

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

16 December 1947

UNITED STATES)

v.)

Case No. 12-1977

Hartmann LAUTERBACHER, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 20 August 1947 to 2 October 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:
 Case No. 12-1837, VIENENBURG-LOCHTUM (P)

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

Particulars: In that the accused, Hartmann LAUTERBACHER, Wilhelm PFEIFFER, Ernest Hermann August KUNIGSDORF, August REINCKE (sometimes called REINKE), Hermann Ferdinand Albert LAHMANN, Otto REINHARDT, Robert SCHOTKE, Ernest ROMANN, and Arthur LESSMANN, German nationals, between the 9th day of December 1941, and the 8th day of May 1945, at sundry places within the then German Reich, individually and collectively, as principals, accessories, leaders, organizers, instigators, and accomplices, did engage in, formulate and participate in a common plan or design to commit, or cause to be committed, violations of the Laws and Usages of War, and pursuant thereto did wrongfully encourage, aid, abet, order and participate in, or took a consenting part in the subjection of members of the Armed Forces of the United States of America, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelty and mistreatment, including killings, beatings, tortures, abuses and indignities.

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

Particulars: In that Hartmann LAUTERBACHER and Wilhelm PFEIFFER, German nationals, did, at or near VIENENBURG, Germany, on or about 19 May 1944, wrongfully encourage, aid, abet and participate in the killing of three unknown members of the United States Army, who were then and there unarmed, surrendered prisoners of war in the custody of the then German Reich.

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

Particulars: In that Hartmann LAUTERBACHER, Wilhelm PFEIFFER, Otto REINHARDT, and Robert SCHOTKE, German nationals, did, at or near LOCHTUM, Germany, on or about 19 May 1944, wrongfully encourage, aid, abet and participate in the killing of two unknown members of the United

States Army, who were then and there unarmed, surrendered prisoners of war in the custody of the then German Reich.

Case No. 12-1035, REINECKE (A)

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

Particulars 1: In that Hartmann LAUTERBACHER, Wilhelm PFEIFFER, August REINECKE, Ernst HOMANN, and Ernest Hermann August KOENIGSDORF, German nationals, did, at or near HEININGEN, Germany, on or about 28 September 1944, wrongfully encourage, aid, abet and participate in the killing of an unknown member of the United States Army, who was then and there an unarmed, surrendered prisoner of war in the custody of the then German Reich.

Particulars 2: In that Hartmann LAUTERBACHER, Wilhelm PFEIFFER, August REINECKE, and Ernest Hermann August KOENIGSDORF, German nationals, did, at or near HEININGEN, Germany, on or about 28 September 1944, wrongfully encourage, aid, abet and participate in the killing of four unknown members of the United States Army, who were then and there unarmed, surrendered prisoners of war in the custody of the then German Reich.

Case No. 12-1878, VIENENBURG-WEDDINGEN (P)

CHARGE 5: Violation of the Laws and Usages of War.

Particulars: In that Hartmann LAUTERBACHER and Wilhelm PFEIFFER, German nationals, did, at or near VIENENBURG, Germany, on or about 22 February 1945, wrongfully encourage, aid, abet and participate in the killing of an unknown member of the United States Army, who was then and there an unarmed, surrendered prisoner of war in the custody of the then German Reich.

Case No. 12-1077, BURGDORF (R)

CHARGE 6: Violation of the Laws and Usages of War.

Particulars 1: In that Hartmann LAUTERBACHER, Wilhelm PFEIFFER, Hermann Ferdinand Albert LAMMERMANN, and Ernest Hermann August KOENIGSDORF, German nationals, did, at or near BURGDORF, Germany, on or about 28 September 1944, 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.

Particulars 2: In that Hartmann LAUTERBACHER, Wilhelm PFEIFFER, and Arthur LESSMANN, German nationals, did, at or near BURGDORF, Germany, on or about 28 September 1944, wrongfully encourage, aid, abet and participate in committing assaults upon an unknown member of the United States Army, who was then and there an unarmed, surrendered prisoner of war in the custody of the then German Reich.

The name of Michael SCHOCK, 15 August 1947, was added to the particulars of Charge 1 and in particulars 1 of Charge 4. Surname of KOENIGSDORF actually spelled KOENIGSDORF.

III. SUMMARY OF EVIDENCE: Incidents: The incidents covered by Charge 2 through 6 will hereinafter be referred to as "Incident Number 2", "Incident Number 3", "Incident Number 4", "Incident Number 4a", "Incident Number 5", "Incident Number 6", "Incident Number 6a". There follows a description of these incidents:

a. Incident Number 2: Following a bombing attack upon the area in and around Vienenburg, Germany, 19 May 1944, three American flyers were captured and taken to the Rathaus in Vienenburg. They were interrogated there and then taken to the forest Krahenholz by accused Kreisleiter PFEIFFER, together with Froelich, Schubert, Pfeil and Fricke. Accused PFEIFFER was in charge of the group. At Krahenholz, Pfeil, Froelich and Schubert took the flyers into the woods and shot them to death.

b. Incident Number 3: On about 19 May 1944 two American flyers were captured near Lochtum, Germany. They were taken to Lochtum and interrogated. Accused PFEIFFER, REINHARDT and SCHOTKE were present, together with other officials, at the interrogation. Accused PFEIFFER ordered accused REINHARDT and Oppermann to dispose of the flyers. Oppermann and accused REINHARDT and SCHOTKE took the flyers outside of Lochtum and shot and killed them. Oppermann is now deceased.

c. Incident Number 4: On 28 September 1944 an American flyer parachuted to the ground near Heiningen, Germany. He was taken to the office of accused REINECKE, Mayor of Heiningen. Accused REINECKE was reminded of the order of accused Kreisleiter PFEIFFER to shoot enemy flyers. Accused REINECKE took the flyer down the road with two of the other accused and shot him to death.

d. Incident Number 4a: No accused was convicted as to particulars 2, Charge 4.

e. Incident Number 5: No accused was convicted as to Charge 5 and the particulars thereunder.

f. Incident Number 6: On 28 September 1944 an American flyer parachuted into a field near the village of Burgdorf, Germany, and was

immediately captured. He was taken to the village of Burgdorf and placed under police guard. On the same day accused KONIGSDORF and LANDWERN took the flyer out of police custody and proceeded down the road with him towards Schladen. After proceeding about 500 meters down the road accused KONIGSDORF, remembering the order issued by accused PFEIFFER to kill all captured enemy flyers, shot the flyer to death.

g. Incident Number 6a: No accused was convicted as to particulars c, Charge c.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Hartmann LAUTERBACHER

This accused was acquitted (R 112C).

2. Wilhelm PFEIFFER

Nationality:	German
Age:	38
Civilian Status:	Unknown
Party Status:	Nazi Party since 1927 with position as Kreisleiter.
Military Status:	Non-commissioned Officer, German Army, 1939 to 1941
Plea:	NO Charges 1 through 6
Findings:	G Charge 1; G Particulars of Charge 1, except the word "and" where it occurs on lines 8, 10, 11 and 14 and substituting therefor the word "or" in each case; G Charge 2; G Charge 3; G Charge 4, G Particulars 1 and NO Particulars 2 of Charge 4; NO Charge 5; G Charge 6, G Particulars 1 and NO Particulars 2 of Charge 6
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was Kreisleiter of Kreis Soelar, Germany (R 42, 44, 98, 112, 134, 136, 141, 148, 171, 295; P-Ex 29). About every four weeks during the summer of 1944, the accused called leaders of affiliated Party and police organizations together at Soelar. At one of these meetings he ordered that enemy flyers were no longer to be taken prisoners but were to be executed if possible (R 134, 173, 174, 222, 228, 282, 283, 287; P-Exs 53A, 66A, P 3, 108A).

The accused was present when three captured American flyers were interrogated at the Rathaus in Vienenburg, Incident Number 2, together with police sergeant Schubert, SA 1st Lieutenant Pfeil, Fricke, Froehlich, Ortsgruppenleiter Bock, and interpreter Lehne (R 136, 141, 142). General Hoefle came in during the interrogation and reminded them of the new order in regard to enemy flyers (R 137-139, 142, 177). The flyers were beaten by the accused during the interrogation (R 139, 154). Before taking the flyers away the accused ordered that the flyers should not arrive at the airfield Goslar (R 142, 143). The accused together with Fricke, Schubert, Froehlich and Pfeil took the flyers, whose hands were tied behind their backs, in automobiles towards Goslar (R 142, 143, 144, 148, 177). When they arrived at the forest Krahenholz, Pfeil, Froehlich and Schubert walked into the woods with the three flyers ahead of them. The accused ordered Fricke to go with them. The accused stayed with the automobiles. After proceeding about six hundred meters into the woods Pfeil, Froehlich and Schubert shot and killed the flyers (R 177). Fricke then returned to the accused and told him what had happened and they both left (R 178). The bodies of the three flyers were found on the same day by Franz Kraus and he informed Schubert of this. Schubert ordered that the bodies be buried in the woods. Each flyer had a bullet hole in the neck (R 149, 150). The bodies were later found by the American authorities at the spot where they were originally buried (R 152; P-Exs 54, 55).

After the shooting in Incident Number 2, the accused, his driver Fricke, Ortsgruppenleiter Bock and interpreter Lehne went to Lochtum (R 153, 154, 179, 180). Two captured American flyers were interrogated there, Incident Number 3 (R 154). Present at the interrogation were the accused, Ortsgruppenleiter Bock, accused SCHOTKE and REINHARDT and policeman Oppermann (R 154, 180). The accused beat one of the flyers during the interrogation (R 154). The accused gave an order to Oppermann and accused REINHARDT to dispose of the flyers (R 181). The flyers were taken to a car with their hands tied behind them. Oppermann and accused SCHOTKE got into an automobile with the flyers and accused REINHARDT got on a

motorcycle. The automobile and motorcycle left at the same time (R 154, 155). One prosecution witness testified that he saw the two flyers with three men wearing military caps. He then heard shots and saw the flyers fall to the ground. He went to where they were and met police sergeant Oppermann. He asked Oppermann what happened and was told that the flyers had tried to escape. He saw accused REINHARDT and SCHOTKE standing where the flyers had fallen. The three men then left the scene (R 156, 159). This witness didn't know whether or not the flyers were dead. He saw that SCHOTKE had a carbine (R 160). Another prosecution witness testified that he saw the flyers twice, once alive and the second time in a field dead (R 162). One flyer made a movement and Ortsgruppenleiter Brandes shot him (R 163, 164). Ortsgruppenleiter Brandes later committed suicide. The bodies were buried in the Lochtum cemetery (R 164). When the bodies were recovered by American authorities each showed that it had been shot twice (R 168; P-Ex 56). The accused had authority over the police because he was a Deputy of the Reichs Defense Commissioner (R 182). The Party had great influence on the rural and city police and the mayor (R 27; P-Ex 22B, p. 791-792).

On 28 September 1944 an American flyer was captured near the village of Heiningen, Kreis Gochlar, Germany, Incident Number 4. (R 205; P-Exs 59A, 60A, 61A, 63A). He was taken to accused REINECKE's office, the mayor of Heiningen (R 205; P-Ex 63A). Accused REINECKE was reminded by accused Ortsgruppenleiter KONIGSDORF of the order of the accused to shoot enemy flyers (R 205, 222; P-Exs 63A, 66A). Accused REINECKE immediately took the flyer down the road and shot him to death (R 205; P-Exs 59A, 63A). The accused gave an order to the Ortsgruppenleiters that all enemy flyers who parachuted to safety were to be killed (R 134, 173, 174, 222, 254; P-Exs 53A, 66A p. 3, 70A, 71A).

On 28 September 1944 an American flyer was taken from police custody by accused Ortsgruppenleiter KONIGSDORF and his deputy, accused LANDWEHR, in the village of Burgdorf, Incident Number 6. (R 242, 243, 247, 254, 262, 263; P-Exs 69, 70A, 71A). Accused KONIGSDORF accompanied by his deputy,

accused LANDWEHR, took the flyer to the outskirts of Burgdorf where accused KÖNIGSDORF shot the flyer to death (R 200, 20a, 20b, 20c; P-Ex 60, 70A, 71A). Accused KÖNIGSDORF gave as his reason for killing the flyer that he had received orders from the accused that enemy flyers were to be treated in that manner and that he was following orders (R 254; P-Ex 70A).

Evidence for Defense: The accused testified that he never gave an order to kill enemy flyers (R 770). The accused testified that on 19 May 1944 he received a report that a plane had crashed at Vienenburg, Incident Number 2. He went from Goslar to Vienenburg where he met General Hoefle. He saw three flyers at the rathaus, each in a different room (R 772). The accused and Hoefle went from room to room. In one of them Hoefle said: "You know the instructions" (R 773). The accused testified that he interpreted this to mean that the flyers were to be taken to the airport (R 781). One of the flyers and someone else got into the car of the accused. The other car with the other flyers drove ahead. When they got outside of town the car in front stopped and the accused stopped his automobile behind it. The occupants of the first car got out and the flyer with accompanying personnel in the accused's car got out. They were to walk to the airport from there (R 784, 785). The accused further testified that he did not order his driver, Fricke, to go along with the flyers. The accused watched a group of people and as he was getting ready to leave Fricke, Schubert and Pfeil returned from the direction they had taken the flyers (R 791). Fricke told him the flyers had been killed (R 789).

The accused testified that he then went to Lochtum, Incident Number 3 (R 791). He went to the farm house of Ortsgruppenleiter Brandes (R 765). Present were Brandes, Bock, Fricke and Lehne (R 766). The two flyers being held there were put in another car and left (R 767, 912). The accused, Fricke, Bock and Lehne then went to where the plane had been shot down (R 766, 912) and from there they went back to Vienenburg, where he let out Bock and Lehne. The accused then returned to Goslar (R 767, 912). The accused testified that he never received an order from Hoefle or accused LAUTERBACHER to shoot flyers; that he never saw any order from Bormann or Himmler so directing (R 776); that the flyers in Incident Number 2 and 3

were not in his custody, but in the custody of the police (R 824); and that he had no control over the police (R 770). Four defense witnesses testified that they had attended meetings held by the accused and that he did not say that enemy flyers were to be killed (R 373, 374, 397, 398, 935, 947, 948).

Sufficiency of Evidence: It is clearly established that the accused participated in the execution of the common design alleged in Charge 1. It is also clearly established that he directed and contributed to the killings involved in Incidents Numbers 2, 3, 4 and 6.

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

Petitions: A Petition for Review was filed by Robert M. Donihi, defense counsel, 7 October 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

3. Ernest Hermann August KOLIGSBORF

Nationality:	German
Age:	55
Civilian Status:	Teacher
Party Status:	Nazi Party member with position as Ortsgruppenleiter
Military Status:	Sergeant, German Army, retired for disability
Plea:	NG Charges 1, 4, 6
Findings:	6 Charge 1; 6 Particulars of Charge 1 except the word "and" where it occurs in lines 8, 10, 11 and 14 and substituting therefor the word "or"; NG Charge 4; 6 Charge 6, 6 Particulars 1 of Charge 6.
Sentence:	Life Imprisonment

Evidence for Prosecution: The accused admitted in his extrajudicial sworn statement that he shot and killed the flyer involved in Charge 6, Particulars 1 (R 254; P-Ex 70a). The accused was an Ortsgruppenleiter (R 222, 226, 254; P-Exs 66a, 67, p. 3, 70a). On 28 September 1944 he heard that an American flyer was being held at the Bremer inn in Burgdorf, Incident Number 6 (R 254; P-Ex 70a). He directed accused LINDWEHR to help take the flyer

to Schladen (R 254; P-Exs 70A, 71A). The accused went to the inn and found the flyer locked in the stable and guarded by the police. He requested custody of the flyer which was refused by the police (R 226, 241, 242, 254; P-Exs 67, 69, 70A, 71A). The accused got a key to the stable from the owner (R 254; P-Ex 70A). The accused and accused LANDWEHR took the flyer from the stable and tied his hands behind his back (R 230, 243, 254; P-Exs 70A, 71A). The accused told accused LANDWEHR that the flyer would have to be killed as ordered by accused PFEBIFFER. Accused LANDWEHR stated in his extrajudicial sworn statement that he protested the killing of the flyer, whereupon the accused indicated that the flyer would not be killed but that they would take him to Schladen (R 254; P-Ex 71A). On the way to Schladen, approximately 500 meters from Burgdorf, the accused shot the flyer twice in the back and killed him (R 206, 225, 254, 262, 263; P-Ex 65, 70A, 71A). The flyer was later buried in the Burgdorf cemetery (R 226, 247, 262, 263; P-Ex 67, p. 4).

Evidence for Defense: The accused did not testify in his own behalf (R 897, 1130). However, he did take the stand to give evidence in mitigation and stated that the reason he killed the flyer was because of an order he had received from accused PFEBIFFER (R 1104, 1136, 1139). This is substantiated by the remarks he made to accused LANDWEHR before the killing (R 866-868).

Sufficiency of Evidence: The shooting of the flyer by the accused was admitted by him in his extrajudicial statement. His participation in the killing involved in Incident Number 6 is satisfactorily established. The same is true as to his participation in the execution of the common design covered by Charge 1. With regard to the evidence offered in support of superior orders, it appears that he took a consenting part in the common design and in the killing alleged in particulars 1 of Charge 6. The killing was accomplished at a point remote from his superiors and he was not shown to have acted under immediate compulsion. He 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: A Petition for Review was filed by Robert M. Donihi, defense counsel, 7 October 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

4. August REINECKE

Nationality:	German
Age:	56
Civilian Status:	Foreman with German Railroad, Mayor of Heiningen, Germany
Party Status:	Nazi Party Member since 1935
Military Status:	None
Plea:	NG Charges 1, 4
Findings:	G Charge 1; G Particulars of Charge 1; except the word "and" where it occurs in lines 8, 10, 11 and 14, and substituting therefor the word "or" in each case; G Charge 4 G Particulars 1 and NG Particulars 2 of Charge 4
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was mayor of Heiningen (R 205, 206, 210; P-Ex 63A). After an air raid about 28 September 1944, the accused received a phone call that an American flyer was in his office, Incident Number 4 (R 205; P-Ex 63A). He left his work at the railroad station in Borsseum and proceeded to Heiningen (R 205; P-Exs 59A, 60A, 61A, 63A). On his way he met Ortsgruppenleiter KONIGSDORF of Burgdorf, who informed him of accused PFEIFFER's order to shoot the flyer. The accused went to get his pistol and then went to his office (R 205; P-Ex 63A). He took the flyer with him together with accused KOMANN and SCHOCK (R 205, 207; P-Exs 59A, 60A, 61A, 63A) and as they proceeded down the road the accused shot the flyer in the back of the head (R 20, 205, 206, 207, 210, 842; P-Exs 11, 59A, 63A). The flyer fell to the ground dead (R 205, 210; P-Ex 63A). The village of Heiningen is in the Kreis Goslar (R 205).

Evidence for Defense: The accused did not testify on his own behalf (R 897, 1178). However, he did take the stand to give evidence in mitigation and stated that the reason he killed the flyer was because of an

order he had received from the Kreisleiter (R 1178). This is somewhat substantiated by a remark he made to accused KOMANN and SCHOLK at the time of the killing when he said "I carried out the order of the Kreisleiter" (R 497, 844).

Sufficiency of Evidence: It is clear that the accused shot the flyer involved in Incident Number 4 and that he participated in the execution of the common design alleged in Charge 1. With regard to the evidence offered in support of superior orders, the Court might well have concluded that he took a consenting part in the common design and in the killing alleged; that the killing was accomplished at a point remote from his superiors; that he did not act under immediate compulsion; and that he 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: A Petition for Review was filed by Robert M. Donihi, defense counsel, 7 October 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

5. Hermann Ferdinand Albert LANDWEHR

Nationality:	German
Age:	51
Civilian Status:	Farmer
Party Status:	Nazi Party Member since 1937 with position as Ortsgruppenamtsleiter
Military Status:	None
Plea:	NG Charges 1, 6
Findings:	G Charge 1; G Particulars of Charge 1, except the word "and" where it occurs on lines 8, 10, 11 and 14 and substituting therefor the word "or" in each case; G Charge 6, G Particulars 1 of Charge 6
Sentence:	5 years, commencing 16 April 1946

Evidence for Prosecution: The accused was deputy Ortsgruppenleiter (R 226; P-Ex 67). On 28 September 1944 he was directed by accused KONIGSDORF to help take a flyer to Schladen, Incident Number 6 (R 254; P-Ex

70A, 71A). He arrived at the inn where the flyer was held shortly after accused KONIGSDORF (R 254; P-Ex 71A). The accused and accused KONIGSDORF took the flyer from the custody of the police, tied his hands behind him and started to take the flyer to Schladen (R 226, 254, 262, 263; P-Exs 67, 69, 70A, 71A). Before they proceeded accused KONIGSDORF told the accused the flyer was to be shot. The accused protested. Accused KONIGSDORF then assured him they would take the flyer to Schladen (R 254, P-Ex 71A). Accused KONIGSDORF gave the accused a pistol (R 254; P-Exs 70A, 71A). The accused went home but returned and overtook accused KONIGSDORF and the flyer (R 231, 254; P-Exs 70A, 71A). According to this accused and accused KONIGSDORF, this accused walked about nine feet ahead of the flyer and accused KONIGSDORF walked about the same distance behind the flyer (R 254; P-Exs 70A, 71A). After they had gone about 500 meters from Burgdorf the accused heard two shots (R 254; P-Ex 71A). He turned around and saw that accused KONIGSDORF had killed the flyer (R 206, 225, 254, 262, 263; P-Exs 65, 70A, 71A). The accused in his first extrajudicial sworn statement stated that he had been informed that the flyer was killed by two SS men; that accused KONIGSDORF did not request or direct that he assist in taking the flyer any place; that he had nothing to do with the flyer; and that he did not personally know anything about how he was killed. The accused finally admitted therein that he did see the dead body of the flyer along the side of a road ostensibly soon after he was killed (R 891; P-Ex 107). In his later extrajudicial sworn statement the accused admitted knowing all about the killing; that he assisted accused KONIGSDORF in taking the flyer from the cafe; that he proceeded with KONIGSDORF and the flyer into the country; and that he was walking just ahead of the flyer at the time KONIGSDORF fired the fatal shot. In this later extrajudicial sworn statement the accused asserted that while KONIGSDORF had indicated his intention to kill the flyer, upon protest by the accused, indicated that the flyer would not be killed (R 254; P-Ex 70A). Witness Luther testified that at the time of the incident he was serving as a policeman; that he had custody of the flyer; that the accused and accused KONIGSDORF took the

flyer from his possession over his protest and that prior to moving off with the flyer they tied his hands behind his back (R 243, 243). Personnel in positions corresponding to that of the accused were required to attend the meetings held by accused PFEIFFER where the treatment of enemy flyers was discussed (R 175).

The accused admitted that he gave false testimony and claimed during the early investigations that the flyer was killed by two SS men; however, he stated that such false statements were made at the instigation of accused KONIGSDORF (R 254: P-Ex 71A).

Evidence for Defense: The accused testified that he met accused KONIGSDORF on 26 September 1944 who directed the accused to help him take a captured American flyer to Schladen (R 865). After arriving at the place where the flyer was held accused KONIGSDORF told him that accused PFEIFFER had issued an order that captured flyers were to be shot when at all possible (R 866-868). The accused testified that he told accused KONIGSDORF that, if he intended to carry out such an order, it would have to be done without him. Accused KONIGSDORF assured him that he wasn't even thinking of it (R 869). Accused KONIGSDORF gave the accused a pistol which he put in his pocket. The accused requested accused KONIGSDORF to excuse him from this duty (R 870). Accused KONIGSDORF directed him to go along. The accused went home to get some things to take with him (R 871). He overtook accused KONIGSDORF and the flyer on the road to Schladen. The accused walked ahead of the flyer and accused KONIGSDORF behind the flyer. The accused heard two shots and turned around. The flyer was lying on the ground (R 872). A pistol was in accused KONIGSDORF's hand when the accused turned around (R 873). Accused KONIGSDORF felt of the flyer's pulse and decided he was dead (R 874). They then went home (R 875). The accused was ortgruppenamptleiter since 1940 (R 890).

Sufficiency of Evidence: It is apparent that the accused was acting in conformity with orders of his superior. While the accused testified to the contrary, the evidence establishes that the accused knew of the plan to shoot the flyer; that he assisted in taking the flyer to the place where he was shot; and that although the accused may have been

slightly reluctant to participate in the killing, his desire to cooperate with and please his superior was very strong and that if he acted under immediate compulsion, such compulsion was present only to a minor degree. The accused admitted in his testimony that at various times he had stated untruths with regard to this killing incident, all of which is demonstrated by the inconsistencies appearing in his two extrajudicial sworn statements and his testimony. Under these circumstances, the Court was warranted in giving little consideration to his assertions which tended to remove from him responsibility for the crime.

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

Petitions: Petition for Review was filed by attorney for accused, Robert M. Donihi, 7 October 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

6. Otto REINHARDT

Nationality:	German
Age:	58
Civilian Status:	Master Sergeant police reserve in Vienenburg
Party Status:	Nazi Party from 1933 to 1936
Military Status:	None
Plea:	NG Charges 1, 3
Findings:	6 Charge 1; 6 Particulars of Charge 1, except the word "and" where it occurs on lines 8, 10, 11 and 14, and substituting therefor the word "or" in each case; 3 Charge 3
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was a police officer (R 154, 173, 180, 216, 217, 275). Accused PFEIFER, his driver Fricke, Ortsgruppenleiter Bock and interpreter Lehne went to Lechta because some flyers were reported to be in custody there. The two flyers were interrogated, Bock, a policeman, Oppermann, and accused PFEIFER and SCHOTKE being present, Incident Number 3 (R 154, 180). The accused and Oppermann, if not present at the interrogation, were at least present immediately thereafter

(R 181, 180). Fricke testified that he assumed accused FFEIFFER and the party went to Lochtum because FFEIFFER wanted to have the flyer shot (R 180). Fricke also testified reluctantly that accused FFEIFFER ordered Oppermann and the accused to dispose of the flyer (R 181). Accused SCHOTKE and Oppermann got into an automobile with the two flyers (R 154). The accused left on a motorcycle at the same time as the automobile (R 155). They took the two flyers outside of Lochtum into a field (R 159). A shepherd named Kramer saw the heads of the two American flyers together with three men over a ridge on the side of a hill as shots were fired. The flyers fell to the ground (R 158). The shepherd went to the scene and talked to Oppermann, who said the flyers had tried to escape. The accused and accused SCHOTKE were standing near the flyers (R 159). He saw no one else there at the scene of the killing (R 160). Accused SCHOTKE testified that the accused was walking fifteen feet from the flyers at the time of the shooting (R 715). Fricke testified that three days later he heard the flyers had been shot and assumed that they were shot by the accused and Oppermann (R 180, 181). The bodies of the flyers were later found in the field (R 182). The bodies were buried in the Lochtum cemetery (R 184). The autopsy disclosed that both flyers had been shot twice (R 188; P-Ex 58).

Evidence for Defense: The accused testified that he was a member of the Gendarmerie Reserve and lived in Vienenburg, Germany (R 647). He received a phone call in May 1944 at his home to come to Lochtum at once. When he arrived he heard that two flyers were at the farm of Ortsgruppenleiter Brandes. He immediately went there (R 660). At the farm were accused SCHOTKE and FFEIFFER and Ortsgruppenleiter Bock and Brandes, and Fricke, driver of accused FFEIFFER, together with the accused's chief, the leader of the guards, Oppermann. Oppermann told the accused to go and pick up the parachutes of two other flyers he had previously captured and he would meet him at the Ecker bridge which he did about one half hour later (R 651). The accused was told to take the flyers to the Kreisleiter's car. They drove down the road about 80 meters. Then the flyers, Oppermann and accused SCHOTKE got out of the car. They proceeded through a field with the two flyers walking ahead beside each other. Oppermann

was about three or four meters behind the flyers and the accused was about one and one half meters behind Oppermann. Accused SCHOTKE was about 30 to 40 meters behind them looking for parachutes. Two or three shots were fired from the left of the flyers (R 652). At that time the accused saw Bock standing two or three meters in front of the flyers with a pistol in his hand. He then saw another man run across the field followed by Bock. The shepherd Kramer then came upon the scene. Both flyers were dead (R 687). The accused further testified that Oppermann recognized the other killer as accused FWEIFFER (R 659). Bock later committed suicide (R 660; P-Ex 94A). Accused SCHOTKE testified that at the time of the shooting he saw two persons vanishing at a distance of 150 to 200 meters from the flyers and that "all of us", except himself, were carrying merely pistols (R 715, 716).

Sufficiency of Evidence: The theory of the defense was that the accused did not participate. However, the evidence clearly establishes that he did participate in the killings and was a major moving force therein. Also the evidence strongly indicates that the accused was personally involved in the actual shooting involved in Incident Number 3. His participation in the common design alleged in Charge 1 is also satisfactorily established.

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

Petitions: A Petition for Review was filed by Robert M. Donihi, defense counsel, 7 October 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

7. Robert SCHOTKE

Nationality:	German
Age:	58
Civilian Status:	Auxiliary policeman in Wienenburg Interior Decorator
Party Status:	Nazi Party since 1937
Military Status:	None
Plas:	NG Charges 1, 3
Findings:	6 Charge 1; 6 of the Particulars of Charge 1, except the word "and" where it occurs on lines 8, 10,

11 and 14. and substituting there-
for the word "or" in each case;
G Charge 3

Sentence:

15 years, commencing 3 August 1945

Evidence for Prosecution: The accused was a police officer (R 154, 172, 180, 275). He was present in Lochtum when two captured American flyers were interrogated, Incident Number 3 (R 154, 180). The accused testified that he did not take part in the interrogation, but admitted that he took the flyers to the place of interrogation and that he was present when accused PFEIFFER's party arrived and heard him inquire as to "Why are these pigs still alive?" (R 711, 712). Fricke testified that following the interrogation accused PFEIFFER ordered Oppermann and accused REINHARDT to dispose of the flyers (R 180, 181). Lehne, who was taken to Lochtum by PFEIFFER to interrogate the flyers, testified that the accused and Oppermann got into an automobile with the two flyers (R 154); and that accused REINHARDT got on a motorcycle and they all left Lochtum together (R 155); they took the two flyers outside of Lochtum into a field (R 159). A shepherd named Kramer saw the heads of the two American flyers together with three men over a ridge on the side of a hill as shots were fired. The flyers fell to the ground (R 158). He went to the scene and talked to Oppermann who said the flyers had tried to escape. The accused and accused REINHARDT were standing near the flyers (R 159). He saw no one else there at the scene of the killing (R 100). Fricke testified that three days later he heard the flyers had been shot and assumed that they were shot by Oppermann and accused REINHARDT (R 180, 181). The bodies of the flyers were later found in the field (R 162). They were buried in the Lochtum cemetery (R 164). The autopsy disclosed that both flyers had been shot twice (R 168; P-Ex 56).

Evidence for Defense: The accused testified that he was auxiliary policeman in Vienenburg (R 709). A policeman, master sergeant Oppermann, came to the accused and asked him to transport two captured flyers to Geelar in his automobile. The accused drove to Lochtum and took the flyers to Ortsgruppenleiter Brandes' place (R 711). A car arrived there bringing accused PFEIFFER and Fricke, Lehne and Bock. Accused PFEIFFER asked

why the pigs were still alive. The flyers were abused by accused FREIFER (R 712). Shortly thereafter, accused REINHARDT arrived (R 713). The flyers were put in the car with the accused and Oppermann. Accused REINHARDT went ahead with his motorcycle. They all stopped near the Ecker bridge and Oppermann got out of the automobile and talked to accused REINHARDT. Oppermann got back into the automobile and they proceeded down the road a short ways. They all got out of the automobile and the two flyers together with Oppermann and accused REINHARDT started across the field. Oppermann told the accused to look for parachutes so he dropped behind the others. Shortly thereafter he heard shots (R 714). As they were walking the two flyers were in front with Oppermann and accused REINHARDT about five paces behind. All the party, except the accused, carried merely pistols. The accused noticed that both flyers fell to the ground when the shots were fired (R 715, 716). The accused walked over to the flyers and asked what had happened. Oppermann said accused FREIFER had fired and accused REINHARDT said Rock had fired. The accused saw two people vanishing at a distance of about 150 to 200 meters (R 716). Shepherd Kramer came on the scene shortly thereafter (R 716).

Sufficiency of Evidence: The evidence establishes that the accused knew that the kreisleiter wanted the flyers to be killed; the accused aided in taking them to the place of the fatal shooting; and he participated in the execution of the common design alleged in Charge 1 and the killings alleged in Charge 3.

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

Petitions: A Petition for Review was filed by Robert M. Donini, defense counsel, 7 October 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

8. Ernest KOMARK

This accused was acquitted (R 1123).

9. Michael SCHOK

This accused was acquitted (R 1123).

10. Arthur LESSMANN

This accused was acquitted (R 1123).

V. QUESTIONS OF LAW:

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

At the outset of the trial the defense moved to dismiss Charge I and the particulars thereunder on the ground that the Court was without jurisdiction to try the offense alleged therein (R 10-12). In support of its motion the defense relied upon an order by Military Tribunal III, Nurnberg, Germany (R 2-4). The defense renewed this motion at the conclusion of the prosecution's case (R 282):

The order referred to is a ruling on the defendant's motion against Count I of the indictment in Case No. 3, Military Tribunal III, Nurnberg, Germany, the United States of America vs. Josef Altstoetter, et al. The pertinent part of this order reads as follows:

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

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

Without conceding that the jurisdiction of Military Government Courts is limited to the trial of those war crimes cases contemplated by Control Council Law No. 10, it is clear that this order has no application to the instant case because the charges and particulars thereunder do not allege a common design to commit a war crime as a "separate substantive crime." They allege that the accused "acting in pursuance of a common design to commit the acts hereinafter alleged.....did.....willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of.....[certain persons].....to cruelties and mistreatment, including killings....." etc. Thus, the particulars in this case charge

as an offense, the execution of a common design to commit described unlawful acts. They do not allege common design as a "separate substantive crime."

The extent of the ruling relied upon by the defense is clarified by the last two paragraphs of the order which provide:

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

The motion to dismiss was properly denied by the Court (A 14).

Severance: The Court did not abuse its discretion in denying the motion by the defense in behalf of accused PFELIPPER for severance (A 15, 17). Severance is not a right or a privilege of the accused. The applicable rule is that such a motion is addressed to the sound discretion of the Court. Under the procedure applicable to the trial of war crimes, the test is whether an injustice would result to accused and not whether purported substantial rights of accused would be violated, if the motion were overruled, because accused have no right in this connection (United States v. Alfaldisch, et al., opinion DEWOS, February 1947, commonly known as the Nauthausen Concentration Camp Case).

Prima Facie Case: At the close of the prosecution's case the defense by three motions asked for a directed verdict as to accused LAUTERBACHER, LANDWEHR, HOMANN and SCHOCK on all charges involving them on the ground that the prosecution had failed to prove their guilt beyond a reasonable doubt (A 282, 293, 297). These motions were denied (R 301). The Court's ruling on these motions was proper. "Concerning Charge 1, the evidence theretofore adduced by the prosecution, which linked the accused with a series of similar criminal acts, had established a prima facie case of concerted action as to those acts and that the incidents were but parts of a common whole. (See Wharton's Criminal Law, Volume II, page 1939).

As to the proof under the charges generally, it is never error for

a war crimes tribunal to overrule a motion for a finding of not guilty made at the close of the case for the prosecution, if it believes there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947; Section 501, page 409, "Manual for Trial of War Crimes and Related Cases", 15 July 1946). A similar practice is followed in Courts-Martial (paragraph 71, d., "Manual for Courts-Martial, U.S. Army", 20 April 1943).

Superior Orders: Accused KONIGSDORF, REINECKE and SCHOTKE 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 DJAWO, December 1945; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWO, 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", 1920, paragraph 146).

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 Llandoverly Castle Case cited
therein; "Manual for Courts-Martial", supra; "Report to the President of
United States", 7 June 1946, 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 DAWC, September 1945, United States v. Thomas, supra; and
United States v. Rack, et al., opinion DAWC, December 1946.)

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