

17 February 1948

UNITED STATES)
) v.) Case No. 000-50-5-31
Karl GLAS, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 28 July - 12 August 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Karl GLAS, Kurt KUCHNER, Franz PILLINGER, Anton SLAFENY and Helmuth VITTA, 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 Boensee, Gros-Raming, Gunsckirchen, Gusen, Hinterbruehl, Lambach, Linz, Loiblpass, Valk, Schwachat, St. Georges, St. Lambrecht, St. Valentin, Steyr, Vienna, Isner-Poudorf, all in Austria, at various and sundry times between January 1, 1942 and May 5, 1945, wrongfully encourage, aid, abet, and participate in the suggestion 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.

III. SUMMARY OF EVIDENCE: The accused in this case were a room orderly, night watchman and block eldest; an SS supervisor of factories; the criminal secretary of the political department; a civilian in charge of delousing operations; and a camp physician at Camp Mauthausen and/or its sub-camps for considerable periods of time between the dates alleged, and were shown to have participated in the Mauthausen Concentration Camp mass atrocity. Prosecution's Exhibit P-1x 6 is a certified copy of the charge, particulars, findings and sentences in the parent Mauthausen Concentration Camp case (United States v. Altfuldisch, et al., opinion DJA.C, February 1947, hereinafter referred to as the "Parent Case"; see Section V post, R 19).

Unless otherwise indicated, an item referred to as a "Statement" is in the form of extrajudicial sworn testimony. Little weight has been given to the testimony of witness Geiger.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Karl GLAS

Nationality:	German
Age:	40
Civilian Status:	Prisoner - Inmate Mental Institute
Party Status:	None
Military Status:	None
Flea:	NG ?
Findings:	C
Sentence:	Life imprisonment

Evidence for Prosecution: In his Statements, the accused stated that he came to Camp Mauthausen in March 1944; that he remained about four weeks in quarantine before being sent to subcamp Gusen; that at Gusen he was a room orderly, then a night watchman, then in March 1945 a block eldest; and that in April he was put into the Waffen SS digging foxholes during the day and standing guard at night (R 100, 267; T-Exs 136 p.1, 21A p.7). One witness testified that at Gusen he saw the accused and three others holding an unidentified inmate in a barrel of water in the washroom. The witness did not know exactly when this incident occurred, but he had previously testified that he was an inmate in Gusen from the end of May 1944 until 28 April 1945 (R 64, 168).

Another witness stated in a Statement that, at Gusen, he saw the accused catch two Jewish inmates (one Polish and one Hungarian) one night and take them into the washroom, and that in the morning he saw their dead bodies in the washroom. The witness did not give the time of the incident, but stated that he was at Gusen from about September 1944 until the liberation (R 178; P-Ex 12 pp 2, 4).

In his Statement the accused stated that, at Gusen, on his third day as block eldest at block 19 he stepped with his feet on the throat and chest of a Greek inmate, then ordered the room capo to finish him off;

that he beat inmates with his fist and with a rubber hose, on several occasions beating them into a state of collapse; and that on more than one occasion he killed inmates by stepping on their throats and chests with his feet and, if they did not die, he stepped on their head with his heel (R 180; P-Ex 13, p p. 1, 2). In another Statement the accused stated that while he was room eldest at block 19 he assisted in killing two inmates who were too weak to walk, a capo killing one and he the other (R 367; P-Ex 21, p.6).

It was stated in the record by defense counsel that the accused GL 3 had been examined by a German psychiatrist as to his mental condition, and that the report on accused had been favorable to proceeding with the trial. The defense reserved the right to request further examination by an army psychiatrist, should it appear advisable (R 16, 17).

Evidence for Defense: The accused testified that in 1930 he was confined in an institution for the mentally deficient and invalids; that later he attended a school in France and served two and one half years in the French Foreign Legion, returning then to Germany; that he was arrested in 1934 by the Gestapo; that he served a term in a penal company and another in jail; that he was then returned to the institution for the mentally deficient and invalids, where he remained for two years before being sent to Mauthausen (R 370-376). He did not read and did not know the contents of his first Statement (R 180; P-Ex 13), but signed after being beaten by other inmates from Mauthausen (R 385, 387, 426). Accused admitted that he wrote his second Statement (R 367; P-Ex 21), but testified that he copied it from statements which other inmates at Dachau wrote for him and that he never swore to it; ^{/and} that no force, coercion or offer of reward induced the Statement. He denied that part of the second Statement concerning the killing of the two inmates who could no longer walk and further testified that he was not put into the Waffen SS but into a probation company (R 389-391, 414, 417).

Sufficiency of Evidence: No issue was raised as to the sanity of the accused. There is nothing in the record to indicate that the accused was not capable of distinguishing right from wrong, and of adhering to the right,

either at the time of the trial or during the period he participated in the execution of the common design. The Court was warranted, from the evidence as to the extent and nature 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.

2. Kurt KIPPNER

Nationality:	German
Age:	34
Civilian Status:	Dyer
Party Status:	Unknown
Military Status:	Staff SS, Technical Sergeant
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he joined the SS in 1934; that on 1 September 1935 he was sent to Camp Mauthausen where he was in charge of the mail censorship office until March 1939; that from that time in 1939 he led a work detail until December when he was to ^{/sent} sub-camp Gusen where he remained until 9 November 1940; that from 10 November 1940 he was supervisor of the out details in and around Mauthausen until May 1941, when he was sent to Steiermark, Austria, to construct a small camp there; that he returned to Camp Mauthausen in September 1941; that he was transferred to Poland in November 1941; and that he was sent back to Mauthausen on 25 January 1945 and a few days later was sent to Gusen, where he was assigned to the control and supervision of armament factories (P 428-433).

One witness testified that in April 1945 at Gusen the accused caught two Polish inmates in possession of a map; that he took them to the guard-house where they were required to stand for two days; that, on the second day, the accused took the two inmates to block 31, where the dispensary was; that the next day the witness learned that the two inmates had been given

injections and were dead; and that he saw bodies in the ice room at the crematorium (R 329, 330, 337-339). This evidence is corroborated by the testimony of the two witness^{es} and the Statement of a third (R 322, 323, 327, 342, 343; P-Ex 20A.) Two witnesses testified that the block mourned for for the two Polish inmates for three days (R 323, 351).

Another witness testified that he saw the accused beat and kick inmates in air raid shelters until some fell to the ground and as a result were stepped on and killed. ^{In} February or March 1945 the witness was beaten several times by the accused (R 330, 331). Another witness testified that, in March 1945 in the stone quarry during an air raid, the accused kicked a Russian inmate to the ground, drew his pistol and shot him twice because the Russian did not go to the air raid shelter; that after the all clear sounded the witness ran to the Russian, who was lying face down, turned him over and found he was dead; and that the accused assembled a detail and told them the same thing would happen to anybody who would not obey orders (R 341, 342, 363).

Evidence for Defense: The accused testified that upon his return to Gusen in January 1945 he was assigned to a company belonging to the guard battalion situated outside the camp; that he was not allowed to enter the camp; that he controlled and supervised the armament factories in the vicinity of the camp; that while he had to pass the stone quarry detail in going from factory to factory, he had no assignment there; that from the end of February 1945 until the middle of April 1945 he was assigned as platoon leader of a company receiving military training in the vicinity of Mauthausen, during which time he was billeted and received rations, including the noon meal, at Gusen; that he did take the two Polish inmates whom he found with the map to the protective custody camp; that he left them at the gate; that he did not see them again or take any further interest in them; that the story about him shooting a Russian inmate was a pure invention; and that he did not know that reporting an inmate's death for the inmate (R 431-438, 445).

Sufficiency of Evidence:

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

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by accused's parents Paul and Liesbeth Kirchner, 12 December 1947; the accused, 31 October 1947, 22 November 1947 and 28 December 1947; the accused's wife, Elise Kirchner, 30 December 1947; and Dr. F. A. Bechert, a German attorney, 24 October 1947.

Recommendation: That the findings and sentence be approved.

3. Franz PHILLIXEDER

Nationality:	Austrian
Age:	46
Civilian Status:	Inspector Criminal Police
Party Status:	Unknown
Military Status:	Unknown
Place:	NA
Findings:	G
Sentence:	30 years, commencing 17 February 1947

Evidence for Prosecution: In his Statement, the accused stated that he was criminal secretary in the political department at subcamp Gusen from 10 November 1941 until June 1944; that during this time his immediate superior was SS Captain Seidler, the camp commandant; and that he wore a police uniform with insignia equivalent to a first sergeant in the SS (P-Ex 19). One witness testified that, while working in the dispensary at Gusen, he was often in touch with the accused, who signed death reports which the witness was required to take to the political department; that the accused wore the same uniform as other SS men with "SD" (Security Service, which was the intelligence agency of the Security Police) on the sleeve; that the accused was responsible for the formalities about death reports, for interrogations of inmates and for investigation of deaths (R 296, 306, 307). The witness further testified that the political department gave orders for executions; that secret messages which came to Gusen in reference to inmate transports went through the political department; that the selected inmates receiving notices signed by the chief or deputy chief of the political department to report on the following morning at the main gate; that he saw the accused's name signed to some of

these notices; that several hundred weak and undernourished inmates were sent to a camp in Hochheim (witness probably meant Hartheim) for extermination; that a few weeks later death reports on them were received; and that he, the witness, kept the death book and saw "pneumonia" entered as the cause of death on reports concerning inmates he had seen shot to death (R 297-299, 303-305, 309).

Another witness, Wahsner, testified that he knew the accused at Gusen from 1943 to the beginning of 1945; that the accused was a Gestapo official working in the political department at Gusen and was the only Gestapo agent in Mauthausen or Gusen; that in 1944 at Mauthausen he saw the accused beat inmates from an incoming transport of Jews and Poles so severely that some died within one half hour and were carried away by stretcher bearers from the crematorium (R 249, 250, 267). Wahsner, after correctly identifying the accused on direct examination, repudiated his identification on cross-examination, identifying accused KIRCHNER as this accused. On redirect he was shown P-Exs 1 thru 5 and again identified accused KIRCHNER as this accused and was unable to identify the photograph of this accused (R 248, 255, 265, 266).

Evidence for Defense: The accused testified that in his three years of duty in a concentration camp he never mistreated an inmate; that he did not sign death reports; that his work at Gusen was to interrogate inmates and investigate accidents; and that, while in Gusen, he went to Mauthausen only three, four or five times to get office material and once to attend a Christmas party (R 465, 466, 484, 488). In his Statement, a former inmate stated that the accused treated inmates well (D-Ex 1A). The widow of a former inmate stated in her Statement that her deceased husband had told her of the accused's kindness (D-Ex 2A). A letter, which the accused testified he had received from the deceased husband after the latter's liberation, referred to the accused as "the only human person across the barbed wire fence" (D-Ex 3A, R 476, 477).

A former capo at Gusen testified that the political department was feared by the inmates because, if inmates who had charges against them did not admit the charges, they were beaten, but that the accused did not

thus beat (R 314).

It was stipulated that, if a former inmate and two former workers in the political department were present, they would testify that the accused treated inmates well (R 583, 584, 604).

Sufficiency of Evidence: Austria was a co-belligerent of Germany.

The accused held an important position and headed an agency, which as demonstrated in this subsequent proceedings initiated and was responsible for widespread abuses and suffering of hundreds of inmates.

The Court was warranted, by the evidence as to the extent and nature of his participation, in its finding of guilty. The sentence is not excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by the Director of Federal Police, Linz Austria, 30 August 1947; and Lucien Van Herle, former Belgian political inmate at Mauthausen, 21 October 1947.

Recommendations: That the findings and sentence be approved.

4. Anton SLUPETZKY

Nationality:	Austrian
Age:	48
Civilian Status:	Business Man
Party Status:	Unknown
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	5 years, commencing 2 August 1945

Evidence for Prosecution: The accused testified that he was the owner of the Anton Slupetzky Delousing Institute in Linz (R 543). In his Statement, a former clerk in the disinfection barracks at Mauthausen stated that the accused's firm assumed responsibility for the disinfection of the whole camp in June 1941; that the form of gas used was "cyclone" (zyklon) B, a cyanide preparation (a form of prussic acid); that cyclone B was very dangerous and seeped into the straw of the mattress; and that it was not safe to return to a place where it had been used for at least 24

hours (P-Ex 15). A defense witness, a medical officer, testified that cyclone B was poisonous and, if highly concentrated, would kill within a minute (R 510-512). Witness Folger, convicted in another Mauthausen subsequent proceedings, Case No. 000-50-5-42, United States v. Pirner, et al., testified that in February or March 1943 the accused deloused about half the camp. At about 2200 or 2230 hours he heard a few shots. In the morning he visited block 16 and saw 20 or 25 dead inmates, who had strangled and had bitten one another. Some were still lying in bed covered up, others half out of bed or on the floor, and one, who had been trying to get out of the window, hanging inside the window shot dead. The capo who took the bodies away from the block in his cart reported to the witness that there were 136 dead. The witness further testified that he heard that some inmates suffering from fever had been permanently assigned to the block. The block eldest from block 3 told the witness that sick inmates from his block had been taken there specially to be gassed (R 183, 202). Another witness stated in his Statement that in the winter of "1942" a rumor spread in Gusen that block 16, which housed about 160 sick Russian prisoners of war, had been gassed. The following morning the witness saw three trucks, with about 25 bodies loaded on each, drive off from the camp (P-Ex 161). Another witness testified that the accused directed a gassing operation at Gusen I in about February 1942 during which 146 or 174 "probably Russian" inmates were gassed in Block 16; that he learned of the gassing and the number of dead from a crematorium worker, who had been on the clean-up detail. The witness saw the dead in the latrine of block 16 (R 234, 235, 240). Another witness testified that in March or April 1942, while the accused was directing gassing operations, he overheard him say that the first Russians would be dead in a couple of hours; that next morning he saw a car bringing bodies from block 16 to the crematorium (R 242, 243). Another witness testified that the accused disinfected the camp in Gusen about the middle of March 1942; that about 160 Russian prisoners of war were gassed in block 16; that, after the block had been gassed, he saw some of the inmates shot by an SS sergeant, Becker, to prevent them from escaping through the window; that from a distance of 25 meters from block 16 he saw invalid inmates, among them Poles

and French, chased into block 16 before the gassing; that SS Captain Chmielowski, the commanding officer who preceded Seidler (See R 238), said officially on the roll call square that he would disinfect block 16 of men, lice and fleas; and that after the gassing he, the witness, helped carry bodies of the dead Russians out of block 16 to the crematory (R 270-274, 276).

Witness Geiger testified that in January 1945 at Gusen II 30 inmates, mostly Hungarian Jews, were killed when block 16 was gassed. He saw the corpses which had been taken out of the block after the gassing (R 206, 207, 212). He knew only by hearsay of a gassing by the accused which had taken place in block 16 of Gusen I in 1942 (R 212, 214).

Evidence for Defense: The accused testified that in May 1941 he was ordered to delouse all inmate barracks in Mauthausen and Gusen; that the second delousing in Gusen was in March 1942; that on this occasion he was told that it was for an epidemic of typhus; that he and his assistant, Fischer, released the gas in the right side of block 16 which was divided into two large rooms (See D-Ex 7); that, when he protested against the SS driving inmates into the gassed room, he was told that he had gassed inmates already and was shown, through a window, covered corpses in the right room; that no disinfecting was done in 1943, the next disinfecting being done at Gusen in 1944 and later in 1945; that his orders came from the Reichs Commissioner and refusal to obey would have meant a court-martial on a charge of sabotage (R 545-549, 553, ⁵⁵⁵567). One witness, a clerk in the garage at Mauthausen, testified that accused's reputation in camp was good; that he had seen him talking with the camp commander about precautionary measures; and that, during gassings at Mauthausen, he had warned the inmates they should not enter the barracks for one to one and one half hours after they were opened (R 497, 500).

Witness Fischer testified that he had worked for the accused since 1939 and had worked in Gusen several times; that in the spring of 1942 he had assisted accused in gassing 20 to 25 barracks at Gusen including block 16; that, while no special search was made for signs of life in the block, the accused did not know that inmates were inside until after the block had been

gassed; and that he talked with the accused about it the next day and the accused was very upset (R 513-528).

Sufficiency of Evidence: Austria was a co-belligerent of Germany.

The evidence establishes that the accused very substantially participated in the execution of the common design. The Court was warranted, from the evidence concerning the extent and nature of the participation, irrespective of his true relationship to the gassing of inmates, in its finding 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.

9. Helmut VETTER

Nationality:	German
Age:	37
Civilian Status:	Doctor
Party Status:	Unknown
Military Status:	Captain, Waffen SS
Place:	NA
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he became a doctor of medicine in 1935, a soldier of 20 May 1941, and came to Gusen, where he was camp physician, in March 1943 (R-588, 589, 594). He implies in other testimony that he remained at Gusen at least as late as December 1944 (R 570, 571). One witness testified that, at Gusen from the summer of 1941 until the end, he assisted the chief surgeon of the pathological section in performing autopsies; that while performing these autopsies, he observed that inmates, among whom were Russians, Poles, Yugoslavs, Jews, Italians and French, had died from injections of gasoline and of hydrogen peroxide; that the accused was camp doctor at Gusen, in charge of the health and welfare of the camp and especially of the camp hospital, from the spring or summer of 1943 until about a week or two before the liberation; that injections causing death could be given only by order of the camp doctor; and that he was told by the doctors in the hospital

block that the accused, on his visits to the hospital, selected inmates for transfer to a special department in block 31 known as the "Bahnhof" or "last stop to heaven" where they were injected (R 22, 23, 27-30, 32, 39, 56-57, 60). Another witness, Loureau, testified that he first saw the accused in October or November 1944 when he was admitted by the accused to the hospital at Gusen: that he spent a month in the hospital, the first eight days in block 31 and the remainder in block 32; that while in block 32 his bed was next to a window overlooking block 31 on the side of the station (room known as the "Bahnhof"); and that many times he could hear yelling and screaming in the station and could see bodies thrown out of the window (R 66, 70, 78). Another witness testified that he saw the accused daily between 1943 and the end of 1945, during which time the accused was camp physician at Gusen; that he, the witness, was in charge of taking injured and exhausted inmates and those with fever to the camp hospital; that the inmates were divided by the accused into three groups, (1) those to be sent to block 31 for injections, (2) those to be returned to Mauthausen and (3) those to be gassed; and that he did not see inmates killed in block 31, but saw the corpses in front of that block (R 87, 88, 93, 99). In his Statement, another witness stated that he worked as a physician in the hospital at Gusen from 20 November 1942 until the liberation; that the accused ordered ~~room R~~ ^{was} in block 31 to be divided into three rooms creating the room which in fact later used for injections and named "Bahnhof" by one of the two persons who gave most of the injections; that between the end of March and the beginning of May 1943 about 1000 inmates were killed by injections at block 31; that he saw Schmitz and Kaferbock give injections and described various aspects of injection scenes and apparently intended to state that he personally viewed the death of many inmates; that in March 1943 he had to make out fake death reports on 26 inmates who had been killed by injections in block 27; that about the middle of 1944 block 31 became overcrowded and the accused selected inmates who were sent on transports and that notices came several weeks later that these inmates had died; that in December 1944 or January 1945 the accused selected 15 or 20 inmates who were killed by injections (P-Ex 9). Another witness stated in his Statement that he worked in the SS

pharmacy from 1942 until the fall of 1943, where requisitions for medicine and liquids for killing were prepared. All requisitions for liquid for killing through intra cardiac injections were signed by the accused(P-Ex 10A).

Witness Geiger testified that in November 1944 he gained admission as a patient to block 31 by use of a ruse; that he observed the accused giving an injection in the "room to heaven" by peering through a hole about four centimeters square covered with a piece of bandage gauze, which had been made in the wall beside his bed in the adjoining room; that the accused was assisted by the block eldest, who, after the injection, took the corpse to the window, and delivered it to a detail with a wagon standing outside the window; that he observed the accused injecting five or six more inmates (on cross-examination witness could not remember that he had said five or six men but thought he had said three); and that he then went outside and saw three or four French, Polish, Czech and Yugoslav bodies on the cart (R 115-117, 139, 147-150).

Evidence for Defense: The accused testified that he never injected inmates at Gusen, ordered it done or selected inmates for injection; that he knows nothing about peroxide or gasoline injections having been made; and that he was absent from Gusen at the time witness Loureau testified he was in the hospital at Gusen (R 592-595, 597, 599).

Sufficiency of Evidence: It is clear from the evidence as to the injections given by personnel under the accused to hundreds of inmates and from evidence as to the accused's acts relating to some aspects of these injection operations that the injections were given with the knowledge of and at the direction of the accused.

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

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by accused's wife, Maria Vetter and his brother Adolf Vetter, 12 August 1947; Dr. W. Vellenzer, a German attorney, 22 September 1947, 10 January 1948, and 2 February 1948; Mr. Wilhelm Klude, German attorney and associate counsel at the trial, 22 September 1947; and a former inmate, Professor Aldo Carpi de Resmini, 8 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 person of the accused and of the subject matter.

Continuance: Upon being asked by the Court as to whether they were ready to proceed with the trial, accused Nos. 2, 3 and 5 expressed doubt as to whether they were ready for trial, some indicating that they had only talked to their American and German defense counsels once (R 8, 10, 12). In each instance defense counsel indicated that the defense was ready (R 8, 10, 12). Counsel was appointed 17 days in advance of the trial as indicated by the counsel assignment bound with and made a part of the record, the accused were served with a copy of the charges 10 days in advance of the trial (R 14B), and the accused were represented by both American and German defense counsel (R 2). Considerable discussion was had between the Court and prosecution and defense counsel as to the readiness of the defense for trial, the defense insisting that it was ready for trial. It was finally agreed that, if developments during the trial indicated that the defense needed additional time in order to properly defend the case, the Court would entertain a motion for continuance (R 13-16). It appears that defense counsel well defended the accused and it does not appear that any injustice resulted to the accused in this connection.

Superior Orders: Accused SLUPETZKY sought to justify his actions by testimony in his own behalf 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., (Hadamar Murder Factory Case), opinion DJAWC, February 1946; and French Republic v. Wagner, et al., Court of Appeals, 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).

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 inmates 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 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 extent and nature of their participation were such as to warrant the sentences imposed.

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.

IRMA V. NUNES
Capt. AGO
Attorney
Post Trial Branch

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

C. W. PHIFER
Lieutenant Colonel, USAF
Acting Deputy Judge Advocate
for War Crimes