261).

On the same day Kattinger, accused STURM, STIEGLER, ECKSTEIN and the accused held a conference in the accused's office in the Kreisleitung. At the conclusion of the conference the accused, or Kattinger in the presence of the accused, told all of them to come back that night at 1915 hours (R 19, 202, 203, 212; P-Exs 18A, 32A). Accused STURM stated in his extrajudicial sworn statement that all of the above mentioned persons returned to the Kreisleitung at about 1915 hours that night. The accused took Kattinger into his office and as they came out the accused said to Kattinger: "Do it well Karl; see that nothing will be heard of this affair." Kattinger replied: "All right, we will handle it" (R 19; P-Ex 18A). Accused STIEGLER in his extrajudicial sworn statement stated that as they came out of the office Kattinger said: "You can be sure that he will pay for it" and the accused answered: "I can trust you." Accused STIEGLER also stated that the accused pointed out that the flyer should be taken out of the city hall at 2200 hours only (R 21; P-Ex 22A). At 2200 hours the same day Kattinger, accused STIEGLER, STURM and ECKSTEIN met at the city hall (R 18, 21; P-Exs 18A, 22A). They took the flyer a short distance outside of Wassertruedingen where they participated in beating him with spades and shooting him until he was dead (R 18, 19, 20, 21, 226; P-Exs 18A, 19A, 20A, 22A). They then buried the flyer in a wood nearby (R 13, 18, 19, 21; P-Exs 11, 18A, 19A, 22A). The next morning all of the accused together with Kattinger had a meeting in the office of the accused (R 204, 313, P-Ex 32A). A former CIC investigator testified that accused STURM told him that the accused ordered accused STIEGLER to go back to the scene of the killing to see that all traces of the incident were removed so that no one could see

what had happened (R 225). On several occasions prior to 1 March 1945 the accused said that enemy flyers should be killed or words to that effect (R 21, 22, 109, 125, 137, 190, 197, 212, 217, 219, 245, 246, 248; P-Exs 22A, 23A, 30A, 32A, 33, 37A, 38A, 39A).

According to the testimony of a German lawyer, who qualified as an expert in matters pertaining to Nazi party organization and who was a member of the Volksturm, the Volksturm was under the supervision of the Kreisleiter (R 572). He further testified that the Volksturm did not become a part of the Wehrmacht in the area in question (R 573).

Evidence for Defense: The accused testified that during the afternoon of 1 March 1945 accused ECKSTEIN came to him and said he had a flyer whom he had brought from Unterschwaningen, (R 502). The accused told accused ECKSTEIN that he had brought the flyer there without his knowledge and wish so he could take him to the airport (R 503). The accused further testified that Kattinger told him he had given the order to get the flyer and that he gave it as leader of the Volksturm. The accused said he could not give orders to the Volksturm in that situation (R 504). The accused did not talk to Kattinger about the treatment of this flyer (R 505). He said that he did not tell anyone to return that evening (R 528).

The accused testified that a First Lieutenant Blank of the police came to his office that afternoon and wanted the flyer (R 490). He agreed to turn him over but Kattinger refused (R 491). He said that he could have given the order for the flyer to be turned over but he was afraid Kattinger would embarrass him (R 491, 492). The accused testified that he told Kattinger the flyer was the Volksturm's responsibility and Kattinger would have to turn the flyer over to the air force. The next morning he asked Kattinger about the flyer (R 493). He was told that the flyer was shot by ECKSTEIN while trying to escape and he was then taken to the guard at the airfield (R 494). The accused denied that he ever said that flyers were to be shot (R 490).

The accused's wife testified that the accused arrived home that evening about 1900 hours and remained there all evening (R 321). The accused told her that the flyer would be taken to air base Houbere

(R 321, 322).

Sufficiency of Evidence: It is clear from the evidence that the accused, both from the standpoint of his high positions as Kreisleiter and mayor and his intention as expressed in words and actions, was the leader, if not the instigator, in the formation and execution of a deliberate and carefully conceived plan to kill the flyer. The Court might well have concluded that the accused, as Kreisleiter, had authority over the Volksturm and issued necessary orders to carry out the plan.

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

3. Fritz STIEGLER

Nationality:	German
Age:	48
Civilian Status:	Merchant
Party Status:	Nazi party since 1929
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was chief clerk at the Kreisleitung (R 21; P-Ex 22A). On 1 March 1945 the accused instructed witness Kranzlein to find accused ECKSTEIN and get transportation to pick up a captured American flyer from Untereckelwangen and bring him to Wassertruedingen (R 17, 18; P-Exs 16, 17A). The flyer was brought to the Kreisleitung at Wassertruedingen at about 1600 hours (R 12, 17, 18, 19; P-Exs 10, 16, 18A, 19A). Accused ITTMEIER interrogated the flyer and ordered that the flyer be placed in the jail at the city hall (R 12, 18, 19, 21, 23; P-Exs 10, 18A, 19A, 22A, 24A). Shortly thereafter on the same day Kattinger, accused STURM, ECKSTEIN, ITTMEIER and the accused held a conference in accused ITTMEIER's office. At the conclusion of

the conference accused ITTMEIER or Kattinger told all of them to come back that night (R 19, 203, 212; P-Exs 19A, 32A). Accused STURM stated in his extrajudicial sworn statement that all of the above mentioned persons returned to the Kreisleitung at about 1915 hours that night. Accused ITTMEIER took Kattinger into his office and as they came out accused ITTMEIER said to Kattinger: "Do it well Karl; see that nothing will be heard of this affair." Kattinger replied: "All right, we will handle it" (R 19; P-Ex 19A).

The accused in his extrajudicial sworn statement stated that as accused ITTMEIER and Kattinger came out of the office Kattinger said: "You can be sure that he will pay for it", and accused ITTMEIER answered: "I can trust you". Accused ITTMEIER also stated that the flyer should be taken out of the city hall at 2200 hours only (R 21; P-Ex 22A). At 2200 hours the same day Kattinger, accused STURM, ECKSTEIN, and the accused met at the city hall (R 18, 21; P-Exs 18A, 22A). The flyer was mistreated by Kattinger. They all got into Kattinger's car together with the flyer and, after stopping at Kattinger's house to pick up three spades (R 19; P-Ex 19A), drove a short distance out of Wassertruedingen in the direction of Ottingen. Kattinger stopped the car and they all got out (R 18, 19, 21; P-Exs 18A, 19A, 22A). According to the extrajudicial sworn statements of the accused and accused ECKSTEIN and STURM, Kattinger went ahead with the flyer beating him with a spade as he went. The flyer fell to his knees and accused STURM hit the flyer with force on the head twice with a spade (R 18, 19, 20, 21; P-Exs 18A, 19A, 20A, 22A). Accused ECKSTEIN then fired one or more shots at the flyer with his pistol (R 18, 19, 21, 226; P-Exs 18A, 19A, 22A). They then buried the flyer in a wood nearby (R 18, 19, 21; P-Exs 11, 18A, 19A, 22A).

The accused admitted in one of his extrajudicial sworn statements that he went with the group and knew that the flyer was to be killed; that he carried a spade when they got out of the car; that he was present during the killing; and that he took part in burying the body (R 21; P-Ex 22A). The next morning all of the accused together with Kattinger had a meeting in the office of accused ITTMEIER (R 201, 206, 210; P-Ex 32A).

Three witnesses, former American investigators, testified that they were told by accused STURM that, the next morning, the accused went back to the flyer's grave and fixed it so that it would not be noticed (R 33, 42, 46, 225). Two of the above witnesses testified that they interrogated the accused and that his extrajudicial sworn statements were his voluntary statements (R 565, 568).

Evidence for Defense: The accused testified that he was present when the flyer arrived at the Kreisleitung on 1 March 1945 (R 377). Accused ITTMEIER talked to the flyer and then told accused ECKSTEIN to take him to the city hall (R 378). Kattinger told the accused to go along with him at 2200 hours to take the flyer to the airport Houborg and told him to report as a Volksturm man. Accused ECKSTEIN and STURM went with them. On the way to the airport Kattinger stopped the car and ordered them all to get out (R 379). Kattinger hit the flyer with a spade and accused STURM also hit the flyer with a spade (R 21, 330; P-Ex 22A, p. 2). The accused testified that he did not hit the flyer (R 381). Accused ECKSTEIN pronounced the flyer dead and they then buried the flyer (R 382).

The accused testified that ITTMEIER did not issue any orders in regard to the flyer (R 383) and that they did not have a meeting about 1800 hours as he had stated in his first extrajudicial sworn statement (R 389). The accused further testified that the conversation between Kattinger and accused ITTMEIER which was set out in his extrajudicial sworn statement was untrue (R 400). The accused said he was under the influence of Kattinger at the time of the incident (R 410).

Sufficiency of Evidence: It is established that the accused actively and willingly participated in the plan to kill the flyer, and the execution thereof, as shown by his presence at the conferences and at the scene of the killing. It is clear that he took part in the burial and returned to the scene the next day to cover up traces of the incident. With regard to superior orders, the Court might well have concluded that the accused failed, in a substantial degree, to meet the burden of proof required by pertinent authorities discussed in Section V, post.

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

4. Johann Georg STURM

Nationality:	German
Age:	36
Civilian Status:	Butcher
Party Status:	Nazi party since 1928
Military Status:	Sergeant in German Army
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for prosecution: The accused was a member of the German Army (R 10, 18; P-Exs 8, 18A). At about 1430 hours on 1 March 1945 the accused went with accused STIEGLER and others to Unterschwaningen to get a flyer being held there by the police (R 12, 17, 18, 19, 24, 28; P-Exs 10, 16, 18A, 19A). They brought the American flyer to Wassertruedingen. They took the flyer to accused ITTAMBIER (R 12, 17, 18, 19; P-Exs 10, 16, 18A, 19A). Accused ITTAMBIER interrogated the flyer and then ordered the accused and accused ECKSTEIN to take the flyer to the city hall and put him in jail (R 12, 18, 19, 21, 23; P-Exs 10, 18A, 19A, 22A, 24A). Shortly thereafter on the same day Kattinger, accused STIEGLER, ITTAMBIER, ECKSTEIN and the accused had a conference in accused ITTAMBIER's office. At the conclusion of the conference accused ITTAMBIER or Kattinger told all of them to come back that night (R 19, 203, 212; P-Exs 19A, 32A). All of the above mentioned returned to the Kreisleitung at about 1916 hours that night (R 19; P-Ex 19A). Accused ITTAMBIER took Kattinger into his office and as they came out remarks were made from which the inference could be drawn that the flyer was to be killed (R 19, 21; P-Exs 19A, 22A). Accused ITTAMBIER told them that the flyer could be taken out of the city hall at 2200 hours only (R 21; P-Ex 22A). At 2200 hours on the same day

Kattinger, accused STIEGLER, ECKSTEIN and the accused met at the city hall (R 16, 21; P-Exs 184, 224). The flyer was mistreated by Kattinger. They all got into Kattinger's car together with the flyer and, after stopping at Kattinger's house to pick up three spades (R 19; P-Ex 194), drove a short distance out of Wassertruedingen in the direction of Ottingen. Kattinger stopped the car and they all got out (R 18, 19, 21; P-Exs 184, 194, 224). Kattinger went ahead with the flyer beating him with a spade as he went. The flyer fell to his knees pleading for help and the accused hit the flyer over the head twice with a spade (R 18; 19, 20, 21; P-Exs 184, 194, 204, 224). He admitted in his extrajudicial sworn statement and in his testimony that he hit the flyer so hard that the handle of the spade broke (R 19, 443, 444; P-Ex 194). Accused ECKSTEIN then shot the flyer with his pistol (R 18, 19, 21, 220; P-Exs 184, 194, 224). They then buried the flyer in a wood nearby (R 13, 18, 19, 21; P-Exs 11, 184, 194, 224).

Three former investigators testified that they had interrogated the accused and that his extrajudicial sworn statements were his voluntary statements (R 564, 568, 570).

Evidence for defense: The accused testified that Kattinger ordered him to go with them to take the flyer to Heuberg (R 438). When Kattinger stopped the car outside of Wassertruedingen he took spades out of the trunk of the car and gave one to the accused. Kattinger walked ahead with the flyer (R 442). Kattinger was beating and kicking the flyer. The accused gave as his reason for striking the flyer that it was his intention to prevent further suffering from the beatings of Kattinger and that he thought he was performing a good act in doing so (R 443, 444). The accused further testified that his reference to accused ITZINGER in his extrajudicial sworn statement when he referred to a conversation with Kattinger was false (R 450). He said he was threatened when he made the statement (R 450). However, the accused admitted that the person who threatened him was not present when he wrote the statement nor was he threatened at the actual time of writing it (R 450, 461).

Sufficiency of Evidence: The participation of this accused in the

plan to kill the flyer, and the execution thereof, is clearly established by the weight of the evidence, including his admissions. With regard to superior orders the accused wholly failed to meet the burden of proof required by pertinent authorities discussed in section V, post.

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

Petitions: No Petitions for Review were filed. A petition for Clemency was filed by the accused 7 November 1947.

Recommendation: That the findings and sentence be approved.

5. Friedrich TIEFENBACH

This accused was acquitted (R 577).

V. QUESTIONS OF LAW:

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

Superior Orders: Accused ECKSTEIN, STIEGLER and STURM sought to justify their actions by offering evidence to show that they were acting in compliance with "superior orders". Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 312; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, Opinion D.J.M.C. December 1945; and United States v. Klein, et al., (Madamar Murder Factory Case), Opinion D.J.M.C. February 1946; and French Republic v. Wagner, et al., Court of Appeals (France), July 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 126).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior in fact, directing that he commit the

wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U.S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rules of the Law", by Ernst Fraenkel; United States v. Bury, et al., opinion DJATC, September 1945, United States v. Thomas, supra; and United States v. Beck, et al., opinion DJATC, December 1946.)

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

The Chief Prosecutor did not sign the certificate of authentication of the record as it was apparently not completed before he was returned to the Zone of the Interior. However, the certificate is signed by the Court President and by Chief Defense Counsel, and no injustice resulted to the accused by such omission.

VI. 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.

FLOYD M. LUMBERG
Major JAGD
Post Trial Branch

Having examined the record of trial, I concur, this _____ day of _____ 1946.

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