

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

1 March 1948

UNITED STATES

v.

Case No. 11-584

Otto Friederich ISENMANN, et al.

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, 28 May 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Otto Friederich ISENMANN and Karl Josef REBEL, German nationals, did, at or near Wolfisheim, France, on or about 15 August 1944, deliberately and wrongfully encourage, aid, abet and participate in the killing of an unknown member of the United States Army, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On 14 August 1944 an American flyer parachuted from a disabled plane near Kolbsheim, France. He was given shelter by a French family. That evening accused ISENMANN, district leader of the gendarmerie for the district of Strasbourg, France, and accused REBEL, Kreis leader of the gendarmerie for Kreis Wolfisheim, Landkreis Strasbourg, France, were notified of the whereabouts of this flyer. Accused ISENMANN had been previously notified by his superiors to turn captured enemy flyers over to the Gestapo or the SS, who would make arrangements for killing the flyer. Accused ISENMANN and REBEL went to the French home and captured the flyer. Accused REBEL hit the flyer twice when he took him into custody. Huebler and accused REBEL, upon orders from accused ISENMANN, walked the flyer towards Wolfisheim over the route Kolbsheim, Brunschwiacker-sheim, and Wolfisheim. Accused ISENMANN had told accused REBEL about the order and told him that, if some people in civilian clothes should come from Strasbourg, the flyer should be turned over to them. Accused ISENMANN called Strasbourg and notified the SS or the Gestapo of the capture of the flyer



and the route over which he was walking. He then went to Breuschwickersheim and after a short delay picked up Huebler, accused REBEL and the flyer in his car and took them to Wolfisheim. The flyer was taken to the gendarmerie building and put under guard. Accused ISENMANN and REBEL told the guards that the flyer should be turned over to the Gestapo in case they arrived. Accused ISENMANN also told the guards that, if the Strasbourg people arrived, he was to be notified. At about 0200 hours accused ISENMANN was notified of the arrival of the people from Strasbourg. He went to the gendarmerie station where he saw three or four men in civilian clothes and one in uniform. He talked to the leader of the group who said the flyer had to be killed. Accused ISENMANN then turned the flyer over to them. Later that morning the body of the flyer was found in a woods about two kilometers from Wolfisheim.

#### IV. EVIDENCE AND RECOMMENDATIONS:

##### 1. Otto Friederich ISENMANN

Nationality:	German
Age:	56
Civilian Status:	Gendarmerie Captain
Party Status:	Unknown
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused, from 17 April 1944 to 18 September 1944, was a captain in the gendarmerie and district leader of the gendarmerie of the district of Strasbourg, France (R 6, 23; P-Ex 3 A, p. 1). In June 1944 he attended a conference held by Major Pflueger, the chief of the gendarmerie, who gave instructions that, if an enemy flyer was captured, they were to call the SS in Strasbourg who would send four or five men dressed in civilian clothes who would then take the flyer and kill him. They would leave him in such manner that it would appear as though the flyer had been disposed of by the angered population (R 6; P-Ex 3 A, p. 1).



stated that on 14 August 1944 at about 2200 hours, the accused received a report that an enemy flyer had landed near Kolbsheim. The accused and accused REBEL together with gendarmerie master Huebler went to Kolbsheim where they learned that the flyer was hiding nearby. They went to the house where the flyer was hiding and took him into custody. The accused ordered accused REBEL and Huebler to walk the flyer to Wolfisheim over the route Kolbsheim, Breuschwickersheim, and Wolfisheim (R 6, 13; P-Exs 3 A, p. 2, 11 A). The accused stated that he told accused REBEL, who knew about the order from Pfeuger, that he would call Strasbourg and that, if people in civilian clothing should come from Strasbourg, the flyer should be turned over to them. It was clear to him that this would mean the death of the flyer. The accused stated he then went to Wolfisheim and called Strasbourg (R 6; P-Ex 3 A, p. 2). The accused is not sure whether he talked to the Gestapo or the SS but he was assured by a wachmeister, to whom he talked, that everything would be all right (R 6, 11, 12; P-Exs 3 A, p. 2, 8 B, 9 B, 10 A).

The accused stated that he then drove to Breuschwickersheim (R 6; P-Ex 3 A, p. 2), where he stopped in a restaurant (R 6; P-Ex 3A, p. 2). He stated that he waited there for a while hoping the men from Strasbourg would come (R 12; P-Ex 9 B). The accused and accused REBEL stated that the accused then picked up Huebler, accused REBEL and the flyer in his automobile and took them to the gendarmerie station in Wolfisheim where the flyer was placed under guard (R 6, 13; P-Exs 3 A, p. 3, 11 A). The accused told the guards to call him, if the people from Strasbourg arrived. About 0200 hours the accused was notified that the men from Strasbourg had arrived. He then went to the gendarmerie station. The accused stated that three or four civilian men and one man in uniform were there. He asked for the leader of the group and he and the leader went outside. The leader told him that he was ordered to kill the flyer. The accused turned the flyer over to him. The men from Strasbourg took the flyer away with them. The next day, he received word that the body of the flyer had been found (R 6; P-Exs 3 A, p. 3). It was found in a woods near Wolfisheim (R 6, 13, 16, 17; P-Exs



the body as that of the flyer (R 6, 13; P-Exs 3 A, p. 3, 11 A).

The accused stated that he recognized his guilt and that he should have turned the flyer over to the army despite the order to turn the flyer over to the Gestapo to be killed. He stated that he was angry at the time because the cathedral at Strashourg had been bombed and because American flyers attacked open towns and killed the population (R 8, 12; P-Exs 5 B, 10 A). The accused stated and also testified that he had orders that, if a flyer was in the gendarmerie station, he was not to be released to anyone else (R 8, 9, 11, 12, 56; P-Exs 5 B, 6 B, 8 B, 10 A). Alex Lenz in his extrajudicial sworn statement stated that he saw a bomber crash on 14 August 1944 and saw four or five parachutists come down, one being the flyer who was killed (R 15; P-Ex 15A). Accused RUFFEL testified that he heard that a bomber had crashed in his Kreis on that date (R 41).

Evidence for Defense: The accused testified that he did not hear of any plane crash in his district. Therefore, he was told he could not say the flyer had bailed out (R 57). He was of the impression that the flyer was to be treated as sabotage flyers in accordance with the order of 1943 which meant he had to deliver the flyer to the Gestapo (R 55, 58). He did not know the flyer was to be killed by the Gestapo. He also testified that, if he had not turned the flyer over, his own life would have been endangered (R 60). The accused admitted that all of the extrajudicial statements introduced in evidence by the prosecution and signed by him were his statements, but asserted that at the time of making them he was run down physically and mentally (R 35-37).

Sufficiency of Evidence: The evidence establishes the guilt of the accused. He did everything possible to get the flyer killed without actually issuing the order or doing it himself. He knew when he made the telephone call to Strashourg and when he released the flyer what would happen to him.

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



Petitions: A petition for review was filed by defense counsel, Lieutenant Wilfred W. Fritz, 10 June 1947. Petitions for Clemency were filed by accused, 10 June 1947 and 27 November 1947; and Pastor of Catholic Parochial at Epslein, 10 August 1947.

Recommendation: That the findings and sentence be approved.

2. Karl Josef REBEL

Nationality:	German
Age:	54
Civilian Status:	Gendarmerie Lieutenant
Party Status:	Unknown
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 10 May 1946

Evidence for Prosecution: The accused was a gendarmerie lieutenant in charge of Kreis Wolfisheim, Landkreis Strasbourg, and went with accused ISENMANN and Huebler to Kolbsheim in order to capture an enemy flyer (R 13; P-Ex 11 A). In his extrajudicial sworn statement accused ISENMANN stated that he told the accused about the order to turn captured enemy flyers over to the Gestapo or the SS and that he told the accused that the flyer would be killed (R 6; P-Ex 3 A, p. 2, 3). As the accused and accused ISENMANN entered the room where the flyer was being sheltered by a French family the accused stepped up to the flyer and without any provocation on the flyer's part hit the flyer twice in the face with his hand or fist. This is shown by the extrajudicial sworn statements of accused ISENMANN and members of the French family, Margarete Henn and Eugene Henn (R 6, 14, 15; P-Exs 3 A, p. 2, 13 A, 14 A). The accused and accused ISENMANN stated in their extrajudicial sworn statements that accused ISENMANN ordered the accused and Huebler to walk the flyer to Wolfisheim by way of Breuschwickersheim and they would be picked up by either accused ISENMANN or the Gestapo. Accused ISENMANN also stated that he would notify Strasbourg. Accused ISENMANN picked them up in his automobile at Breuschwickersheim and took them to the gendarmerie station at



Wollstein where the flyer was placed under the guard of two gendarmes (R 6, 13; P-Exs 3 A, p 1, 2, 11 A). The accused stated that he told the gendarmes that the flyer should be handed over to the Gestapo in case they arrived. The next morning the accused heard that the flyer had been called for by the Gestapo. Later in the morning he heard that someone had been killed and he went to the place and uncovered the body. It was the dead body of the flyer (R 13; P-Ex 11 A).

Accused ISENHANN stated that the accused told him he would kill the flyer when they were on their way to take him into custody (R 6; P-Ex 3A, p. 11). The accused stated that he knew about the order to turn flyers over to the Gestapo (R 13; P-Ex 11A).

Alex Lenz, in his extrajudicial sworn statement, stated that the flyer was an American and that the accused stated, when he interrogated him on the next day, that he was going to kill the flyer and that all flyers should be killed (R 15; P-Ex 15A).

Accused ISENHANN testified that he thought the accused said the flyer should be shot (R 31).

Evidence for Defense: The accused stated in his extrajudicial sworn statement that he knew of the order to turn prisoners of war over to the Gestapo but did not know they were to be killed. He stated that he did not say he would kill the flyer nor did he know about the planned murder of the flyer (R 13; P-Ex 11A). He stated and testified that, when he went into the room where the flyer was sitting, the flyer jumped up and made a movement with his hand as though he was going to reach for a weapon. Consequently, he slapped the flyer twice (R 13, 41; P-Ex 11A). He further stated that he thought the flyer would be turned over to the Gestapo for the purpose of interrogating him (R 13; P-Ex 11A). He testified that he did not tell Lenz he was going to kill the flyer (R 46).

Accused ISENHANN testified, in contradiction to his statements, that the accused slapped the flyer after the flyer raised his hands to his chest (R 29, 32). Accused ISENHANN also testified that he did not tell the accused that the flyer was to be killed (R 31); that the accused did not



give orders to deliver the flyer to the men from Strasbourg (R 33); and that the accused could not know that the flyer was to be killed (R 34).

The accused further testified that accused ISENMANN did not tell him the Gestapo would kill the flyer and he assumed that the turning over of the flyer was in compliance with an order to turn flyers over to the Gestapo which was issued in 1943 (R 40). The accused never interrogated Lenz (R 42). He also testified that he did not give orders to his subordinates to turn the flyer over to the Gestapo when they arrived (R 47).

Sufficiency of Evidence: The accused was subordinate to accused ISENMANN and was superior to the gendarmerie at Wolfisheim which was in Kreis Wolfisheim, Landkreis Strasbourg. The accused knew the flyer was going to be turned over to the Gestapo or the SS and assisted in this procedure. There is a conflict of evidence as to whether or not the accused was notified that the Gestapo would kill the flyer. Accused ISENMANN, in his extrajudicial sworn statement stated that he told the accused about it, but in his testimony in Court he denied it. The Court was justified in believing the statements of accused ISENMANN rather than his testimony in Court. The accused made no attempt to protect the prisoner of war in his custody.

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

Petitions: A Petition for Review was filed by defense counsel, Lieutenant Wilfred W. Fritz, 10 June 1947. Petitions for Clemency were filed by Major Mark, 18 June 1947; M. Wintz, 18 May 1947; accused, 12 June 1947 and 23 November 1947; and wife of accused, Mrs. L. Rebel, 15 July 1947.

Recommendation: That the findings and sentence be approved.

#### V. QUESTIONS OF LAW:

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

Superior Orders: Neither of the accused sought to justify his actions by offering evidence to show that he was acting in compliance with superior orders. However, there is some evidence to that effect. Compliance with



superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, opinion DJAWC, December 1945; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, February 1946; and French Republic v. Wagner, et al., Court of Appeals, France, July 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior in fact, directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U. S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 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; and United States v. Beck, et al., opinion DJAWC, December 1946.)

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.

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. LUNDBERG  
Major JAGD  
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