

7 January 1948

UNITED STATES)

v.)

Case No. 000-50-5-2

Ernst Walter DURA, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 9-23 June 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Ernst Walter DURA, Alfred KRAUSZ, Johann KRONER, Alfred KUHNERT, Fritz NITSCHKE, Otto SCHRADER, Ludwig STIER, Kurt Emil SCHLUTZLER, Alois HOLLRIEGL, German nationals or persons acting with German nationals, acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses, and indignities, did, at or in the vicinity of the Mauthausen Concentration Camp, at Castle Hartheim, and at or in the vicinity of the Mauthausen sub-camps, including but not limited to Ebensee, Gros-Raming, Gunskirchen, Gusen, Hinterbruehl, Lambach, Linz, Loiblpass, Melk, Schwechat, St. Georgen, St. Lambrecht, St. Valentin, Steyr, Vienna, Wiener-Neudorf, all in Austria, at various and sundry times between January 1, 1942, and May 5, 1945, wrongfully encourage, aid, abet, and participate in the subjection of Poles, Frenchmen, Greeks, Yugoslavs, Citizens of the Soviet Union, Norwegians, Danes, Belgians, Citizens of the Netherlands, Citizens of the Grand Duchy of Luxembourg, Turks, British Subjects, stateless persons, Czechs, Chinese, Citizens of the United States of America, and other non German nationals who were then and there in the custody of the then German Reich, and members of the armed forces of nations then at war with the then German Reich who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating thousands.

(Surname of KRONER actually spelled KRÖNER (R 72; P-Ex 4))

III. SUMMARY OF EVIDENCE: The prosecution's evidence establishes that all of the accused served at Wiener-Neudorf, an outcamp of the Mauthausen Concentration Camp, for substantial periods of time between the dates alleged.

Except for DURA and SCHRADER, individual acts of mistreatment by the accused are established. Except for KRONER and KUHNERT all of the accused took part in an inmate evacuation march, during which a great number of inmates were illegally killed. Prosecution's Exhibit P-2 is a certified copy of the charges, particulars, findings and sentences in the parent Mauthausen Concentration Camp case (United States v. Hans ALTFULDISCH, et al., 000-50-5, March 1946, DJ&C, hereinafter referred to as the "Parent Case", see Section V, post (R 18, 70).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Ernst Walter DURA

This accused was acquitted (R 589).

2. Alfred KRAUSZ

This accused was neither served nor tried.

3. Johann KRONER

Nationality:	German
Age:	44
Civilian Status:	Laborer
Party Status:	Nazi Party since 1 January 1939
Military Status:	Waffen SS Sergeant from 7 November 1939; Allgemeine SS since 1 January 1939
Plea:	NC
Findings:	G
Sentence:	20 years, commencing 19 July 1945

Evidence for Prosecution: The accused served in various capacities in Mauthausen Concentration Camp outcamps. He was a guard at Gusen from February 1940 to December 1941;

supply sergeant at Gusen from December 1941 to August 1943; guard at Wiener-Neudorf from August 1943 to March 1944; detail leader of hall no. 11 at Wiener-Neudorf for an undisclosed period of time; and guard at Ebensee from April 1944 to May 1945 (R 35, 72; P-Ex 4).

The accused was a detail leader in hall no. 11 of the airplane ammunition factory in which some 500 of the inmates of outcamp Wiener-Neudorf worked (R 35). Witness Pohl testified that, while the accused was there, he beat inmates of all nationalities with a rubber hose so severely that at least one inmate, a Pole, broke down from the beating (R 35, 36). Witness Pucolowski testified that the accused gave daily beatings with his fist to inmates; and that he reported them for infractions of the rules to the Camp Commander, resulting in many inmates receiving 25 lashes as further punishment (R 61, 62).

Witness Schumann testified that the accused was nicknamed the "Greyhound"; that he beat inmates severely in the factory hall; and that he frequently turned a hose on inmates in the toilet after which they were required to continue working in wet clothing, even though it was winter time (R 100, 107). Four other witnesses testified that the accused beat inmates frequently, both with his fists and with a rubber hose, and turned a fire hose on inmates who were in the latrine, sick with diarrhea (R 123-125, 151, 152, 187, 188). In extrajudicial sworn testimony another witness stated that the accused beat inmates with a stick and a rubber hose in the latrine so severely that many had to be carried back to camp after their work was over (R 292; P-Ex 20). The accused was transferred before the inmate evacuation march from Wiener-Neudorf to Mauthausen took place and, therefore, did not take part in that oper-

Evidence for Defense: The accused neither took the stand nor presented any witnesses to testify in his defense.

Sufficiency of Evidence: The evidence as to the accused's connection with the outcamp Wiener-Neudorf for the period set out and his frequent mistreatment of inmates, is sufficient to establish his active participation in the common design. 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 Olaf J. Tolnas, 24 June 1947. Petitions for Clemency were filed by Adolf Quacke, 9 July 1947; Karl Gerstberger, 14 July 1947; Robert Jauernig, 13 July 1947; Aloisia Gross, 4 August 1947; Hedie Hauke, 20 August 1947; Wilhelmina Iraler, undated; and William and Anna Czach, 14 July 1947.

Recommendation: That the findings and sentence be approved.

4. Alfred KUHNERT

Nationality:	German
Age:	50
Civilian Status:	Unknown
Party Status:	Nazi Party since 15 August 1932
Military Status:	SS Sergeant, Allgemeine SS from 1 September 1933, Waffen SS from 10 November 1939
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 5 May 1945

Evidence for Prosecution: The accused was assigned to Mauthausen Concentration Camp on 1 March 1940 and served in various outcamps as follows: He was a guard at Gusen from 1 March 1940 to 1 August 1943; detail leader at Wiener-

Neudorf' from 2 August 1943 to 10 March 1944; and guard at Ebensee from April 1944 to February 1945 (R 36, 72; P-Ex 5).

The accused was a detail leader in hall no. 11 of the factory in which most of the inmates of Wiener-Neudorf worked (R 78). Witness Lemcic testified that the accused beat inmates with a stick because they did not work fast enough. He also gave beatings in the latrine to inmates, but not so severely as to cause them to fall to the ground or have to be carried away (R 184, 185). The inmates working in the factory were mainly of Yugoslavian, Russian, Polish and French nationality (R 186).

Evidence for Defense: Four witnesses, all of whom were in the accused's detail, testified that the accused was good to the inmates (R 36, 42, 44, 64, 78, 381, 386) and two of them testified that he gave them food on occasions (R 42, 78).

Sufficiency of Evidence: The evidence of the period of time this accused served at various outcamps of the Mauthausen Concentration Camp, his connection with and opportunity to observe the criminal method of its operation, and the evidence of his mistreatment of inmates is sufficient to prove his participation in the common design.

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

Petitions: A Petition for Review was filed 24 June 1947 by Major Olaf J. Tolnas. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

5. Fritz NITSCHKE

Nationality: German

Age: 46

Civilian Status: Unknown
Party Status: Nazi Party since 1 August 1932
Military Status: SS Master Sergeant, allgemeine SS from 1 August 1933 to 26 August 1939, Wehrmacht from 26 August 1939 to 12 November 1939, Waffen SS from 1 February 1940
Flea: NG
Findings: G
Sentence: 20 years, commencing 5 May 1945

Evidence for Prosecution: From 10 June 1940 to 15 August 1944 the accused was assigned to outcamp Neuengamme of the Natzweiler Concentration Camp, first as platoon leader of the 2nd guard company, and from 26 September 1942 as supervisor of dog training. He was transferred to the Mauthausen Concentration Camp in August 1944, serving in outcamp Wiener-Neudorf as dog leader from 5 October 1944 to 1 April 1945, and in Gusen from 12 April 1945 to 5 May 1945. He participated in the inmate evacuation march from Wiener-Neudorf to Mauthausen from 2-12 April 1945 (R 26, 73; P-Ex 6). For particulars concerning this march as a whole, reference is made to the discussion of "Evidence for Prosecution" page 15, post.

In his extrajudicial sworn statement the accused admitted being a member of a detail consisting of accused HOLLRIEGL and others, who were sent to Vienna in March 1945 to apprehend two Russian inmates who had escaped from outcamp Wiener-Neudorf. The order from accused SCHUTZLER, the Camp Commander of Wiener-Neudorf, was to bring these Russians back dead. While the accused did not admit that he either fired at or killed these escaped inmates, he stated that they were killed by members of this detail. He stated that he saw no weapons in the possession of the dead Russians, although another member of the detail was heard to say that both were armed with pistols and knives. In any event, according

to the accused, it would have made no difference whether the Russians were armed or not, as the order directed that they were to be brought back dead (R 262; P-Ex 11). Accused HOLLRIEGL, in referring to this incident in his extrajudicial sworn testimony, corroborated the fact that the accused was a member of this detail and that both Russians were killed. He was not an eye witness of the killing of either, but stated that a truck drove up with the body of one dead Russian inmate, and that the accused was on this truck with other members of the detail (R 295; P-Ex 25).

Witness Pohl testified that the accused was present with his dogs on the inmate evacuation march (R 26, 30). Witness Waldeck testified that the accused was present when at least one inmate was shot by a dog leader during the inmate evacuation march (R 314, 317). Witness Felez testified that the dog leaders who were under the accused killed inmates who could not keep up with the column during the inmate evacuation march, and the order to do so must have been from the accused as he was the leader (R 281).

This witness further testified that he heard the accused say, during the line up, that he had given an order to the dog leaders on the third day of the inmate evacuation march directing that the number of every inmate killed by them was to be reported daily to Warrant Officer Klass (R 283, 285, 286). Witness Gaedicke testified that dog leaders appeared to be under the orders of group leaders during the inmate evacuation march, although in killing inmates who fell out of the column they appeared to act independently without consulting the group leaders (R 93, 94). In his extrajudicial sworn testimony the accused admitted being present at a meeting a day or two before the inmate evacuation march began, at which time accused SCHMUTZLER, Camp

Commander, issued orders that the dog leaders be distributed among the three guard companies and assigned the detail of killing inmates who could not keep up with the march. When a dog leader objected to killing any more inmates, the accused advised him to see Warrant Officer Weiss because the killing order existed and had to be carried out (R 275a; P-Ex 14).

Evidence for Defense: Accused SCHMUTZLER testified that the dog leaders were under the 37th guard company for duty, and that the accused only had administrative duties in connection with the dog cage and the care of the dogs (R 529-531). The accused did not take the stand.

Sufficiency of Evidence: While the evidence does not conclusively establish that the accused himself killed either of the two Russian inmates who had escaped from out-camp Wiener-Neudorf or that he killed inmates during the evacuation march, his participation in the common design is clearly established by evidence as to his activities as dog leader.

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 Olaf J. Tolnas, 24 June 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

6. Otto SCHRADER

Nationality:	German
Age:	54
Civilian Status:	Unknown
Party Status:	Nazi Party since 1 May 1937
Military Status:	SS Master Sergeant, Luftwaffe

from 25 July 1944 to 11
December 1944 and Waffen SS
from 12 December 1944 to 5 May
1945

Plea: NC
Findings: G
Sentence: 2 years and 7 months, com-
mencing 5 May 1945

Evidence for Prosecution: From 16 August 1944 the ac-
cused served in outcamp Wiener-Neudorf of the Mauthausen
Concentration Camp. He served as detail leader until 30
September 1944; as guard control non-commissioned officer
until 1 January 1945; and as 1st Sergeant of the 38th SS
guard company until 5 May 1945.

After the inmate evacuation march from Wiener-Neudorf
to Mauthausen from 2 to 12 April 1945, during which march
the accused was a group leader, his guard company was trans-
ferred to outcamp Gusen II, where he remained until the lib-
eration on 5 May 1945 (R 73, 82, 289; P-Exs 7, 15). For
particulars concerning the inmate evacuation march as a
whole, reference is made to the discussion of "Evidence for
Prosecution", page 15, post.

In his extrajudicial sworn statement the accused ad-
mitted he attended a meeting held by accused SCHMUTZLER
on 31 March 1945, at which time this accused was assigned as
group leader of the second march block of 1,000 inmates.
At the same meeting, the task of executing inmates who
could not keep up with the march was assigned to the dog
leaders and the SS guard company with the last marching
block. Many inmates were not able to keep up with the
march and the accused heard that some 20 were killed (R 289;
P-Ex 15). In another extrajudicial sworn statement the ac-
cused admitted he was also present at another meeting con-
ducted by accused SCHMUTZLER, where the order to shoot

Inmates who could not keep up with the march was discussed. The accused's march block was in the middle of the column during the entire march, except for one day. On the third or fourth day of the inmate evacuation march, at the request of accused STILLER, this accused furnished some inmates and guards for a burial detail (R 290; P-Ex 17). Witness Gaedicke testified that the accused was the leader of one of the marching columns during the inmate evacuation march (R 91). Witness Honold testified that the accused was one of the air corps guards who were later transferred to the Waffen SS and that he was known as a harmless sergeant (R 134).

Evidence for Defense: Witness Peckack, financial accountant of the guard company at Wiener-Neudorf, testified that he was with the accused for two days during the inmate evacuation march (R 368). When the first inmate of the marching block led by the accused was killed by an SS Technical Sergeant, the accused was indignant and immediately gave orders to his guards that none of them were to shoot inmates (R 369). In the accused's marching block there was a baggage cart to which inmates who were unable to walk unaided could hang on to for support. Both inmates and guards were urged to help those inmates who were having trouble keeping up with the column (R 374, 375). Witness Gaedicke testified that the accused was humane to the inmates of Wiener-Neudorf and that he had heard that the accused had provided a cart for inmates of his marching block who had become over-fatigued during the march (R 382, 383).

The accused did not take the stand.

Sufficiency of Evidence: The evidence of the period of time this accused served at outcamps of the Mauthausen Concentration Camp, his rank in the SS, his connection with

and opportunity to observe the criminal method of its operation is sufficient to prove his participation in the common design.

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 Olaf J. Tolnas, 24 June 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

7. Lucwig STIER

Nationality:	German
Age:	52
Civilian Status:	School Teacher
Party Status:	Nazi Party since 1 March 1932
Military Status:	Captain in Wehrmacht. Served in Wehrmacht from 26 August 1939 to June 1944
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused was transferred in June 1944 to outcamp Wiener-Neudorf of the Mauthausen Concentration Camp system, to command the guard troops. His highest rank was that of a captain in the Wehrmacht (R 538, 539). The accused was in command of the guards on the inmate evacuation march from Wiener-Neudorf to Mauthausen from 2 to 12 April 1945 (R 259, 263; P-Exs 10, 12). For particulars concerning the inmate evacuation march as a whole reference is made to the discussion under "Evidence for Prosecution", page 15, post.

Witness Pchl testified that the accused was in command of the guards on the inmate evacuation march (R 26). This

witness further testified that the accused was present at a meeting a day or two prior to the beginning of this march at which the order to kill inmates who could not keep up with the column was discussed. He and two other witnesses testified that they heard the accused give an order that those who could not keep up with the march were to be shot (R 28, 153, 154, 282). Pohl saw an inmate killed by an SS sergeant on the first day of the march pursuant to an order from the accused (R 27, 39, 40). Witness Gaedicke testified that he heard that the accused personally had shot and killed two inmates on the day after accused SCHWUTZLER spoke to all of the inmates, reassuring them and stating that no more would be shot (R 85, 86, 90, 91). He further testified that he heard the accused tell an elderly guard, who had asked permission to rest because he was having difficulty walking, that if he could not continue walking he would be "bumped off" in the same manner as an inmate (R 87). Witness Honold testified that on the second, third or fourth day of the march, his marching column came upon two inmates who had remained behind from a forward column; that the accused ordered the guards to kill these two inmates; that they were then led behind some bushes; that two shots were heard; and that these inmates did not return to the column (R 129, 130). The witness believed that these victims were not Germans (R 130). This witness further testified that on 9 April 1945, when bivouac was being broken, one inmate was ill and could not rise; that the accused ordered him killed; that he was carried into a pasture and a shot was heard; and that the inmate was seen no more (R 131, 132).

In his extrajudicial sworn statement, the accused stated that the order to shoot stragglers was given to him

by accused SCHMUTZLER on 1 April 1945; that he held a meeting of his guards the next day; and that he may have said then that by order of accused SCHMUTZLER inmates who could not keep up would be shot, but that to his knowledge no one was shot during the march (R 273; P-Ex 12).

Evidence for Defense: The accused testified that he was present at a meeting, held just prior to the inmate evacuation march, at which accused SCHMUTZLER read an order signed by Zeireis, Mauthausen Concentration Camp Commander, which order directed the shooting of inmates who could not keep up with the column on the march (R 548). The accused further testified that he told his guards to ignore this order, because the detail for killing inmates who could not keep up with the column had been assigned to the dog leaders (R 549, 550). He also testified that inmates who could not keep up with the column were allowed to ride on the kitchen trucks. Those in accused SCHRADER's marching block were allowed to hang on to the baggage cart (R 552). The accused admitted that a few inmates were killed while attempting to escape, but denied knowledge of any other killings (R 553-555).

Witness Lamm, a former roll call leader in outcamp Wiener-Neudorf, testified that deaths decreased materially after the accused took command of the guards, but did not cease entirely since inmates still tried to escape (R 434, 435). Witness Rademacher, a former work detail leader in outcamp Wiener Neudorf, testified that he remained in the camp with some 30 or 40 inmates the morning the inmate evacuation march started, awaiting vehicles the accused had promised for inmates who were unable to march (R 438). This witness finally left about 1100 hours, leaving about 15 inmates behind. Prior to his departure one horse and

wagon arrived, but he did not know whether this was for sick inmates (R 439, 440).

Doctor Khuri, physician in charge of the prison hospital at Dachau, was called by the accused to testify in regard to his physical condition and the effect of this condition upon his mental capacity. He testified that the accused was suffering from an incurable cardio vascular renal disease, probably of one or two years standing, but that such disease did not in any way impair the understanding of the sufferer relative to the difference between right and wrong. (R. 542-543).

Sufficiency of Evidence: The evidence establishes not only the accused's responsibility for the killing of inmates by the guards during the inmate evacuation march from Wiener-Neudorf to Mauthausen, but also establishes his active participation in some of the killings. The accused is not entitled to mitigation on the ground that he acted pursuant to superior orders. The Court might well have concluded from all the circumstances, including the evidence of accused's rank and position of responsibility on the inmate evacuation march that he did not act unwillingly or under the immediate compulsion of superior orders; 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 defense counsel, Major Olaf J. Tolnas, and Dr. Karl Gick, 24 June 1947. Petitions for Clemency were filed by Dr. Karl Gick, German defense counsel, 10 September 1947; Paula Stier, wife of the accused, 3 August 1947; Burgermeister Eber of Hardt, 5 August 1947; K. Kaub, minister, 3 August 1947;

W. Stolleis, 6 July 1947; A. Hainich, 6 July 1947; Edward Scheffel, undated; Franz Xaver Mayer, 28 July 1947; G. Hurn, 21 July 1947; Christian Baumann, 21 July 1947; Rolf Schwindling, 18 July 1947; Ernst Eich, 15 August 1947; Walter Volz, 6 August 1947; Karl Dyroff, 1 August 1947; Jakob Stolleis, 1 August 1947; and Ludwig Losch, 2 August 1947.

Recommendation: That the findings and sentence be approved.

8. Kurt Emil SCHMUTZLER

Nationality: German
Age: 52
Civilian Status: Painter
Party Status: Nazi Party since June 1937
Military Status: SS Captain, Wehrmacht from 26 August 1939 to 15 September 1939. Allgemeine SS from June 1934 to 7 May 1945, Waffen SS from 17 July 1940 to 7 May 1945
Plea: NG
Findings: G
Sentence: Death by hanging

Evidence for Prosecution: On 17 July 1940 the accused was assigned to Mauthausen Concentration Camp where he served in various outcamps. From 17 July 1940 to 9 November 1940 he served at Gusen as platoon leader in the guard battalion; from 9 November 1940 to 15 May 1942 at Voecklabruck as Camp Commander; from 16 May 1942 to 30 August 1942 at Ternberg as Camp Commander; from 30 August 1942 to 26 July 1943 at Gusen as Platoon leader in the guard battalion; from 26 July 1943 to 2 April 1945 at Wiener-Neudorf as Camp Commander; and from 8 April 1945 to 4 May 1945 at Mauthausen as officer of the collection center (R 74, 259; P-Exs 8, 10). The accused was Camp Commander of outcamp

Wiener-Neudorf at the commencement of the inmate evacuation march to Lauthausen on 2 April 1945 and was present during part of the march (R 29, 259; P-Ex 10).

The accused was Camp Commander of outcamp Wiener-Neudorf from its activation in July 1943 (R 20). Witness Pohl testified that many inmates of all nationalities died at Wiener-Neudorf during the course of its operation as a result of the hard work, poor food and other mistreatments (R 21, 22). This witness further testified that the accused participated in many beatings, killings and other acts of cruelty toward the inmates; that inmates who escaped and were recaptured were beaten and sometimes killed or committed suicide; that only the Camp Commander could have ordered the killings; that six or eight sick inmates in the dispensary were killed just prior to the inmate evacuation march because of the order that no one was allowed to remain behind in the camp; and that just before the evacuation the accused ordered that anyone who could not keep up would be shot and killed (R 21-25). Witness Pucelowski testified that a Polish inmate, who had stolen a piece of leather belting from the factory, was driven into the electrically charged wire fence surrounding the camp by the accused and several of his block leaders. This incident occurred in the fall of 1943 or spring of 1944 (R 59, 60). Witness Gaedicke testified that it was general talk in the camp that the accused and others chased this Polish inmate into the electrically charged fence (R 80).

Pohl and three other witnesses testified that many inmates who committed infractions of the rules committed suicide, in fear of the punishment that would be meted out to them by order of the accused (R 24, 104, 105, 149, 150, 278, 279). Another witness, Waldeck, testified that the

accused sent 14 inmates, who were suffering from tuberculosis, to Mauthausen in an open truck in January 1945; that he was advised it meant death from exposure for these sick inmates; and that seven of them did die during the trip (R 304). Accused NITSCHKE stated in his extrajudicial sworn statement that the accused once ordered a detail of the camp guard to apprehend and kill two Russian inmates who had escaped and were hiding in Vienna; and that the two Russians were actually killed while being apprehended (R 262; P-Ex 11).

Three additional witnesses testified that they were present at a meeting held by the accused the day before the inmate evacuation march of 2-12 April 1945 from Wiener-Neudorf to Mauthausen. At this meeting the accused issued orders that those who were unable to keep up with the march would be shot and that this function was assigned to the dog leaders who were to be distributed among the guard companies (R 220-222, 229, 230, 236, 237, 245, 246, 259; P-Ex 10). Accused NITSCHKE, STIER, and SCHRADER stated in their extrajudicial sworn statements that they were also present at this meeting held by this accused when orders were issued by him to kill inmates who could not keep up with the march (R 263, 275a, 289, 290; P-Exs 12, 14, 16, 17). Gaedicke testified that group leader Weiss shot a young Polish inmate on the first day of the inmate evacuation march, and when asked how it was possible for him to do so, he stated that it was an order from the accused given at the aforementioned conference. Weiss, a group leader, shot four or five inmates during the march; other inmates were shot by dog leaders (R 83-85). Four of the above mentioned witnesses and two additional witnesses testified concerning the number of inmates who were killed during the ten days

of the inmate evacuation march, their estimates ranging from 15 to 247, all of these witnesses having actually seen one or more inmates killed (R 84, 85, 109, 110, 208, 245, 246, 267, 268, 280, 281, 299). Seven witnesses who had previously testified and an additional witness testified that the accused was in charge of the inmate evacuation march; that he was seen in and about the march columns on different occasions; that on the third or fourth day he made a speech to the assembled inmates to the effect that everyone would be returned to his homeland and family and no more would be shot; and that he was present at some of the killings of inmates during the inmate evacuation march (R 29, 82, 85, 109, 165, 208, 270, 280, 281, 313, 314).

Evidence for Defense: Witness Pedack testified he had a number of footsore inmates and guards riding on his vehicle during the inmate evacuation march; that he stopped in a village for a break; that the accused approached and wanted to know who the men were; that when he was told they were people unable to march, he ordered everyone to line up against a wall; that he asked this witness if he had heard the order from accused STIER that those who could not keep up were to be shot; and that the accused indicated he would shoot these people himself, but relented when the witness spoke sarcastically to him and no shooting took place (R 372, 373).

Prosecution witness Pruchnik, called as a witness by the defense, testified that Wiener-Neudorf was a better camp than Mauthausen and Gusen because the accused, as Camp Commander, did not beat the inmates personally (R 384). Witness Lamm testified that the accused arranged for extra rations for the inmates, and the food was adequate; and that the accused did not get along well with Zeireis, the Camp

Commander of Mauthausen, disagreeing with his policies regarding the administration, care and treatment of inmates (R 426, 427, 435, 436). Witness Strauss, former chief of administration for the Mauthausen Concentration Camp, testified that the food ration at Wiener-Neudorf was adequate as it was supplemented by extra rations from the factory where the inmates worked and there were few complaints about the food (R 442-445). Witness Schoeneknes, a former guard at Wiener-Neudorf, testified that he did not see anyone killed during the inmate evacuation march, but on cross examination admitted that he had heard that inmates who could not keep up were to be killed (R 450, 451, 454). Witness Geiger testified that the camp doctor was independent of the Camp Commander and was the sole judge of the physical condition of the inmates with reference to their ability to work or to be transported (R 462, 463).

The accused testified that not more than 90 to 100 inmates died in two years at outcamp Wiener-Neudorf, these deaths being from all causes, such as sick in hospital, suicide, and those inmates shot while attempting escape. He further testified that the evacuation order was received in March 1945 from Zeireis, the Camp Commander of Mauthausen Concentration Camp; that this order contained a direction to kill everyone, inmates and guards, who could not keep up with the march; and that he told the dog leaders they would take over if it came to that, but he did not desire to carry out the order. He testified that he tried to arrange for transportation for the sick and disabled and, while he was not given as many vehicles as requested, transportation was adequate. On orders from Zeireis he turned control of the inmate evacuation march over to accused STIER; that because of clogged roads and mechanical defects

with his motor cycle the column passed him several times, but he did not consider himself a part of the column; and that he heard, only after he arrived at Mauthausen, that some inmates were shot while attempting to escape (R 478-485, 495, 512, 522).

The accused stated with reference to deaths in the hospital that he had no responsibility in that respect, the camp doctor being directly under Mauthausen (R 491). The accused denied ever having taken part in any beatings or other cruelties except to slap an inmate who had tried to send a letter to his father for blackmail purposes (R 487, 490, 507, 523, 524). That part of the "death book" of the Mauthausen Concentration Camp which refers to deaths occurring at outcamp Wiener-Neudorf was introduced in evidence. According to this record 21 inmates died, either killed while attempting escape, or from committing suicide, during the period of the operation of outcamp Wiener-Neudorf (R 568; D-Ex 4).

Sufficiency of Evidence: The Court was warranted from the evidence concerning the period of time the accused served at various outcamps of the Mauthausen Concentration Camp, his rank and position of responsibility in these outcamps, his connection with and participation in the criminal method of its operation and the evidence of his active participation in killings and other cruelties toward inmates in its findings of guilty. With regard to the evidence offered in mitigation because of superior orders, the Court might well have concluded that the accused did not act unwillingly or under immediate compulsion in ordering that inmates who could not keep up on the march were to be killed; that his desire to cooperate and please his superiors was stronger than other considerations; and that he failed

to meet the burden of proof required by pertinent authorities discussed in Section V, post.

The sentence is not excessive.

Petitions: A Petition for Review was filed by defense counsel, Major Olaf J. Tolnas and Doctor Karl Gick, 24 June 1947. Petitions for Clemency were filed by special defense counsel, Doctor Karl Gick, 10 September 1947 and 19 December 1947.

Recommendation: That the findings and the sentence be approved.

9. Alois HOLLRIEGL

Nationality:	Austrian
Age:	38
Civilian Status:	Unknown
Party Status:	Nazi Party from July 1938 to September 1939
Military Status:	SS Sergeant, Allgemeine SS from April 1938 to September 1939. Waffen SS from 7 September 1939 to 2 May 1945
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused was assigned to the Mauthausen Concentration Camp on 1 February 1940 and served both at Mauthausen and its outcamps as follows: from 1 February 1940 to 1 January 1942 as a guard at Mauthausen; from 1 January 1942 to 1 September 1943 as deputy block leader at Mauthausen; from 1 September 1943 to 2 April 1945 as deputy block leader at Wiener-Neudorf; and from 14 April 1945 to 2 May 1945 as deputy block leader at Mauthausen. The accused participated as a guard in the inmate evacuation march on 2-12 April 1945 from Wiener-Neudorf to Mauthausen (R 74, 288, 295; P-Exs 9, 15, 25).

Witness Rosenstock testified that he saw the accused beat two inmates with a whip at Mauthausen in June 1943. as a result, they were carried in an unconscious condition to the dispensary where they subsequently died (R 197, 199). Witness Lemcic and three other witnesses testified that the accused and others forced a Polish inmate into the electrically charged wire fence at outcamp Wiener-Neudorf in December 1943, causing his death by electrocution (R 64-66, 69, 178, 180, 194, 195, 204, 205, 247-250). Two of the above and five additional witnesses testified that the accused frequently beat, with an oxtail whip, inmates of all nationalities in outcamp Wiener-Neudorf during a period covering almost two years. This was corroborated in the extrajudicial sworn statements of four witnesses (R 58, 86, 87, 133-135, 172, 205, 206, 266, 292-294, 307, 343; P-Exs 19, 22, 23, 28).

Witness Schumann testified that he heard from the kitchen chief Harrestein that the accused took part in the killing of sick inmates in the dispensary just prior to the start of the inmate evacuation march (R 110). witness Jakovljivic testified that the accused shot a Yugoslav inmate on the fifth or sixth day of the inmate evacuation march, stating he was able to identify the accused from a distance of 100 to 150 meters although he could not see accused's face (R 163-165, 167, 168, 171). Witness Lemcic testified that the accused came upon an inmate who had collapsed in a ditch during the evacuation march, the witness heard shots and, looking back, he saw the accused with a pistol in his hand standing by the fallen inmate (R 182, 183). In an extrajudicial sworn statement witness Kricka stated that, in February 1944, sixteen inmates of the Mauthausen Concentration Camp were beaten by the accused

with an oxtail whip and the handle of a shovel, and that 14 of these later died from their injuries (R 343; P-Ex 2).

Evidence for Defense: Three witnesses, all former inmates of Mauthausen and Wiener-Neudorf, testified that while accused occasionally beat inmates, he was known as a light beater and as one who tried to avoid beating the inmates (R 345, 353, 354, 376, 377). Two of these witnesses testified that the accused did not beat inmates, at least not publicly on the roll call square at outcamp Wiener-Neudorf (R 348, 356, 357).

The accused testified that he was not in the Mauthausen Concentration Camp in February 1944, at the time of the beatings and killings referred to in the extrajudicial sworn statement of witness Kricka; that he was on leave at Christmas time 1943 and 1944 and did not beat any inmates on the roll call square; that he had never chased any inmates into the electrically charged wire; that he had no special duty during the inmate evacuation march, most of the time riding in advance of the column with accused STIER and a woman companion; and that he had never killed an inmate (R 390, 392, 399-401). The accused admitted he occasionally administered punishment to inmates, consisting of slaps and light beatings, for infractions of the rules and for thefts (R 394, 395, 398, 399, 406-408).

Sufficiency of Evidence: Austria was a cobelligerent of Germany. The evidence of the period of time this accused served at the parent and various outcamps of the Mauthausen Concentration Camp, his connection with and opportunity to observe the criminal method of its operation, and the evidence of his own mistreatment, cruelty to, and killing of inmates, is sufficient to warrant the findings of guilty.

The sentence is not excessive.

Petitions: A Petition for Review was filed by defense counsel, Major Olaf J. Tolnas, 24 June 1947. Petitions for Clemency were filed by accused, Ernestine Rapf, 21 July 1947; Wilhelm Honold, 8 September 1947; 1st Deputy Burgermeister of Mauthausen a/Donau, 13 July 1947; Josef Sieghartner, 30 July 1947; Marie Pissenberger, 30 July 1947; Josefina Hollriegl, the accused's mother, 13 August 1947; Alois Kindl, 8 July 1947; Dr. Herbert Hoffinger, 12 August 1947; Willi Auerswald, 27 October 1947; and Rudolf Lamm, 6 November 1947.

Recommendation: That the findings and the 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.

Application of Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Case, including the findings of the Court therein, that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, File AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and that Parent Case). The convicted accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceeding, in concluding as to them that they not only participated to a substantial degree, but the nature and extent of their

participation were such as to warrant the sentences imposed.

Superior Orders: The accused STIER and SCHLUTZLER sought to justify their actions by 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 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 DJ&C, December 1945; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJ&C, February 1946; and French Republic v. Wagner, et al., Court of Appeals, July 1946). This rule is followed in Anglo-American jurisprudence (Mitchel 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 Crim-

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 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 DJ&C, September 1945, United States v. Thomas, supra; and United States v. Beck, et al., opinion DJ&C, December 1946).

Examination of the entire record fails to disclose any error or omissions 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.

Joseph L. Haeffel
JOSEPH L. HAEFFEL
Major CJP
attorney
Post Trial Branch

Having examined the record of trial, I concur, this 23rd
day of January 1948.

C. E. Straight Lt
C. E. STRAIGHT
Lieutenant Colonel J&GD
Deputy Judge advocate
for war Crimes