

28 November 1947

U N I T E D S T A T E S )

v. )

Case No. 12-031

Hans SEIBOLD, et al. )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 5-7 March 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

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

Particulars: In that Hans SEIBOLD, Albert SCHRAFF, and Fritz MULLER, German nationals, did, at or near FRIEDRICHSHAFEN, Germany, on or about 22 July 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Arthur M. Scott, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

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

Particulars: In that the accused Hans SEIBOLD, Albert SCHRAFF, and Fritz MULLER, German nationals, were members of organizations declared criminal by the International Military Tribunal in Case No. 1, i.e., the Leadership Corps or Die Schutzstaffeln der National Sozialistischen Deutschen Arbeitspartie (commonly known as the SS), after 1 September 1939, with knowledge that the said organizations were being used in the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, annexed to the agreement establishing the Tribunal, dated 8 August 1945, or were personally implicated in the commission of such criminal act.

(Full name of Muller is Albert Friedrich Müller R. 133).

III. SUMMARY OF EVIDENCE: On or about 20 July 1944, following a bombing attack on Friedrichshafen and Ailingen, Germany, an American flyer, believed to be Arthur M. Scott, parachuted to earth from his disabled plane, landing near Ailingen. He was immediately taken into custody and lodged in the village jail by accused SCHRAFF.

The next day accused SCHRAFF notified accused SEIBOLD of the situation. Accused SEIBOLD instructed accused SCHRAFF to go away with the flyer. The following day accused SCHRAFF and MULLER together with Helmuth Hauser removed the flyer from the village of Ailingen and proceeded to or near a firing range a short distance from the village. There the flyer was shot and killed by Helmuth Hauser and accused MULLER.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Hans SEIBOLD

Nationality:	German
Age:	43
Civilian Status:	Engineer
Party Status:	Nazi Party since 1927; Kreisleiter of Friedrichshafen
Military Status:	German Army from 1940 to 1942
Charges:	NG Charge I, NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	Life imprisonment

Evidence for Prosecution: The accused, in July 1944, was the kreisleiter of Kreis Friedrichshafen with his office in Friedrichshafen, Germany (R 12, 45, 47, 49, 54, 55, 57, 59, 60, 171; P-Exs 1, 2, 3, 9, 10, 12, 14, 15, 16). On about 21 July 1944 the accused received a message from accused SCHRAFF, mayor and ortsgruppenleiter of Ailingen, to the effect that he was holding an American flyer in his jail and he wanted to know what to do with him (R 45, 54, 55, 57, 59, 60, 171; P-Exs 1, 9, 10, 12, pp. 6, 8, 14; P-Exs 14, 15, 16 pp. 2, 7, 10). The accused as kreisleiter was superior to accused SCHRAFF as ortsgruppenleiter (R 55, 57, 171; P-Exs 10, 12, p. 11; P-Ex 16). The accused informed accused SCHRAFF in writing that he had his orders in this respect; that Bormann's order stands; and that "There are many possibilities" to act accordingly (R 45, 49, 54, 55, 57, 58, 59, 60, 171; P-Exs 1, 3, 9, 10, 12, p. 19; P-Exs 13, 14, 15, 16, pp. 10, 14). A few days later the accused talked to

accused SCHRAFF and was told that while trying to deliver the flyer to the antiaircraft garrison the flyer was shot while trying to escape (R 54, 57, 59; I-Exs 9, 12, pp. 11, 17; I-Ex 14). The accused was a kreisleiter in the Leadership Corps at the time of the incident (R 75, 76).

Evidence for Defense: The accused testified that the Bormann order had nothing to do with this case (R 70). The only reason he mentioned the Bormann order to accused SCHRAFF was because he wanted an explanation of it (R 71). He said that he told the messenger, sent by accused SCHRAFF, that the flyer could be delivered to the army if they were loyal (R 72). He said that his unsworn pretrial statements, I-Exs 1 and 14, taken by the French at Friedrichshafen and Paris were taken after he had been beaten (R 73) and that they were not true (R 74). He further said that he never gave an order to kill the American flyer (R 74). The accused said that he did not know that the Leadership Corps was a criminal organization (R 76). The accused admitted that he was a superior party official of accused SCHRAFF (R 76). The accused said that he told accused SCHRAFF to hold the flyer until conditions between the army and the party cleared up sufficiently to turn the flyer over to the army. The accused further said that he understood accused SCHRAFF's question in regard to the Bormann order as a general one which did not apply to this flyer (R 85).

Sufficiency of Evidence: The statements given by the accused at Friedrichshafen and Paris were corroborated in most material respects by a later extrajudicial sworn statement given to American investigators and his testimony in Court. The accused admitted that he was kreisleiter in the Leadership Corps at the time the flyer was killed.

The Court may well have concluded that the accused gave the order to have the flyer killed; that the flyer was killed pursuant to his order; and that the accused did not act under immediate

compulsion and that he did not 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: A Petition for Review was filed by defense counsel, Major C. E. Whitney, 26 April 1947. A Petition for Clemency was filed by the accused Hans SEIBOLD, 10 March 1947; Agathe Schraff, Paula Mueller and Amalie Seibold, 31 July 1947; Alfons Aechter, 26 June 1947; Josef Manz, 6 July 1947; and policeman Swick, 17 July 1947.

Recommendations: That the findings and sentence be approved.

2. Albert SCHRAFF

Nationality:	German
Age:	49
Civilian Status:	Farmer; Mayor of Ailingen
Party Status:	Nazi Party since 1933; Ortsgruppenleiter of Ailingen
Military Status:	None
Plea:	NG Charge I; NG Charge II
Findings:	C Charge I; C Charge II
Sentence:	Life imprisonment

Evidence for Prosecution: The accused in July 1944 was mayor and ortgruppenleiter of Ailingen (R 12, 15, 22, 45, 49, 54, 55, 57, 59, 60, 171; P-Exs 1, 3, 9, 10, 12, 14, 15, 16). On 20 July 1944 he took into custody an American flyer who had parachuted from his disabled plane and landed near Ailingen. The flyer was confined at the local jail which was under the control of the accused (R 15, 18, 19, 49, 55, 57, 60, 171; P-Exs 3, 10, 12, p. 10; P-Exs 15, 16, pp. 2, 3). The next day this accused notified accused SEIBOLD, who was kreisleiter of that kreis, of the fact that he had the flyer and requested information as to what to do with him. Accused SEIBOLD instructed this accused in writing that the Hermann order was still in effect; that he should act accordingly; and that there were many possibilities (R 45, 54, 55, 57, 58, 59, 60, 171; P-Exs 1, 9, 10,

12, pp. 8, 14, 19; P-Exs 13, 14, 15, 16, pp. 2, 7, 10). The accused summoned Helmuth Hauser and accused MULLER to his office and ordered them to go with him and the flyer. He showed them the order from accused SEIBOLD (R 55, 60, 171; P-Exs 10, 15, 16, p. 13). They all got in this accused's automobile which had a trailer attached. In the trailer was a rubber boat which had been found near the shot down airplane (R 22, 40, 47, 49, 55, 56, 60, 171; P-Exs 2, 3, 10, 11, p. 10; P-Exs 15, 16, pp. 2, 12). They proceeded towards the Unterraderach firing range which was a short distance from Ailingen. At or near this range accused MULLER together with Hauser and the flyer got out of the car. The accused drove on a short distance and turned the vehicle around. When the accused returned the flyer was dead and Hauser and accused MULLER were near the body. When he returned they loaded the body into the trailer and took it to the Friedrichshafen cemetery and laid it on the rubber boat outside the morgue (R 47, 49, 55, 56, 60, 177; P-Exs 2, 3, 10, 11, pp. 8, 9, 10, 14; P-Exs 15, 16, pp. 11, 12, 19). The body had a wound in its chest and temple (R 60; P-Ex 15). The next day two witnesses saw the body beside the rubber boat which contained the markings U.S.A. and America (R 27, 28, 35). The body was taken to a bomb crater near the cemetery and pushed into it (R 29, 38). When the body was recovered by the American authorities it had a bullet hole in the temple (R 51, 52, 53; P-Exs 5, 6, 7, 8). The accused admitted he did not oppose the killing and left it to the other two men (R 55; P-Ex 10). He knew the order from accused SEIBOLD had been read by them (R 60; P-Ex 15). He admitted that he could have turned the flyer over to the army or kept him in jail (R 55; P-Ex 10, p. 2). The accused was an ortgruppenleiter in the Leadership Corps at the time of the incident (R 76, 87).

Evidence for Defense: The accused testified that he took the flyer into custody (R 38). He put the flyer in jail because the civilian population was so excited that one woman tried to take his pistol so she could shoot the flyer (R 89). The next day when an

antiaircraft officer came to interrogate the flyer, the accused tried to turn the flyer over to him but he refused to take him (R 90). The accused then wrote a note to accused SEIBOLD. He told about the flyer and said he did not know what to do about the Bormann order. The accused received a reply the same day from accused SEIBOLD which called his attention to the Bormann order. The reply stated that in case of an attack by civilian population on a flyer who bailed out during a bombing, the police must not interfere.

The accused called Hauser and accused MULLER to his office and told them inasmuch as apparently the army was not coming after the flyer, he wanted the flyer delivered to the army. The accused testified that Hauser may have seen the order from accused SEIBOLD. They decided to take the flyer to the army the next night (R 91). The next night all three together with the flyer proceeded towards Ittenhausen in the accused's automobile. As they approached the woods called "shooting gallery", they came upon some bomb craters and decided they would have to turn around. Accused MULLER, the flyer and Hauser got out of the automobile while this accused drove further down the road in order to turn around. When the accused returned he found that the flyer had been killed. His body was lying 10 to 12 meters inside the woods. Hauser told him the flyer was shot while trying to escape. The body of the flyer was loaded into the trailer. The body was taken to the entrance of the morgue at Friedrichshafen, where it was left together with the rubber boat (R 92). At Friedrichshafen, when interrogated by the French, P-Ex 3, the accused was severely beaten and tortured (R 95, 96). The accused was treated by two doctors whose unsworn pretrial statements were read into the record. Their statements show that the accused had been severely mistreated about the time he stated (R 97-100). The accused also asserted he had been beaten in Paris, P-Ex 15, and that the unsworn pretrial statements made at Friedrichshafen and Paris were false (R 101). The accused said that he did not receive a direct order from accused SEIBOLD as to the disposition of the flyer.

Inefficiency of Evidence:

The statements made by the accused at Friedrichshafen and Paris were corroborated in most material respects by his extra-judicial sworn statement made at a later date to the American authorities and his testimony in Court. There is considerable evidence that the accused was an Ortsgruppenleiter in the Leadership Corps at the time the flyer was killed.

The Court may well have concluded that the accused did not intend to turn the flyer over to the army; that the accused relayed accused SEIBOLD's order to kill the flyer to Hauser and accused MULLER; that the flyer was killed pursuant to the order; and that the accused did not act under immediate compulsion nor did he 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: A Petition for Review was filed by defense counsel, Major C. E. Whitney, 26 April 1947. Petitions for Clemency were filed by 11 members of the former "volksstrum", 14 January 1946; Josef Heine, 5 April 1946; seven non-members of Nazi Party, 10 August 1945; Engelbert Schraff and Alfons Schraff, 28 May 1947; Agathe Schraff, 15 June 1947; Agathe Schraff, 15 June 1947; Agathe Schraff, Paula Muller and Amalie Seibold, 31 July 1947; Maria Wa, 27 June 1947; Dr. Gruelin, 12 June 1947; Dr. Wenfried Jansen, 27 May 1947; and Alfons Knoblauch, 20 July 1947.

Recommendations: That the findings and sentence be approved.

3. Albert Friedrich MULLER

Nationality:	German
Age:	42
Civilian Status:	Mason
Party Status:	Nazi Party since 1929; Allgemeine SS

Military Status:	None
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	Death by hanging

Evidence for prosecution: On or about 21 July 1944 the accused together with Helmuth Hauser were summoned to accused SCHRAFF office (R 56, 171; P-Ex 11, p. 6; P-Ex 16, p. 10). They were informed that accused SEIBOLD had ordered that an American flyer held by accused SCHRAFF be shot (R 47; P-Ex 2). They were shown the order from accused SEIBOLD (R 55, 60, 171; P-Exs 10, 15, 16, p. 13). The next evening the three took the flyer in accused SCHRAFF's automobile to or near the Unterraderach firing range, which was a short distance from Ailingen (R 47, 49, 55, 60, 171; P-Exs 2, 3, 10, 15, 16, p. 12). Attached to the automobile was a trailer containing a rubber boat which had been found near the shot down airplane (R 22, 47, 49, 55, 56, 60, 171; P-Exs 2, 3, 10, 11, p. 16; P-Exs 15, 16, p. 12). At the firing range, the accused together with Hauser and the flyer got out of the automobile. While accused SCHRAFF was turning the automobile around the flyer was shot and killed (R 47, 49, 55, 56, 60, 171; P-Exs 2, 3, 10, 11, pp. 8, 9; P-Exs 15, 16, p. 12). He was shot once through the body and once through the temple (R 47, 60; P-Exs 2, 15). The body was then loaded into the trailer and taken to the morgue at Friedrichshafen where it was placed at the entrance together with the rubber boat (R 47, 49, 55, 56, 60, 177; P-Exs 2, 3, 10, 11, pp. 8, 9, 10, 14; P-Exs 15, 16, pp. 11, 12, 19). The next day the body was pushed into a bomb crater near the cemetery (R 29, 38). When the body was later recovered by American authorities it was found to contain a bullet hole in the temple made by a small calibre pistol (R 51, 52, 53; P-Exs 5, 6, 7, 8). The accused/a <sup>carried</sup> small calibre pistol at the time of the killing while Hauser had a large calibre pistol (R 56; P-Ex 11, p. 21). The accused was an SS man at the time of the incident (R 47, 49, 55; P-Exs 2, 3, 10).



Evidence for Defense: The accused testified that when he was called to accused SCHRAFF's office on 21 July 1944, Hauser was already there. It was decided that they would take the flyer to the army the next evening, if the army had not already picked him up (R 135). The next evening the three together with the flyer went in accused SCHRAFF's car towards Ittenhausen. Because of bomb craters in the road, they decided to turn around. The accused together with the flyer and Hauser got out of the car while accused SCHRAFF drove down the road to turn around. Suddenly Hauser yelled, "Watch out" and "Halt". The accused heard some shots and looked around and saw the flyer lying 12 to 15 meters in the woods (R 136). The accused ran into the woods and saw there was blood on the upper part of the flyer's body. The flyer was dead. When accused SCHRAFF returned the body was loaded into the trailer and taken to the Friedrichshafen cemetery (R 137). When the accused was interrogated by the French in Friedrichshafen, P-Ex 2, he was forced to sign a paper after being severely beaten. The unsworn pretrial statement he made at that time was not true (R 138, 139). The accused testified that he did not shoot the flyer. At the time the accused was interrogated at Dachau by American authorities he stated in an extrajudicial sworn statement that the statement made by him in Paris was true (R 140).

Sufficiency of Evidence: There is considerable evidence that the accused was a member of the SS at the time of the killing of the flyer.

The Court may well have concluded that accused SCHRAFF relayed accused SEIBOLD's order to kill the flyer to Hauser and the accused; that Hauser and the accused killed the flyer pursuant to the order; that if the accused did not shoot the flyer with his small calibre pistol, he was at least very instrumental in the fatal shooting; that the flyer who was shot in the temple, did not attempt to escape; that the extrajudicial statement of the accused at Friedrichshafen

was substantially corroborated by the evidence from the other accused, as well as witnesses; that he participated willinly and not under immediate compulsion; that he did not meet the burden of proof concerning superior orders required by the pertinent authorities discussed in Section V, post.

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

Petitions: A Petition for Review was filed by defense counsel Karl Kolpf, 14 March 1947. Petitions for Clemency were filed by the accused, 11 March 1947; Hermann Muller, 21 March 1947; Bernhard Lieb, 12 March 1947; 31 signatures, 13 March 1947; 158 signatures, 12 March 1947; Schmidt, town priest, and Fr. Muckler, administrator of the 2nd Protestant pastorate, 11 March 1947; Hermann Muller, 11 March 1947; Paula Muller, 21 March 1947; Dr. Med. Voss, 19 March 1947; Paula Muller, 21 October 1947; Hans Seibold, 5 October 1947; and by Agathe Schraff, Paula Mueller and Amalie Seibold, 31 July 1947.

Recommendations: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

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

Motions:

2. The defense made a motion (R 6) that Charge 2 be stricken from the charge sheet on the ground that it is duplicitous in that the accused are charged with two separate offenses. While the meaning of the motion is not clear, it is believed that the defense meant that Charge 1 and Charge 2 are based on the same criminal act. The motion of defense is not well founded. The only connection between Charge 1 and Charge 2 is that proof of the former is one means of proving the crime charged under the latter. The law concerning Charge 2 is more fully analyzed below. The motion was properly overruled (R 6).

Membership in Criminal Organizations:

3. Accused SEIBOLD, SCHRAFF and MULLER were found guilty under Charge 2 of membership in criminal organizations, i. e., the Leadership Corps or the SS. Article 9 of the Charter annexed to the London agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis, provided that at the trial of any individual member of any group or organization the International Military Tribunal may declare (a connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization. Article 10 of the Charter provides that the declaration of criminality against an accused organization is final and cannot be challenged in any subsequent criminal proceeding against a member of the organization in national, military or occupation courts. In view of these provisions of the Charter, Law Number 10 of the Control Council of Germany, 20 December 1945, specifically recognized as a crime membership "in categories of a criminal group or organization declared criminal by the International Military Tribunal". Among others, the Tribunal found the Leadership Corps and Die Schutzstaffeln der Nationalsozialistischen Deutschen Arbeitspartei (commonly known as the SS) to be criminal organizations. With regard to the two organizations, the Tribunal included, as to the Leadership Corps, Reichsleiters, Gauleiters, Kreisleiters, Ortsgruppenleiters and Amtsleiters of Kreis and higher levels and, as to the SS, all persons who had been officially accepted as members of the SS including members of the Allgemeine SS, members of the Waffen SS, members of the SS Totenkopf Verbände, and members of any of the different police forces who were members of the SS, when it appears that they became or remained members of either of the two organizations with knowledge that they were being used for the commission of war crimes, or who were personally implicated as members of these organizations in commission of such crimes, within the groups declared to be criminal.

4. Although not relied upon by any of the accused in mitigation, superior orders merit discussion.

Superior Orders: Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 40.; 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 46.)

Examination of the entire record fails to disclose any error or omission 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