

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

5 March 1940

UNITED STATES )  
                  ) )  
                  v. ) Case No. 000-50-5-22  
                  ) )  
Peter BAERENS, et al. )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 6-24 October 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Peter BAERENS, Karl GISSORIGL, Ernst KIRSCHBICHLER, Werner REINSDORFF, Michael Peter PUSITZ, Hans ULLMANN, Josef ANTIS, Johann GLETSCH, Adam DIENER, Josef BLOH, Rudolf MUECK, Philipp HEHL, 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, Hinterbrühl, Lambach, Linz, Loidlpass, 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.

(Christian name of HEHL actually spelled Philipp (R 201; P-Ex 19).

III. SUMMARY OF EVIDENCE: All of the accused were members of the Waffen SS or inmates connected with the camp administration at the Mauthausen Concentration Camp or its subcamps for considerable periods of time between the dates alleged, and were shown to have participated

in the Mauthausen Concentration Camp mass atrocity as capos, block  
eldests, guards, clerks, block leaders, detail leaders, construction  
leaders or roll call leaders. Prosecution's Exhibit P-Ex 6 (R 32)  
was a photostatic copy of the record of trial in the parent Mauthausen  
Concentration Camp Case (United States v. Altfuldisch, et al., 000-50-  
5, hereinafter referred to as the "Parent Case"; see Section V, post).  
The copy of the record of trial in the Parent Case was withdrawn at  
the conclusion of the trial with permission of the Court (R 32).

General Evidence: Werner Conn, a first lieutenant in the United  
States Army, testified that he was familiar with the Mauthausen Concen-  
tration Camp and its operations by reason of his investigations of the  
camp during the preceding 18 months, pretrial interrogations, etc.;  
that the camp was located approximately 20 miles out of Linz, Austria ;  
that it had many subcamps which were under the administration and super-  
vision of the main camp (R 35-37); that the inmates were of many nation-  
alities, including Russians, Poles, Belgians and Americans; that the  
number of inmates, who passed through or were exterminated in the main  
camp and its subcamps, has been estimated to be as high as 2,000,000  
(R 38); that the camp was known as a "Class 3 Camp", which is referred  
to generally as "an extermination camp"; that the main purpose of the camp  
was to get as much labor as possible from the inmates; that, if they  
could not work, they were hospitalized, providing there was a reasonable  
certainty of their recovery within a short time, otherwise the inmates  
were exterminated in gas chambers (R 39); and that the Wiener Graben  
(Vienna Ditch) was a stone quarry located in the immediate proximity of  
the Mauthausen Concentration Camp. Conn further testified that Prose-  
cution Exhibit 7 is one of the death books recording so-called un-  
natural cases of deaths of inmates at Mauthausen from October 1942 to  
May 1945 (R 47); that this book was kept by the political department at  
Mauthausen and contained a list of inmates shot by guards with pertinent  
information as to the date and type of death, name of the guard and date  
of the report on the death to the SS Economic and Administrative Depart-  
ment (R 48, 49); that this book contains approximately 1,000 names b7

does not include any death resulting from starvation or from gassing.

Unless otherwise indicated, an item referred to as a "Statement" is in the form of extrajudicial sworn testimony.

Not much weight was given to the testimony of Karl Geiger.

#### IV. EVIDENCE AND RECOMMENDATIONS:

##### 1. Peter BAERENS

Nationality:	German
Age:	34
Civilian Status:	Minor
Party Status:	None
Military Status:	None
Plea:	NO
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused testified that he arrived at Mauthausen Concentration Camp as an inmate on 16 June 1943 and carried stones for two and one half months; that he then worked as room orderly in block 16 until Christmas 1943 (R 412, 413) at which time he was made block oldest of block 20; that he then was transferred to a bomb disposal detail; and that thereafter in March 1944, as a result of a hand injury, he was made block oldest of block 17 (R 413). He held this position for about two months, after which time women inmates temporarily occupied block 17 for about seven weeks; that during this period he remained idle; and that thereafter he returned to block 17 and resumed his former position of block oldest, which he retained until February 1945, when block 17 was dissolved and he was sent as block oldest to block 8. The number of inmates in block 17 varied between 60 and 1,260. As block oldest he was responsible for their food and billeting (R 414). The accused further testified that he slapped and beat inmates because they stole food from other inmates or committed other infractions of the rules, but that he did not kill any inmate (R 415, 435, 436). He was often beaten because inmates of his block were caught by the SS violating the rules of the

Schmehling testified that he was an inmate of Mauthausen until October 1943, of subcamp Schlier until 23 December 1944, and thereafter of Mauthausen (R 64). He identified the accused and testified that he wore a green triangle and was block eldest of block 20 in 1944 and later was the block eldest of blocks 16 and 17 (R 64). He further testified that the accused beat inmates daily with any object he could find, if they did not vacate the blocks quickly enough to please him (R 65, 66, 73); that in January 1945 the accused made the inmates from block 17 go outside and stamp down the snow for one to two hours, although some were poorly clothed and others had nothing on their bodies (R 66); that the accused usually issued only one blanket to an inmate, although the blocks were without heat and a huge pile of blankets was available (R 66); that on one occasion in December 1944, using a rubber hose, the accused beat a Yugoslav inmate, who had reported him for stealing the food of the inmates, and told the room eldest, "This Yugoslav has to go to the washroom and there he will be finished off"; and that the next morning the witness saw the dead body of this Yugoslav with no deadly wounds visible. However, the witness was later told that the accused had killed him (R 67, 68, 74-77).

Dietl, an inmate of Mauthausen from 7 September 1944 to 13 May 1945, testified that he knew the accused as block eldest of block 17, which block housed approximately 1,100 inmates (R 83), 47 of whom were insane (R 79); that he saw the accused kick a German inmate for making a report and the witness was later told that this victim died (R 80); and that the accused beat at least 100 inmates each day with a stick or rubber hose (R 80). Dietl further testified that on one occasion in October 1944 he saw the accused kick and beat an Italian inmate with a stick for stealing bread from another inmate; that he was told that this victim sustained seven broken ribs and died/<sup>three days</sup>later in the medical camp (R 81, 87, 88, 94); and that he saw the accused beat three Russian inmates with his fists in the washroom during December 1944 and make them remain standing all night because they had stolen food (R 82).

Kaufmann, an inmate of Mauthausen from 1939 to 20 August 1944 and at subcamp Linz III from 20 August 1944 to 17 May 1945 (R 96), testified that he was first medic of the first aid station in the inmate dispensary at Mauthausen; that he knew the accused as block oldest of blocks 17 and 20 (R 97); that 13 or 14 inmates, while being treated at the first aid station, told him that the accused had beaten them or had scrubbed them with a brush, in some instances causing them to bleed (R 98); and that it was necessary to admit at least three of these inmates into the hospital for further treatment (R 99).

Deberenz, an inmate of Mauthausen in August 1944 for 14 days, and of subcamp Rodl-Zipf until 23 December 1944 at which time he returned to and remained at Mauthausen until 5 May 1945 (R 104), testified that the accused frequently beat inmates, but that he knows of no case in which the victim died, although there were rumors that the accused had beaten an inmate to death (R 106, 107).

Jaroszka, a former inmate, testified that he knew the accused in Mauthausen during the period 14 November 1944 to 1 December 1944 (R 110). During this period the accused beat a priest in the face with his fists, because there was noise in the room in which this inmate was living (R 111). Krakowski testified that he was in Mauthausen from June 1943 until the liberation, except for the period from August 1944 to April 1945, during which period he was in subcamp Wiener-Neudorf (R 119); that during his stay in Mauthausen he was an inmate in the accused's block for three weeks and that he saw the accused beat inmates of many nationalities, including French, Polish and Yugoslav, to such an extent that he acquired the reputation of a "bandit" (R 120, 121).

Nodinovich, a Yugoslav inmate of Mauthausen and its subcamps from 1942 to 1945, testified that he was assigned in 1945 to block 17 where the accused was block oldest (R 122); that in April 1945 the accused pushed a cup from which he was drinking into his face, necessitating treatment in the dispensary (R 123, 126); that on another occasion in 1945 he saw the accused beat a French inmate until this inmate fell to

the ground; that two days later the witness saw this victim placed on a stretcher and carried to the crematory; and that he assumed the victim was dead, as his arms hung down and he did not move (R 123-125, 128, 130, 131). Kriendl, an inmate in Mauthausen from 1939 to 1944 (R 133, 134), testified that he was assigned to block 17 for three weeks in October 1944 and that daily he saw the accused beat Polish and Russian inmates severely with his hands (R 135, 136); and that he was told the accused had killed a few inmates by crushing their ribs (R 136).

Wagschalk, a former Polish inmate, testified that he was in block 17 for approximately two weeks during December 1944 (R 603); that the accused directed him and three other inmates to step outside the block; that the accused then remarked to another block leader, who was known as "Death of Jews", to the effect that he, the accused, wanted to "make fun" with the three, whereupon the other block leader beat the three Jewish inmates; and that the accused frequently beat inmates with a stick or whatever he had in his hand to such an extent that he drew blood (R 605).

Five Statements and four unsworn pretrial statements are to the effect that the accused on numerous occasions at Mauthausen beat inmates of various nationalities with his hands, fists and an oxtail whip and kicked them to such an extent that on at least two such occasions it was rumored the victims died (R 114; P-Ex 13; R 113, P-Ex 12; R 109; P-Ex 11; R 623; P-Ex 49; R 115; P-Ex 14; R 117; P-Ex 16; R 116; P-Ex 15; R 62; P-Ex 10; R 61; P-Ex 9).

Evidence for Defense: In his Statement, the accused, stated that he was a criminal inmate at Mauthausen from June 1943 to May 1945, during which period he saw inmates mistreated, shot and hanged, but that he never took part in any killings or cruelties. He admitted that he slapped 15 to 20 inmates in the face for infractions of rules, instead of reporting them (R 61; P-Ex 8). The accused testified that he only slapped and beat inmates because they had violated existing rules. No inmates ever died as a result of his mistreatments (R 415, 435, 436).

Prosecution witness Kaufmann testified that block 17 was overcrowded, housing at least 700 inmates, and that the accused's position as block eldest was a difficult one (R 100). This witness further testified that the accused did not have access to any reserve blankets as all available blankets had to be distributed to the inmates (R 101), and that he never heard of the accused killing anyone (R 102).

Reber, an SS sergeant and block leader at Mauthausen from December 1943 to February 1945 (R 319), testified that he knew the accused for four weeks and that the accused had a good reputation among the inmates (R 320). Varge-Arnegol, an inmate from August 1940 to May 1945 (R 333), testified that he knew the accused during the entire period the accused was in Mauthausen (R 333, 334); that the accused in 1945 stole approximately 1,000 pounds of medical supplies from the SS for the inmates (R 348); that the accused did not have a bad reputation among the inmates (R 334); and that he saw the accused slap inmates on the ears because of uncleanness or because the inmates were trying to get more than their proportionate share of the food (R 338). Barcynski testified that he was an inmate at Mauthausen from 1940 to May 1945 (R 350); that he was night tailor and knew the accused from 1944 to 1945; that he never heard anything bad about him; and that he never saw the accused kill anyone (R 350). Blaimuller, a former inmate, testified that he worked in the stone quarry, as a carpenter and as a chimney sweep in Mauthausen; that he knew the accused following 1943; that the accused had a very good reputation among the inmates (R 363); that accused's position as block eldest of block 17 was a very difficult one as the inmates of this block were constantly changing; and that he never heard of any deaths being caused by the accused (R 364), but he did see him once strike inmates for taking food from other inmates at meal time (R 370, 372).

Schoeps, an inmate from 1939 to May 1945 and block eldest and camp eldest part of the time, testified that he knew the accused during his complete stay at Mauthausen and saw the accused every day; that the accused did not have a bad reputation; and that he never saw the accused

accused killing an inmate (R 388).

Keller, a camp eldest from 1942 to the middle of 1943, stated in his Statement that he never heard any complaints from inmates relative to mistreatments by the accused. If the accused administered blows occasionally, it was to keep order and cleanliness and to protect the inmates from a worse punishment by the SS (R 456; D-Ex 1). Two other Statements are to the effect that the accused provided extra food and assured equal distribution of food in his block (R 456; D-Exs 2, 3).

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

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

Recommendation: That the findings and sentence be approved.

2. Karl GIESSRIGL

Nationality:	Austrian
Age:	43
Civilian Status:	Machine locksmith
Party Status:	Nazi applicant
Military Status:	Waffen SS Sergeant
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused testified that he joined the Waffen SS on 16 November 1939; that he <sup>was</sup> transferred to the Mauthausen Concentration Camp on 1 February 1940 as a private and guard in the First Company (R 458); that because of being blind in one eye he could not perform guard duty and was made detail leader of the boiler house in January 1941, which position he retained until May 1943, at which time he was hospitalized in Vienna because of various illnesses; that four and one half months later he returned to Mauthausen, but being physically incapacitated to perform the duties required of a detail leader, he was appointed block leader of block 19 in October 1943 (R 459); and

Block leader of various blocks until February 1945, at which



time he became labor allocation and roll call leader, which position he retained until 5 May 1945 (R 460). He further testified that in April 1945 on four separate occasions he brought 100 inmates dressed in drawers and shirts from camp 3 to the bunker and turned them over to SS Sergeant Niedermeyer. They came from the sick enclosure and were called out for execution. He left them before anything happened to them (R 475-478).

Dotz, an inmate in Mauthausen from 1942 to 5 May 1945, testified that he became acquainted with the accused in 1943 (R 246) when he was block leader; that during April 1945 he saw the accused on five or six occasions lead groups of 50 to 100 Russian, Italian and French inmates, dressed in shirts and pants to the crematory to be gassed; that later a capo told him that these inmates had been gassed (R 247, 248, 252); and that in April 1945 he saw the accused slap an Allied prisoner of war inmate (R 248, 249) and hit the inmate with his fist (R 250).

Milonia, an inmate from January 1942 to December 1942 and from September 1944 until May 1945 in Mauthausen and from December 1942 to September 1944 at subcamps Gros-Raming and St. Valentin (R 256), testified that he became acquainted with the accused in December 1944 as roll call leader (R 257); that in April 1945 he saw the accused hit one of five Allied prisoner of war inmates on the neck, knocking his face into a wall, which made his nose and mouth bleed (R 258); that the accused further participated in beating and kicking these inmates while they were being taken to the crematory; and that he never saw these inmates again, but did see their flying uniforms in the laundry (R 259, 263).

In his Statement, accused BAERENS stated that the accused took part in searching for the inmates who escaped from block 20 (R 265; P-Ex 30, p. 4). In his unsworn pretrial statement, Weber stated that the accused shot two Russians during early 1945, when 400 prisoners of war were recaptured after they had escaped from block 20 and were returned to the laundry; that the accused took part in mistreating many inmates and in leading inmates to the execution place; that on about

1 February 1945 the accused took an active part in mistreating 200 naked inmates behind the laundry. Some froze to death and others were slain (R 264; P-Ex 28). In his Statement, the accused stated that in the winter of 1943-1944 he was ordered to take approximately 80 inmates, in all, on two or three occasions to the cell arrest room. He knew that they were to be executed, but he did not know why or how (R 245; P-Ex 27).

Evidence for Defense: The accused testified that he did not participate in searching for the inmates who escaped from block 20, but remained with the other block leaders in the guard house as an emergency measure in anticipation of a general escape attempt by the inmates (R 461); and that he never shot or killed any inmates or served in the crematory detail (R 461). He further testified that he saw Sergeant Riegler shoot two captured inmates in the neck in the rear of the laundry in February 1945 (R 466, 468, 469); that in February 1945 he heard the camp commander order that the inmates, who were standing by the laundry, be undressed and required to stand there naked all night, but that he immediately left the camp and did not participate in any manner in abusing these inmates (R 472, 473); that in August 1944 he saw 30 to 40 Allied flyers brought into camp and also in April 1945 he saw five or six Allied flyers standing by the guard house; that on this latter occasion he heard an SS lieutenant say that all the flyers would be shot, whereupon he immediately left; and that none of the Allied flyers were mistreated in any manner in his presence (R 474).

Prosecution witness Dodt testified that the accused was one of the best SS men in his treatment of inmates and always treated him "pretty good" (R 251).

Rober identified the accused and testified that they were in daily <sup>and</sup> contact/ that accused had a very good reputation among the inmates. The accused was not present in Mauthausen on the night in February 1945 when 200 inmates were lined up behind the laundry and mistreated (R 320, 321). Vargo-Arnegol, a physician and former inmate, testified that he was assigned to the inmate dispensary and never treated an inmate who had been mistreated by the accused. The accused's reputation was good among the

inmates (R 335). Barcynski testified that he knew the accused from the winter of 1944-1945; that he had a good reputation among the inmates; and that he never heard of the accused killing anyone (R 351). This witness further testified that the accused did not participate in the mistreatment of the 200 inmates who were made to stand by the wall of the laundry all night during the month of February 1945 (R 352).

Bleimuller identified the accused (R 364) and testified that he saw the accused almost daily following 1943; that he never heard of the accused killing anyone; and that the accused had a very good reputation (R 365). Clausen, a former inmate who at the time of the trial was prosecutor in the German denazification court at Dachau, Germany, testified that he knew the accused and saw him almost daily for about 18 to 24 months prior to the liberation; that the accused had a good reputation among the inmates; that he never heard of the accused killing any inmates (R 383, 384); and that he never heard the accused's name mentioned in connection with the mistreatment of the Allied flyers in April 1945 or in connection with any executions by gassing (R 384-386). Schoeps testified that he knew the accused as block aldest, detail leader and roll call leader and saw him often, but never heard of the accused killing any inmates. The accused's reputation was good (R 389, 390). Accused BAERENS in his testimony denied that part of page 6, P-Ex 8, to the effect that he saw the accused shoot captured inmates in the neck behind the laundry (R 423-425).

Two unsworn pretrial statements, bearing the signatures of nine former inmates, are to the effect that the accused was always humane and decent to them (R 484; D-Exs 8, 9).

Sufficiency of Evidence: Austria was a co-belligerent of Germany. The findings of guilty are warranted by the evidence. The sentence is not excessive.

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

Recommendation: That the findings and sentence be approved.

3. Ernst KIRSCHBICHLER

Nationality:	Austrian
Age:	42
Civilian Status:	Construction manager, mason and carpenter
Party Status:	Nazi Party 1938
Military Status:	Waffen SS Technical Sergeant
Flea:	NG
Findings:	G
Sentence:	10 years, commencing 13 March 1947

Evidence for Prosecution: The accused testified that he was drafted into the Waffen SS on 7 September 1939 and two weeks later was transferred to the construction office of Mauthausen as chief of construction (R 487, 281; P-Ex 37, p. 2), which position he retained until 1945 (R 488).

Huber, an inmate from September 1939 to November 1943 (R 282), testified that he was a capo in the construction office in Mauthausen and later a capo in the SS new construction building in Gusen for two and a half years (R 283); that he was acquainted with the accused as a former SS staff sergeant, construction leader and block leader; and that the accused operated his own private construction business in Mauthausen with the use of some inmate labor (R 283, 284). Huber further testified that the accused inspected the construction sites inside the camp where inmate labor was used (R 284); that the accused employed inmates in his private construction business outside the camp; and that relations between the accused and the camp commander were very friendly (R 285, 286).

Dotz testified that he worked on the construction detail and that the accused was in charge of the construction in Mauthausen (R 294); that in March or April 1943 he saw a Russian inmate trying to escape; that after the first shot was fired by the guard, the accused drew his pistol and fired toward the fleeing inmate; that he saw this victim carried away dead, but does not know whether the shot fired by the accused hit the inmate (R 295, 298). This inmate had been beaten prior to the attempt to escape. However, there is no showing that the accused

saw the beating or that the beating and the attempt to escape were closely connected in point of time (R 295, 296). Dot further testified that he did not know the accused at the time of the aforementioned incident, but was later told by a Spanish inmate that it was the accused who drew the pistol and fired (R 295). The same Spaniard told the witness that the accused shot another inmate on an occasion in 1942 (R 296). Nedinovich identified the accused (R 298) and testified that he saw the accused in March 1943 hit a Yugoslav inmate 10 to 30 times with a spade handle. The witness was told that the dead body of this victim was carried to the crematory (R 299, 300, 302). Rehn testified that in 1942 he and several other inmates worked on the private dwelling house of the accused (R 303, 304).

Geiger, a former inmate, testified that he saw the accused in April 1944 participate in lining up 18 inmates near the warehouse, and participate in their execution by shooting (R 609); that he observed the dead bodies of these inmates being carried away on stretchers; that no sentences were read to the victims prior to their execution and that he observed the entire procedure from a distance of 25 meters (R 610). It was common knowledge in the camp that these victims were Czechs (R 611).

Evidence for Defense: The accused testified he never was in charge of construction inside the camp; that he never performed guard duty (R 487, 488); that he never killed any inmates or participated in an execution (R 489, 281; P-Ex 37, p. 3); that on numerous occasions he acted as courier in carrying mail to and from the camp for inmates (R 489); that he carried a small pistol which was a "museum piece" and his personal property and which would not fire (R 488, 489, 495); and that during March or April 1942 he was confined in an insane asylum because of epileptic fits (R 498). The accused further testified that during the last days before the liberation in 1945 he approached the Bishop of Linz and requested him to endeavor to procure speedy assistance for approximately 8,000 of the 14,000 sick inmates of Mauthausen

if speedy medical treatment were furnished. Within a short time after this relief effort by the accused, thousands of packages arrived (R 499).

Kaufmann testified that the accused had a good reputation among the inmates (R 325, 331); that he never saw the accused participate in any executions or carry any type of arms, except a very small pistol (R 326); that he never heard of the accused participating in beating, shooting or mistreating any inmates (R 327, 328); and that in his position, as first medic in the inmate dispensary from April 1942, he would have become aware of mistreatments by the accused had they occurred (R 328, 329). Vargo-Arnogol testified that he never heard of the accused mistreating inmates. The accused had a good reputation (R 336).

Bleimuller testified that he knew the accused following 1942 and saw him several times weekly in Mauthausen; that on one occasion the accused scolded the capos for not safeguarding the sides of a ditch in such a way as to assure they could not collapse on the inmates working therein (R 372, 373); and that he never heard of the accused killing anyone, or serving on an execution detail (R 365, 367). Soswinski, an inmate of Mauthausen from January 1945 to 5 March 1945, testified that he knew the accused during this period (R 446); that he requested the accused to talk to influential people outside of Mauthausen in an effort to gain their sympathy for the inmates, hoping that this would keep the SS from carrying out a rumored plan to exterminate all inmates upon the approach of enemy forces (R 447, 448); and that the accused's reputation was good (R 449). Huber testified that he never knew of the accused mistreating or beating any inmate (R 288).

The Bishop of Linz, in an unsworn pretrial statement, stated that the accused came to him in April 1945 and apprized him of the deplorable conditions existing in Mauthausen and requested him to render assistance in behalf of the inmates (R 501; D-Ex 10). The unsworn pretrial statements of three former inmates are to the effect that the accused from 1940 until the liberation always behaved correctly and humanely toward the inmates (R 502; D-Ex 12; R 503; D-Exs 13, 14). Another former inmate, Becker, stated in an unsworn pretrial statement that the accused

the camp for the inmates from February to May 1945 (R 501; D-Ex 11).

Sufficiency of Evidence: Austria was a co-belligerent of Germany. The Court was warranted from the evidence as to the nature and extent of his participation, especially that as to position, personal use of slave labor and beating, in its findings of guilty. The sentence is not excessive.

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

Recommendation: That the findings and sentence be approved.

4. Werner REINSDORFF

Nationality:	German
Age:	39
Civilian Status:	Master Cabinet Maker
Party Status:	None
Military Status:	SS Private; Capo
Flea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused testified that he worked in the carpentry shop in Mauthausen until 12 February 1942, when he was transferred to Berlin where he remained until 31 August 1942; that thereafter he was transferred back to the carpentry shop at Mauthausen; that he remained there until transferred, as foreman, to the settlement building detail on 16 June 1943; that he was assigned as capo of this detail, which consisted of approximately 1,200 inmates, on 1 September 1943 and retained this position until 13 March 1945 (R 507, 514); that from 13 March to April 1945 he received training in Mauthausen preparatory to becoming a member of the Waffen SS; and that from April 1945 to 5 May 1945 he was on duty as a member of the SS with a combat unit, the Upper Danube Group (R 508, 509).

Diels, an inmate who worked in the kitchen at Mauthausen, testified that he knew the accused, who worked in the settlement construction as

slapped or hit inmates with a stick because they picked up food too quickly or turned a food pot over (R 268, 269). However, the witness never heard of the accused killing any inmate (R 270).

Kricka, stated in his Statement that in April 1945 the accused beat and kicked Polish and Hungarian Jews to death. These victims were unable to board a truck which was to carry them to the Danube for extermination. At the loading of trucks for the transport to the Danube, the accused beat and kicked approximately 20 of these inmates to death (R 275; P-Ex 32). In his unsworn pretrial statement, Belohlevck stated that the accused made numerous punishment reports on inmates. Those reported were sent to the punishment detail. He further stated therein that the accused beat a Czech inmate and put a Polish boy in the punishment cell for refusing the accused's homosexual desires (R 279; P-Ex 34).

Evidence for Defense: The accused testified that he was never in Mauthausen subsequent to 9 April 1945 (R 508, 509); that he did not beat any Jewish inmates being transported to the Danube just prior to the liberation (R 509); and that he was imprisoned in Mauthausen because of statements he had made to the effect that Germany was executing pregnant women (R 510). The accused further testified that he beat a German and a Pole for having homosexual relations; that he slapped five to 10 inmates, including one Russian, for trying to steal food from their fellow inmates (R 515); that he never killed any inmate and was not conscious of any guilt whatsoever with regard to his activities in Mauthausen (R 519, 520).

Barcynsky and Bleimuller, who were formerly inmates of Mauthausen (R 350, 363), testified that they never heard of the accused having killed any inmates (R 353, 367). Barcynsky further testified that he never heard of the accused participating in the killing of any inmate on a Jewish transport to the Danube (R 352, 353). Justus testified that he became acquainted with the accused in 1944 and that the accused joined the Upper Danube Group on 8 April 1945 and remained with it until the end of the war (R 408).



Sufficiency of Evidence: The Court was warranted by the evidence as to the nature and extent of his participation in its findings of guilty. The sentence is not excessive.

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

Recommendation: That the findings and sentence be approved.

5. Michael Peter PUSITZ

Nationality:	Austrian
Age:	36
Civilian Status:	Machine construction technician
Party Status:	Nazi Party 1938
Military Status:	Waffen SS Sergeant
Plea:	NG
Findings:	G
Sentence:	20 years, commencing 1 June 1945

Evidence for Prosecution: The accused testified that he was transferred to Mauthausen as a private in the Waffen SS in September 1940. He was assigned to duty in the armory, where he remained until the liberation (R 522). Schwarz, an inmate clerk in the accused's office from 1942 to 1945, identified the accused as being a former SS corporal in charge of the gun repair shop at Mauthausen (R 138, 139). He testified that the accused issued guns and ammunition to the execution details. He further testified that the accused beat inmates with his hands (R 141). Rohn, a former inmate (R 152), testified that he became acquainted with the accused. He worked for the accused in the armory for three and a half months in 1942 (R 152). He testified that he saw the accused repeatedly beat inmates with his hands and kick them (R 153); that he heard that the accused had a Czech inmate transferred from the armory to the penal group for disagreeing with him (R 153, 156); that he saw the accused on two occasions with the execution squad going toward the execution place wearing a steel helmet; and that on both of those occasions he later heard shots (R 154, 157).

Meyer, an Austrian inmate, testified that he became acquainted with the accused on 14 July 1942, when he and 66 other Austrians arrived at the bath house in Mauthausen (R 160); that at this time the accused participated with other SS men in giving these 67 Austrian inmates hot and cold showers and in mistreating them by beating them with iron rods and oxtails; and that as a result of these mistreatments six of the aforementioned inmates died in the hospital (R 161, 162, 164). Meyer further testified that he saw the accused kick a Belgian inmate until the victim remained lying on the ground. The accused had a very bad reputation (R 161, 162).

Bleimuller identified the accused and testified that he observed from the carpentry shop, approximately 25 meters distance from the execution place, that the accused on at least five separate occasions served on the execution squad as one of the firing detail (R 166, 167). The witness heard from other inmates that the inmates who were executed were Russian, Yugoslav, Czech, Polish and Austrian (R 166, 168). This witness further testified that no court orders were read prior to the executions (R 169). Another former inmate by the name of Kastner identified the accused (R 173) and testified that he beat a Czech inmate with some instrument, perhaps an iron bar or club (R 174, 175); that on another occasion the witness was insulted and kicked by the accused (R 174); and that in February or March 1945 the witness saw the accused beat and kick a sick inmate of unknown nationality as this inmate was going to the inmate dispensary to be treated (R 175). Kulka testified that he saw the accused participate as a member of the execution detail, wearing a steel helmet and carrying a weapon (R 180) and that on at least two other occasions he saw the accused going with the execution squad carrying ammunition boxes and armed with a pistol (R 181, 182).

Kanduth, a former inmate, testified that during the fall of 1940, he saw the accused give ammunition to the execution squad (R 615) and that he saw this execution squad execute 80 Czech inmates (R 614).

This witness further testified that after the execution squad had executed these 80 inmates, they departed; that he saw the

these 80 inmates and fire his pistol indiscriminately into the heads of any bodies which moved or groaned (R 616-619, 621); and that the witness participated in carrying the dead bodies away (R 615-621).

Evidence for Defense: The accused testified that he never served on an execution squad, because his right eye was defective and he had to shoot left-handed; that he was never inside the inmate compound at Mauthausen (R 523); that he was never a block leader and knew nothing about setting up lights for executions (R 524). The accused further testified that he slapped an inmate by the name of Schwartz approximately 10 times for violating the rules of the armory (R 526). On another occasion he slapped an inmate by the name of Danberger (R 527).

Malle, a former SS sergeant, testified that he was the accused's immediate superior in the armory and that he never heard of the accused serving on an execution detail as it would have been impossible as the accused had trouble with his eyes and could not have been used in connection with shootings (R 378). This witness further testified that the accused had no permission to enter the inmate compound (R 378), but that he sometimes sent the accused to the execution place to set up lights (R 381).

Sufficiency of Evidence: Austria was a co-belligerent of Germany. The findings of guilty are warranted by the evidence. The sentence is not excessive.

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

Recommendation: That the findings and sentence be approved.

6. Hans ULLMANN

A nolle prosequi was entered as to this accused without prejudice (R 313).

7. Josef ANTIS

Nationality:	German, born in Yugoslavia
Age:	23
Civilian Status:	Merchant Employee
Party Status:	None

Military Status:	Waffen SS Private
Plea:	NG
Findings:	G
Sentence:	5 years, commencing 15 August 1945

Evidence for Prosecution: The accused testified that he was drafted into the Waffen SS on 21 October 1942 when he was 17 years of age and was sent to Mauthausen Concentration Camp with the rank of SS private, which he retained until the liberation (R 532); that he performed guard duty at Mauthausen from February 1943 until June 1944, at which time he was transferred to the anti-aircraft search defense and he never performed any guard duty thereafter; and that in April 1945 he was transferred to the Upper Danube Group (R 532, 533). The accused further testified that during August or October 1943, while he was on guard duty at Tower No. 1 at subcamp Stahlbau, he saw a Russian inmate running across the line of sentries; that he fired one shot and the inmate dropped and remained lying on the ground; that shortly thereafter he reported this incident to SS Technical Sergeant Lankanke, who was passing by in company with a capo; that the sergeant and capo approached the inmate who then jumped up and ran; that the capo caught the inmate and hit him a few times in the mouth, making him collapse; that the sergeant then ordered the accused to shoot; that the accused fired a second shot, but he did not know whether either of his shots struck the victim; and that the sergeant then went over to the inmate and fired two shots with his pistol. The dead body of the victim was carried to the camp when his detail returned (R 533, 534, 540). The accused further testified that the shots fired by the technical sergeant killed the victim. The accused, in a Statement, stated that an incident happened substantially the same as the aforementioned incident (R 243; P-Ex 24).

The Statement of Neumann is to the effect that he saw the accused and another SS man beat a Polish Jew on the head, neck and private parts with a wooden stick until he died. This incident is alleged to have happened in March or April 1947 (obviously the witness meant 1945)

he saw the accused beat inmates in the stone quarry with a stick; that the accused said to all inmates who pleaded for mercy, "I will beat you until you will be dead, you dog"; and that maybe some "would have died unless the American army had approached" (R 623; P-Ex 48).

The book of unnatural deaths reveals that an SS guard by the name of Josef Antis shot a Russian inmate who died on 13 October 1943 (R 243, 49; P-Ex 7, pp. 28, 29).

Evidence for Defense: The accused testified that he did not go into the compound of Mauthausen Concentration Camp after he was transferred in June 1944 to the anti-aircraft search unit (R 533). The accused stated in his Statement that he never beat any inmate and can conceive of no reason why any witnesses would say that he had mistreated inmates (R 243; P-Ex 24).

Justus testified that he was an SS corporal with the airplane spotters at Mauthausen Concentration Camp from the spring of 1944 until 8 April 1945 at which time he was transferred to the Upper Danube Group (R 406); that the accused was transferred to his group as an airplane spotter in the spring of 1944 and continued working with him until the liberation; that during this entire period he was the superior of the accused; and that the accused did not perform any guard duty (R 407). This witness further testified that a group of inmates escaped in January or February 1945 but the accused did not participate in the search for these inmates because he had to continue his duties as airplane spotter (R 407).

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

Petitions: No Petition for Review was filed. Petitions for Clemency were filed by Josef Mayer, 7 January 1948, and accused's parents, Josef and Agneza Antis, undated.

Recommendation: That the findings and sentence be approved.

6. Johann GRETSCH

This accused was acquitted (R 317).

9. Adam DIEMER

This accused was acquitted (R 628).

10. Josef BLOH

Nationality:	Yugoslav
Age:	39
Civilian Status:	Farm laborer
Party Status:	None
Military Status:	Waffen SS Private First Class
Plea:	WG
Findings:	G
Sentence:	30 years, commencing 8 May 1945

Evidence for Prosecution: The accused testified that he joined the SS and was transferred to Mauthausen Concentration Camp on 6 October 1943 as an SS private (R 544). After he completed his training, he performed guard duty until March 1945 and then was transferred to combat duty. In September 1944 he was accompanying a work detail outside the camp as a guard (R 545).

Naftali Werberger, an inmate, stated in a Statement that he saw the accused in September 1944 in subcamp Melk when the accused found a Hungarian Jewish inmate putting paper from a cement bag into his shoes. The accused then put the inmate's head into the cement bag and suffocated him. The witness assisted in carrying the dead body of the inmate to the infirmary (R 308; P-Ex 40).

The Statement of Pinkas Werberger is substantially to the same effect (R 309; P-Ex 41).

The book listing unnatural deaths reflects that death resulted to a Polish Jew on 24 November 1943 because of being shot by an SS guard by the name of Josef BLOH (R 307, 49; P-Ex 7, pp. 32, 33).

Evidence for Defense: The accused testified that he was a Yugoslav and that he could not read or write (R 544). He further testified that he was never stationed at subcamp Melk and never put anybody's head into a cement bag (R 545). While he was a guard on a tower at the Vienna Ditch

called to the accused, "A prisoner is trying to escape, shoot him". While trying to get his machine pistol off his shoulder, he discharged two rounds into the air, at which time the inmate turned to come back through the line of sentries, whereupon the detail leader again called to the accused, "Shoot him", whereupon he told the detail leader, "I cannot do it". The detail leader then shot the victim himself. He put down the accused's name, age and birthplace and reported him (R 545, 546, 550-555). The accused stated substantially the same thing in his Statements (R 307; P-Ex 39; R 559; P-Ex 47, p. 2). He further testified that he shouted at the inmate before the shots were fired (R 550).

Sufficiency of Evidence: The Court was warranted from the evidence in its findings of guilty. However, even if the accused shot an inmate, the evidence indicates that he was attempting to escape. The small amount of evidence as to the suffocation of an inmate in a cement bag is not persuasive. The sentence is excessive.

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

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for 3 years.

11. Rudolf MUECK

Nationality:	Austrian
Age:	46
Civilian Status:	Book Handler
Party Status:	Nazi Party, 1938
Military Status:	Waffen SS Sergeant
Flea:	NG
Findings:	G
Sentence:	25 years, commencing 5 May 1945

Evidence for Prosecution: The accused testified that he was drafted into the SS on 3 January 1940 as a private (R 560); that he came to Mauthausen about 1 February 1940 where he performed guard duty for one and one half years as a member of the Second Guard Company. At the

as assistant clerk where he remained until the liberation (A 201, 202). He further testified that, upon the arrival of inmates, he supervised the collection of their property (A 563, 564); that he knew inmates were beaten with oxtail whips and other objects by the Camp Commander and other SS officers; that he often saw inmates who appeared to be only skin and bones when they arrived; and that he may have, on occasions, struck new arrivals because they tried to smuggle some contraband into camp (A 566, 568). The accused further testified that "If they say I beat hundreds, then I beat hundreds; if they say I beat thousands, then I beat thousands" (A 207) and that he participated in a search action in February, 1943 for Russians who had escaped (A 563).

Wensner, an inmate, testified that on 8 August 1944, 35 to 40 French, Yugoslavian and Czech inmates were brought into Mauthausen Concentration Camp, undressed, and were required to stand in front of the Political Department for one day (A 205) and that during this time the accused participated in mistreating these inmates by kicking and beating them with a stick or rubber truncheon. It was reported to the dental station, where the witness worked, that several of these victims died (A 206). In 1942 or 1943 he saw the accused on several occasions with the execution squad, the members of which wore steel helmets (A 207). Kulka identified the accused and testified that he saw him on at least two occasions in 1942 or 1943, wearing a steel helmet and carrying a machine pistol, with the execution squad and that the inmates who were executed were Poles, Czechs, Russians and Yugoslavs (A 215). The accused, while relieving newly arrived inmates of their valuables, beat them with his fists and kicked them to such an extent that some remained lying on the ground (A 216, 217). Bleimuller testified that he frequently saw the accused strike newly arrived inmates with his hands and with an oxtail whip as they were being relieved of their watches and other valuables in the valuables room, where the accused worked (A 219) and that he witnessed the accused in July 1942 participate in the mistreatment of 67 Austrian inmates by beating them with an oxtail and throwing some of them down a flight of stairs leading to the bathroom. As a result of



this treatment four or five supposedly died. This witness further testified that he learned the following morning from a block clerk that six of the aforementioned inmates had been shot in the bunker (R 220, 221, 225, 226). In April 1945 he saw the accused convert a few bars of Red Cross chocolate to his own use (R 221, 222).

Diels, an inmate of Mauthausen from 1940 until April 1945 (R 227), identified the accused and testified that he saw the accused while supervising newly arrived inmates of various nationalities, including Austrians, Spaniards and Poles, beat them with wooden shoes and an oxtail whip in the bath house (R 228, 229). Some of these mistreated victims later died (R 230). Meyer substantiated Bleimuller's testimony relative to the mistreatment of 60 odd Austrian inmates (R 235, 236) and further testified that he saw the accused beat inmates of various nationalities with a wooden truncheon until they bled (R 237). The witness was told by inmates working in the dispensary that several groups were treated for injuries sustained from mistreatments by the accused (R 237). Accused WEINSDORFF, in a Statement, stated that the accused was very brutal to the inmates and very often beat new arrivals until they bled (R 242; P-Ex 23). Klein, in an unsworn pretrial statement, stated that the accused regularly hit new arrivals over the head and body with a club, particularly while they were taking showers. This resulted, in many instances, in serious injuries (R 241; P-Ex 22).

Evidence for Defense: The accused testified that he never beat or shot an inmate to death and never beat anyone with an oxtail whip, but that he did carry a stick which he used once to beat a new arrival on his buttocks (R 565). He never served on an escort on detail and never performed guard duty after being transferred to the property room (R 562). He further testified that the officers were chiefly responsible for the mistreatment of the inmates, but he was used as the one to bear the guilt (R 566). He never beat any inmate hard enough to draw blood or to require treatment in the infirmary (R 569). He recalled the case of the arrival of 60 odd Austrian inmates, but testified that he knew nothing about any of them being killed the night of their arrival and, "Nobody

was dying and nobody was dead, as far as I know" (A 571, 572). Frequently when large groups of inmates arrived, the old German inmates mingled with the new ones and stole their valuables. On several occasions it was necessary for the accused to administer slaps to these old inmates in order to protect the new arrivals. Often new arrivals lay on the ground because they were tired or sleepy (A 565, 567, 568).

Sufficiency of Evidence: Austria was a co-belligerent of Germany. The findings of guilty are warranted by the evidence. The sentence is not excessive.

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

Recommendation: That the findings and sentence be approved.

12. Filipp HEHL

Nationality:	Yugoslav
Age:	39
Civilian Status:	Cabinet Maker
Party Status:	None
Military Status:	Waffen SS
Plea:	NG
Findings:	G
Sentence:	25 years, commencing 28 June 1945

Evidence for Prosecution: The accused testified that he joined the Waffen SS on 6 October 1943 and was transferred to Mauthausen Concentration Camp on 10 October 1943, where he remained until 27 February 1944 when he was transferred to Redl-Zipf. He remained at Redl-Zipf until the middle of September 1944 when he returned to Mauthausen for two days, after which he was transferred to subcamp Linz (A 578). In September 1944 he was performing guard duty on Tower No. 12 at Mauthausen Concentration Camp adjacent to the Vienna Ditch (stone quarry) when he heard "Halt" shouted a few times by guards standing between Towers 11 and 12; that he saw three inmates coming up the stairs from the Vienna Ditch running toward the wire fence; that they ignored the command to halt, went through the wire fence and tried to hide in some tall grass. At

this time the guards between the towers and on Tower No. 11 fired and the detail leader shouted to the accused, "Guard, shoot". He testified that he fired two or three rounds and shortly thereafter was relieved and went to the Political Department (R 578-580) and that when he and two other guards arrived at the Political Department, the guards were immediately ordered out of the room. This incident was written up in a statement, which was read to the accused by a noncommissioned officer, the accused being unable to read German. An SS lieutenant who was present shouted at the accused and made him sign this statement (R 593, 594).

Dietl, testified that the following named former inmates of Mauthausen Concentration Camp, to wit, Stadler, Wagner, and Kainz whose names are registered in the book of unnatural deaths as being German prisoners (R 183, 184) were known to him and that they were actually of Austrian nationality (R 185, 186). This book of unnatural deaths reflects that a person by the name of Phillip HEHL shot the three mentioned inmates on 18 September 1944 (R 183, 184, 49; P-Ex 7). The witness further testified that on 7 September 1944 he and the three aforementioned Austrian inmates arrived in Mauthausen Concentration Camp in a transport composed of 14 persons (R 185); that they were made to stand until 11 September 1944 (R 186); that all 14 were assigned to the penal company on 18 September 1944 and went to work at 1330 hours in the Vienna Ditch, dressed only in undershorts (R 187, 188); and that during the same day he saw the dead body of the aforementioned Stadler, where he had been shot to death at the top of the steps leading out of the Vienna Ditch. He was inside the guard chain (R 189, 190). He saw the aforementioned inmate, Wagner, shot to death in the Vienna Ditch after he had dropped a stone which he was carrying. Before the shooting he was kicked and beaten by a capo. The victim was not attempting to escape. On the first afternoon that they worked, nine of the 14 inmates were killed (R 190, 191, 193). On the same day the witness saw Kainz's dead body at the top of the Vienna Ditch but he was not there when Kainz was killed

dead bodies of the three Austrian victims in the crematory (R 193). The accused, in two Statements, stated substantially the same facts as he did in his testimony relative to his participation in the shooting of three Austrian inmates (R 201; P-Ex 19; R 202; P-Ex 20).

Evidence for Defense: The accused testified that he had papers authorizing his furlough when he arrived at Mauthausen and he had to pick up ration cards and railway tickets there. During the delay he was placed on tower guard duty (R 581-584). During his previous stay at Mauthausen he might have served as guard at the Vienna Ditch once or twice, but he never heard of a punishment company (R 598). The accused testified relative to the incident involving the three Austrian inmates that escape by them was feasible because the fence was made of loose wire, the woods were close and the brush and grass were high (R 588); that they were warned to "Halt" and the accused said "don't be so stupid, go back" (R 590); that warning shots were fired by other guards (R 591, 592); and that the inmates were outside of the wire before he fired (R 591). Three other guards also fired (R 587). When he noticed the inmates they were running toward the fence (R 589) and were not carrying stones (R 590). He could not state whether the inmates were dead (R 594). The accused stated in his Statement that he was in tower 12 at the Vienna Ditch. In the afternoon three inmates ran out and were shot. Three other guards also fired at them and when he fired the inmates had already fallen (R 201; P-Ex 19). In an earlier Statement, the accused stated that he came to Mauthausen to get a furlough and was placed on guard duty at the Vienna Ditch on tower 12 for one day (R 202; P-Ex 20).

Dietsl testified that the shootings he witnessed were not by a tower guard (R 188, 190, 200). Stadler went out of the quarry without a rock before he was shot (R 189, 196). On cross-examination, he testified all were shot by the same guard in no more than a minute (R 195).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. However, there is credible evidence that the three inmates who were shot by the accused were attempting to escape. The sentence is

Petitions: No Petition for Review was filed. Petitions for Clemency were filed by accused's wife, Mrs. Elisabeth Hehl, 5 February 1948 and by G. Husser, K. Duerr, S. Duerr II and W. Lang III on 26 January 1948.

recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for 3 years.

V. QUESTIONS OF LAW:

Universality of Jurisdiction Over War Crimes: Accused KIRSCHBICHLER, GEISSRIGL, PUSITZ and MUECK are Austrian nationals and accused BLOH and HEHL are Yugoslavs. A validly constituted court of an independent state derives its power from the state. A state is independent of all other states in the exercise of its judicial power, except where restricted by the law of nations (S.S. Lotus, France v. Turkey, 2 Hudson World Court reports 23). Concerning punishment for a crime of the type involved in the instant case, it has been stated that the sovereign power of a state extends "to the punishment of piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed" (Wheaton's "International Law", Sixth Edition, Volume I, page 269). Recognition of this sovereign power is contained in the provision of the Constitution of the United States which confers upon Congress power "to define and punish offenses against the law of nations," (Winthrop, "Military Laws and Precedents", Second Edition, Reprint 1920, page 831).

Any violation of the law of nations encroaches upon and injures the interests of all sovereign states. Whether the power to punish for such crimes will be exercised in a particular case is a matter resting within the discretion of a state. However, it is axiomatic that a state, adhering to the law of war which forms a part of the law of nations, is interested in the preservation and the enforcement thereof. This is true, irrespective of when or where the crime was committed, the belligerency or non-belligerency status of the punishing power, or the nationality of the victims. ("Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pages 177-218; "Law reports of Trials of War Criminals", by United Nations War Crimes Commission, 1947, hereinafter referred to as

"Law reports", Volume I, pages 41, 42, 43, 103; United States v. Klein, et al., Hadamar Murder Factory Case, opinion DJAWC, February 1946; United States v. Weiss, et al., Dachau Concentration Camp Case, opinion DJAWC, March 1946; United States v. Becker, et al., Flossenburg Concentration Camp Case, opinion DJAWC, May 1947; United States v. Brust, opinion DJAWC, September 1947; and United States v. Otto, opinion DJAWC, July 1947.) A British court sitting in Singapore tried Tomono Shimio of the Japanese army and sentenced him to death by hanging for illegally killing American prisoners of war at Saigon, French Indo-China (Law reports, Volume II, page 128).

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 the Parent Case). All of 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 proceedings, in concluding as to them that they participated to a substantial degree. The nature and extent of their participation were such as to warrant the sentences imposed except the sentences imposed as to accused BLOH and HEHL as indicated in Section IV, supra.

Lieutenant Colonel Eric M. McGaffey, an appointed member of the Court, was absent without explanation in the record, but a quorum including a legally trained member was present throughout the trial.

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

to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved, but that the sentence as to BLOH be reduced to imprisonment for 3 years, and that the sentence as to HEHL be reduced to imprisonment for 3 years.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

WILLIAM A. OATES  
Major CAC  
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