

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

27 February 1948

UNITED STATES )  
                  v.                    )  
Josef BARTL, et al.                    )

Case No. 000-50-5-24

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 29 July-5 August 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Josef BARTL, Philipp BECK, Walter BLUME, Max BOBROWSKI, Oscar Eduard DORFLEB, Ernst LORENZ, Edward OHNMACHT, Konrad VOLGGER, Johann ZIEMER, Herman ZULEGER, 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, Grossraming, 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, Jugoslavs, 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.

III. SUMMARY OF EVIDENCE: All of the convicted accused, with the exception of accused OHNMACHT and ZULEGER, were members of the SS at Linz III, a subcamp of Mauthausen Concentration Camp, for considerable periods of time between the dates alleged and were shown to have participated as guards in the Mauthausen Concentration Camp mass atrocity. Included among inmates of the subcamp were political inmates from France, Poland, Russia and Italy. Accused OHNMACHT and ZULEGER were civilian foremen at the

Hermann Goering Plant located in the vicinity of the subcamp. The inmates of the subcamp worked as slave laborers on various details in the plant. In addition to general participation in the execution of the common design, each of the convicted accused participated in beating, mistreating or killing inmates of the subcamp. Prosecution's P-Ex 2 (d 19) is a certified copy of the charge, particulars, findings and sentences of the Parent Mauthausen Concentration Camp Case (United States v. Altfuldisch, et al., 000-50-5, opinion DJAWC, February 1947, hereinafter referred to as the "Parent Case", see Section V, post).

#### IV. EVIDENCE AND RECOMMENDATIONS:

##### 1. Josef BaCTL

Nationality:	German
Age:	29
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS Corporal
Flea:	NG
Findings:	G
Sentence:	3 years, commencing 5 May 1945

Evidence for Prosecution: The accused was an SS guard at Linz III, a subcamp of Mauthausen Concentration Camp, from 1 November 1944 to 21 December 1944. He was assigned to the Waffen SS from 15 September 1943 to 5 May 1945 (d 20; P-Ex 3A).

A witness, a former inmate of the subcamp, testified that in November or December 1944 he was a member of the BW I detail and that the accused was assigned as a guard to this detail. The detail made parts for tanks and other vehicles (d 47, 48, 51). During this period while the inmates on this detail were engaged at work, from a distance of 10 to 15 meters he saw the accused beat an inmate with his fist and the butt of his rifle. As a result of the beating, the victim was covered with bruises and was unable to work for a few days. The victim was identified as Polish. The accused was especially brutal toward Jews (d 51, 52).

Evidence for Defense: The accused declined to testify (R 225). In his extrajudicial sworn statement, the accused denied that he was a guard on escort details; and denied that he saw or heard <sup>of</sup> the other guards beating or mistreating inmates (R 132; P-Ex 15A).

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. Philipp BECK

Nationality:	German
Age:	33
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS Private First Class
Plea:	NG
Findings:	G
Sentence:	5 years, commencing 6 May 1945

Evidence for Prosecution: The accused was an SS guard at Camp Linz III, a subcamp of Mauthausen Concentration Camp, from 5 July 1944 to 2 April 1945. He was assigned to the Waffen SS from 25 September 1943 to 6 May 1945 (R 21; P-Ex 4A). He was assigned as a guard on the escort detail, escorting inmates to and from work at the Hermann Goering Plant, located in the vicinity of the subcamp. (R 133; P-Ex 16A).

A witness, a former inmate of the subcamp, testified that in January or February 1945 the accused ~~and accused~~ LORENZ were members of the guard detail escorting inmates to and from work. On one occasion, as the inmates were marching under a railroad bridge on their way to work, the accused and accused LORENZ beat the inmates with their rifles (R 111). The accused belonged <sup>to</sup> the group of young guards who were greatly feared by the inmates (R 114, 115).

Evidence for Defense: The accused testified that he was assigned as a guard at Linz III on 28 August 1944. He denied that he knew accused LORENZ during the time he was at Linz III (R 201, 203). He testified that he saw accused LORENZ for the first time in Dachau (R 202, 204). He denied that he escorted inmates together with accused LORENZ under a railroad bridge. He also denied that he beat and mistreated inmates together with accused LORENZ on that occasion. He admitted that he escorted inmates under a railroad bridge on the way to work (R 202). He also admitted he was assigned as a guard on the railroad detail (R 205). He further denied beating any of the inmates on his detail, and testified that he never saw or heard of other guards beating inmates (R 205). The accused made similar denials in his extrajudicial sworn statement (R 133; P-Ex 16A).

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.

3. Walter BLUM

Nationality:	German
Age:	47
Civilian Status:	Unknown
Party Status:	Member of Nazi Party, 1943 to 1945
Military Status:	Luftwaffe, 1939 to 1944; Waffen SS Technical Sergeant
Plea:	NC
Findings:	G
Sentence:	10 years, commencing 8 May 1945

Evidence for Prosecution: The accused was an SS guard at Linz III, a subcamp of Mauthausen Concentration Camp, from 1 November 1944 to 5 May 1945 (R 21; P-Ex 5A). He was also a member of the Waffen SS from 25 September 1944 to 8 May 1945. He was a sergeant of the guard and escorted the inmates to and from work. He also formed and supervised the guard chain around the plant during the time the inmates were at work (R 133;

One witness, a former inmate of the subcamp, testified that in January or February 1945, at a distance of about 20 meters, he saw the accused beat a Russian inmate with a cable until the inmate fell unconscious. The accused procured the cable from a capo. The mistreatment occurred during the noon day meal in the electrical workshop because the inmate had asked for more food. Later, the inmate got up but was unable to work. That evening the witness saw two other inmates help the victim back to camp. Late in the evening of that day the witness saw the victim dead on his bunk in the barrack (R 33, 34).

A second witness, a former inmate of the subcamp, stated in his extrajudicial sworn statement that during the escort of the inmates to and from work at the Hermann Goering Plant the accused engaged in the practice of beating inmates with the butt of his rifle (R 130; P-Ex 13).

Evidence for Defense: The accused testified that he was sergeant of the guard and detail leader at Linz III (R 183). He denied that he beat an inmate during the noon meal inasmuch as he did not serve food to the inmates. This was the duty of the capo. He served food only to the guards. He also denied mistreating inmates with the butt of his rifle during the escort to and from work. He further testified that as sergeant of the guard he did not carry a rifle (R 184, 185). He denied that he beat any of the inmates and denied that any of the guards on his detail beat inmates (R 193). He admitted that he had a guard detail in the electrical workshop (R 187). He made similar denials in his extrajudicial sworn statement (R 133; P-Ex 17A).

Sufficiency of Evidence: The Court was warranted from the evidence as to the nature and extent of his participation, particularly that as to his position and beatings by him, in its findings of guilty. The sentence is not excessive.

Petitions: No Petitions for review were filed. Petitions for Clemency were filed by accused, 15 August 1947 and 13 October 1947.

Recommendation: That the findings and sentence be approved.

4. Max BOBROWSKI

Nationality:	German
Age:	57
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS; Waffen SS Sergeant
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 5 May 1945

Evidence for Prosecution: The accused was an SS guard at Linz III, a subcamp of Mauthausen Concentration Camp, from August 1944 to 5 May 1945. He served in the Waffen SS from 16 March 1942 to 5 May 1945 (R 21; P-Ex 6A). He was assigned as a guard on the escort detail, escorting inmates to and from work at the plant. During the time the inmates were at work he was assigned as a guard to the guard chain (R 135; P-Ex 18A).

A witness, a former Polish inmate of the subcamp, testified that the accused was a guard on his escort detail (R 62, 63). In February or March 1945, during an escort of the inmates from work, the accused struck him several times on the neck with the butt of his rifle as he bent down to lace his shoe. As a result of this mistreatment, he suffered severe pains for a period of about a month. The accused made a practice of beating inmates (R 63).

Evidence for Defense: The accused declined to testify (R 224, 225). In his extrajudicial sworn statement, the accused denied that he beat or mistreated inmates and denied that he saw or heard of other guards beating or mistreating inmates (R 135; P-Ex 18A).

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.

5. Oscar Eduard DORFLER

Nationality:	German
Age:	46
Civilian Status:	Unknown
Party Status:	Member of Nazi Party, 1939 to 1945
Military Status:	Wehrmacht, 1941 to 1944; Waffen SS Corporal
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 5 May 1945

Evidence for Prosecution: The accused was a SS corporal and guard at Linz III, a subcamp of Mauthausen Concentration Camp, from 22 June 1944 to 5 May 1945. He also was a member of the Waffen SS from 1 September 1944 to 5 May 1945 (R 21; P-Exs 7, 7A). The inmates of the subcamp included many Jews, Poles, Russians, Frenchmen, and Italians (R 138, 141; P-Exs 21A, p. 1, 24A). They were employed as slave laborers in the Hermann Goering Plant located in the vicinity of the subcamp. The accused was assigned as a guard to the escort detail, escorting inmates to and from work at the plant (R 136, 220; P-Ex 19A).

A witness, a former Polish inmate of the subcamp, testified that the accused was assigned to his detail as a guard on several occasions. The accused escorted the inmates to and from work. In January or February 1945, on the occasion of an air raid, he saw the accused beat inmates who were proceeding into the air raid shelter. The accused was standing at the entrance of the shelter. The accused also beat the witness. The inmates beaten by the accused were Polish, French, Russian, and Italian. As a result of the beating administered by the accused, the witness suffered severe pains in the right side for several days. The witness also saw the accused beat and mistreat inmates regularly during the marches to and from work (R 31, 32).

Evidence for Defense: The accused declined to testify (R 223). In his extrajudicial sworn statement, the accused denied that he beat or mistreated inmates; denied that he saw or heard that other guards beat inmates; and stated that he did not beat inmates.

to the air raid shelter (R 136; P-Ex 19A).

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.

6. Ernst LORENZ

Nationality:	German
Age:	22
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Wehrmacht; Waffen SS Private
File:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was an SS guard at Linz III, a subcamp of Mauthausen Concentration Camp, from 29 August 1944 to 8 April 1945. He was assigned to the Waffen SS from 27 August 1944 to 6 May 1945. He served as a guard on an inmate transport from Mauthausen Concentration Camp to subcamp Linz III on 29 August 1944 (R 23; P-Ex 8A). He escorted the inmates to and from work on various details, e.g., electrical workshop, BW I, and BW II details. The inmates on the BW I and BW II details made tank and gun parts. During the time the inmates were at work he was assigned as a guard in the guard chain (R 35, 48, 100, 137; P-Ex 20A).

One witness, a former inmate of the subcamp, testified that in January or February 1945, the accused was an escort guard on the electrical workshop detail. He saw the accused beat inmates quite often during the escort to and from work (R 35, 36).

A second witness, a former inmate of the subcamp, testified that the accused was a guard on his detail, BW I, several times. This detail was engaged in making tank parts. In February 1945, during the night shift of the detail, an air raid alarm sounded and the inmates were ordered to the air raid shelter. At a distance of about five to eight meters, he



saw the accused beat an elderly inmate with the butt of his rifle because of the inmate's inability to walk fast. The witness and another inmate carried the victim to the air raid shelter. He was covered with bruises. The next morning the victim was taken to the dispensary. About seven or eight days later the witness was told by the block clerk that the victim had died the day before. The victim was identified as a Pole, one Israel Szpitzman (R 48, 49). The accused always beat inmates during the escort to and from work. He beat the witness very often (R 50).

A third witness, a former inmate of the subcamp, testified that the accused served as a guard on his detail about 10 or 15 times (R 60). In February or March 1945, while the inmates on the night shift were being escorted back to camp, the accused deliberately disorganized the march column so as to have an excuse to beat them. On this occasion the witness saw the accused beat an inmate to the ground with the butt of his rifle. Other inmates in the march column carried the victim to camp. The victim was covered with bruises and complained of pains in the side which impeded movement. The victim was identified as a Pole, one Gamski. The accused beat inmates on the work details on other occasions (R 61, 62).

A fourth witness, a former inmate of the subcamp, testified that the accused was a guard on his detail, BW II, about 10 or 15 times. The detail was engaged in welding gun parts (R 100). In September 1944, the accused beat inmates on the railroad unloading detail to increase the rate of work (R 101). On cross-examination the witness admitted that, during the "line-up" of the accused herein at Dachau, he told the accused he had nothing against him. He admitted that he lied in that conversation with the accused (R 101-103).

A fifth witness, a former inmate of the subcamp, testified that the accused and accused BECK were guards on his detail. In January or February 1945, while the detail was proceeding under a railroad bridge on the way to work, the accused and accused BECK beat the inmates with the butt of their rifles. The accused beat an inmate marching in front of the witness, a Frenchman, identified as Shapiro. As a result of the mistreatment, the victim was knocked to the ground. The next morning the witness saw the

corpse of the victim lying next to the door in the block (R 111-114). On this occasion the accused also beat the witness and broke two ribs on the right side of his body (R 112).

The accused was a member of a group of young guards who frequently beat inmates during the escort to and from work (R 50). The young guards had the worse reputation for brutality (R 101, 114, 115).

Evidence for Defense: The accused testified that he was a guard in subcamp Linz III following 29 August 1944. He denied that he knew accused BECK in the subcamp. He also denied that he was ever on a guard detail with accused BECK; denied that he beat or mistreated inmates during the escort; denied that any guards on his detail mistreated or beat inmates; and denied that he saw any inmates carried during escort to and from work (R 194-198). The accused made similar denials in his extrajudicial sworn statement (R 136; P-Ex 20A).

Sufficiency of Evidence: The Court was warranted from the evidence as to the nature and extent of his participation, especially that as to his frequent extreme violence toward the inmates by beating with a rifle butt, 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.

7. Edward OHNMECHT

Nationality:	German
Age:	36
Civilian Status:	Civilian Foreman, Hermann Goering Plant, Linz
Party Status:	SA, 1942 to 1945
military Status:	Luftwaffe, 1942 to 1943
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 9 May 1945

Evidence for Prosecution: The accused was the civilian foreman on the steel construction detail in the Hermann Goering Plant, Linz, from

April 1944 to ~~May~~ 1945 (R 22; P-Ex 9A). This detail manufactured small parts for tanks. During this period, inmates from Linz III were used as slave laborers in the plant. There were from 180 to 200 inmates under his supervision. He distributed and supervised the work of the inmates and was responsible for production (R 138; P-Ex 21A, p. 1).

One witness, a former inmate of the subcamp, testified that during the course of his duties at the plant he saw the accused almost daily (R 73, 74). In March 1945, at a distance of from 15 to 18 meters, he saw the accused slap the face of an inmate two or three times and then kick him. The accused reported the victim to the detail leader who thereupon beat him to the ground. The detail leader continued to kick him. The victim got up and went into the factory after the lapse of a little time. Shortly thereafter during an air raid, the witness and another inmate helped the victim back to camp. The victim told the witness he had been kicked in the kidneys and genitals by the detail leader. The victim did not go back to work but was sent to the dispensary by the block orderly. Two or three days after the incident the witness made inquiry at the dispensary concerning the victim. The dispensary clerk told him the victim had died. The victim was identified as a Pole (R 74, 75). Occasionally the accused hit and kicked inmates (R 75).

A second witness, a former inmate of the subcamp, testified that he worked on the steel construction detail under the accused's supervision (R 84, 85). In the winter of 1945, the inmates were unloading boxes containing iron, rivets, etc., from a railroad car. At a distance of one meter he saw the accused slap a Russian inmate twice in the face because the unloading was proceeding too slowly (R 85). The accused led the victim to the detail leader. About <sup>a</sup>half hour later the victim returned and told him the detail leader had given him 50 strokes on the buttocks. As a result of the beating the victim was unable to work for three or four days. The accused frequently beat inmates, but the beatings were not described as severe (R 86).

A third witness stated in his extrajudicial sworn statement that in March 1945, he saw the accused beat a Jewish inmate until he collapsed.

The accused reported the victim to the detail leader who finished him off with a rubber stick. As a result of the beating the victim died (R 131; P-Ex 14A).

In his extrajudicial sworn statement, the accused admitted that he slapped inmates and reported them to the capo. However, none of the inmates who were reported were beaten by the capo. They were reprimanded (R 138; P-Ex-21A, p. 3).

Evidence for Defense: The accused testified that he was the foreman of the steel construction detail (R 208, 209); that he slapped about 10 inmates for violation of work regulations; that these inmates were reported to the capo with a request that the latter inform the inmates to obey the regulations; and that he gave the inmates he mistreated extra bonuses and bread (R 209).

One witness, a former foreman of the steel construction detail with the accused, testified that he saw the accused slap inmates who were loafing. After such mistreatment the accused would repent and give them extra rations (R 150-152).

Two witnesses, one a former camp clerk of the subcamp and the other a former capo, testified that the steel construction detail was considered the best and the inmates requested assignment to it (R 155, 158, 173). The former camp clerk further testified that all reports of death by violence came through his office; that no such report came in from the accused's detail; and that the accused never submitted a punishment report on any inmate (R 156, 157). The former capo testified that he saw the accused slap inmates, but that he never reported an inmate to the camp authority (R 173, 174).

Sufficiency of Evidence: The Court was warranted from the evidence as to the nature and extent of his participation, particularly that relative to beatings by him and at his instigation, in its findings of guilty. The sentence is not excessive.

Petitions: No Petitions for Review were filed. A Petition for Clemency was filed by accused, 20 September 1947.

8. Konrad VOLGGER

Nationality:	Austrian
Age:	36
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Wehrmacht; Waffen SS Corporal
Plen:	NG
Findings:	G
Sentence:	10 years, commencing 8 May 1945

Evidence for Prosecution: The accused was an SS guard at Linz III, a subcamp of Mauthausen Concentration Camp, from 1 September 1944 to 5 May 1945. He was also a member of the Waffen SS from 1 September 1944 to 5 May 1945. He was assigned as a guard on the escort detail, escorting inmates to and from work at the Hermann Goering Plant. During the time the inmates were at work he was assigned as a guard in the guard chain. He also served as a guard on an inmate transport from Mauthausen Concentration Camp to Linz, 1 September 1944. The transport was comprised of approximately 1000 inmates and about 100-150 guards (R 22, 139; P-Exs 10a, 22a).

A witness, a former inmate of the subcamp, testified that in January 1945 the accused was on duty as a guard on the night shift in the electrical workshop (R 26, 27). At a distance of from 15 to 18 meters, he saw the accused beat two inmates on this detail with his rifle. He beat them until they were unable to talk. As a result of the beating the victims were unable to continue to work. The next morning other inmates carried the victims back to camp. They were taken to the dispensary. That evening one of the victims reported back to work. On the second day after the incident, the witness saw the victim who had reported back to work lying dead on his bunk in the barrack. The body was taken to the morgue. The victim was identified as a Pole. Three days after the incident, the witness saw the corpse of the other victim as it was carried out of the barrack (R 27, 28). This victim was also identified as a Pole (R 29). The accused frequently beat inmates during the escort to and from work (R 30).

Evidence for Defense: The accused declined to testify (R 224). In his extrajudicial sworn statement, the accused denied that he beat any of the inmates; denied that he ever saw any of the guards beat or mistreat inmates on the escort to and from work; and denied that he ever heard of any inmates of the subcamp being mistreated (R 139; P-Ex 22A).

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 in its findings of guilty. The sentence is not excessive.

Petitions: No Petitions for Review were filed. A Petition for Clemency, undated, was filed by the accused.

Recommendation: That the findings and sentence be approved.

9. Johann ZILNER

Nationality:	German
Age:	36
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS Corporal
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 6 May 1945

Evidence for Prosecution: The accused was an SS guard at Linz III, a subcamp of Mauthausen Concentration Camp, from 5 June 1944 to 6 May 1945. He was in the Waffen SS from 23 November 1943 to 5 April 1945. He was assigned to the escort guard detail, escorting inmates to and from work at the Hermann Goering Plant. During the time the inmates were at work, he was assigned as a guard to the guard chain (d 22, 140; P-Exs 11A, 23A).

A witness, a former assistant capo in the subcamp, testified that in September 1944, he worked on the kitchen detail, serving food to the SS guards. The accused came into the kitchen and requested seconds. Upon being informed that none was available, he hit a Russian inmate in the face with his fists. As a result of the beating, the victim was knocked to the floor. Thereupon the accused kicked him. This mistreatment produced

bleeding and a big lump on the victim's face (R 106, 107, 145). The witness admitted he was previously convicted of theft in 1933 and sentenced to confinement for 12 years (R 108, 109).

Evidence for Defense: The accused declined to testify (R 224). In his extrajudicial sworn statement, the accused denied that he ever beat or mistreated an inmate; denied that he saw any of the other guards beat or mistreat them; and denied that he ever heard of inmates being beaten or mistreated in the factory (R 140; P-Ex 23A).

Sufficiency of Evidence: The Court was warranted from 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.

10. Herman ZULEGER

Nationality:	German
Age:	44
Civilian Status:	Civilian Foreman, Hermann Goering Plant, Linz
Party Status:	Unknown
Military Status:	Unknown
Flea:	NG
Findings:	G
Sentence:	15 years, commencing 9 May 1945

Evidence for Prosecution: The accused was a civilian senior foreman on the steel construction detail in the Hermann Goering Plant at Linz from 1 August 1944 to 1 May 1945. During this period inmates from Linz III were employed on this detail (R 23; P-Ex 12A). There were about 30 inmates under his supervision in the manufacture of bridge beams, etc. (R 141; P-Ex 24A).

One witness, a former inmate of the subcamp who worked on the accused's detail, testified that in January or February 1945 at a distance of about 12 to 17 meters, he saw the accused slap and kick two inmates on two dif-

called the detail leader who thereupon beat and kicked them into unconsciousness. The inmates were carried back to camp. The witness was later told by the dispensary clerk that both victims had died. The mistreatment occurred within a week or 10 days of each other during this period. Both inmates were Polish (R 68-71). Just before capitulation, the accused gave the witness a vicious kick in the buttocks. After that incident the witness had to use a stick to aid him in walking. This condition continued about a month. The accused often beat inmates (R 71, 72).

A second witness, a former inmate of the subcamp, testified that in January 1945 at a distance of about five meters, he saw the accused slap and kick an inmate who was a few minutes late getting to his work bench after the noon meal. As a result of the beating, the victim was knocked to the floor. That evening after work the victim was helped back to camp by two inmates and taken to the dispensary. Two days later the witness visited the dispensary for first aid treatment. At that time he was told the victim had died the day before (R 87, 88). The victim was a Polish Jew (R 89).

A third witness, a former assistant capo of the subcamp, testified that in August 1944 he saw the accused beat a French inmate because he was not at his work place. As a result of the mistreatment, the victim's eyes were swollen and his mouth bled. The victim required medical attention. The accused was reprimanded by the detail leader for mistreating this victim (R 107, 146, 147). In one of his extrajudicial sworn statements, the accused admitted that he slapped inmates. He denied that he reported them for punishment. In another extrajudicial sworn statement, he admitted that he slapped inmates about 10 times (R 141; P-Exs 24A, 25A). Two of the foregoing witnesses and an additional witness testified that the accused often beat inmates (R 71, 89, 174). The mistreatment of the inmates by the accused was corroborated by the testimony and the extrajudicial sworn statement of accused OHN~~MAN~~CHT (R 138, 219; P-Ex 21A, p. 4).

Evidence for Defense: The accused declined to testify (R 224).

One witness, a former civilian foreman on the steel construction detail, testified that at the bi-weekly conferences held in the plant by



Burgwinkel, the plant manager, the latter urged the foremen to speed up construction and to beat the inmates to accomplish this end (R 150, 151). He admitted that he heard that the accused beat inmates (R 152). A second witness, a former capo of the subcamp, testified that the steel construction detail enjoyed the best reputation and that inmates requested assignment to it (R 173). He also admitted that he heard that the accused beat inmates (R 174). In his extrajudicial sworn statement, the accused stated that he mistreated inmates upon orders of Burgwinkel, the plant manager (R 141; r-Ex 25a).

Sufficiency of Evidence: Although the question was not raised by counsel for defense, the record indicates that the accused sought to justify some of his actions by attempting to show that he acted in accordance with superior orders. However, the accused failed to establish that his superiors were present when he beat and mistreated inmates, that he acted unwillingly, or under immediate compulsion. As to superior orders he failed to meet the burden of proof required by pertinent authorities set forth in Section V, post. The Court was warranted from the evidence concerning the nature and extent of his participation, especially that as to beatings by him and those encouraged by him, in its findings of guilty. The sentence is not excessive.

Petitions: No petitions for review were filed. Petitions for Clemency were filed by accused, 7 July 1947, 12 September 1947; his wife, Erna Zuleger, 21 November 1947 and 17 December 1947; Alfred Gies, 28 October 1947; Wilhelm Poggemeir, 9 September 1947; Carl Schorer, 7 September 1947; Karl Kaufman, 13 November 1947; Josef Fiesfler, 7 September 1947; Dortmund Bridge Construction Union, 8 September 1947; Certificate of the town of Dortmund, 29 August 1947; Charlotte Schroder, 9 September 1947; E. Jetter, 31 October 1947; Franz Silber, 14 November 1947; six former co-workers at the Hermann Goering plant, 15 November 1947; and Certificate of the Police of Linz, 6 November 1947.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

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

Superior Orders: accused ZULGER sought to justify his actions by offering evidence to show that he was 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 DJAWC, December 1945; and United States v. Klein, et al., (Hadamard Murder Factory Case), opinion DJAWC, February 1946 and French Republic v. Wagner, et al., Court of Appeals (France), July 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148).

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

Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rules of the Law", by Ernst Fraenkel; United States v. Bury, et al., opinion DJAWC, September 1945, United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWC, December 1946.)

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 not only participated to a substantial degree but that the nature and extent of their participation were such as to warrant the sentences imposed.

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

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

RONALD DADAMIO  
2nd Lt. Inf  
Post Trial Branch

Having examined the record of trial, I concur, this \_\_\_\_\_  
day of \_\_\_\_\_ 1948.

C. E. STRAIGHT