

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 1,07

27 February 1948

UNITED STATES)

v.)

Adolf HEIG, et al.)

Case No. 000-50-5-50

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 3-10 November 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Adolf HEIG and Karl WEIDHOFER, 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, Gurskirchen, Gusen, Hinterbrühl, Lambach, Linz, Loiblpass, Melk, Schwechat, St. Georgen, St. Lambrecht, St. Valentin, Steyr, Vienna, Wiener-Neudorf, all in Austria, at various and sundry times between January 1, 1942 and May 5, 1945, wrongfully encourage, aid, abet, and participate in the subjection of Poles, Frenchmen, Greeks, Yugoslavs, Citizens of the Soviet Union, Norwegians, Danes, Belgians, Citizens of the Netherlands, Citizens of the Grand Duchy of Luxembourg, Purks, 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: Accused HEIG was a detail leader, leader of the guards, and later a member of the SS, and accused WEIDHOFER was a capo in the Mauthausen Concentration Camp and/or its subcamps for considerable periods of time between the dates alleged, and each participated in the Mauthausen Concentration Camp mass atrocity. Prosecution's P-Ex 6 (rt 9) is a certified copy of the charges, particulars, findings and sentences in the parent Mauthausen Concentration Camp Case (United States vs.

Altfuldisch, et al., opinion DJAWC, February 1947, hereinafter referred to as the "Parent Case"; see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Adolf BECK

Nationality:	German
Age:	50
Civilian Status:	Workman
Party Status:	None
Military Status:	Waffen SS Sergeant
Plea:	NG
Findings:	G
Sentence:	7 years, commencing 5 May 1945

Evidence for Prosecution: One witness testified that he was an inmate at Gusen II from August 1944 until May 1945 where he saw the accused almost daily until about April 1945; that the accused was detail leader and leader of the guards at Ausbau, a subcamp of Mauthausen Concentration Camp; that in September 1944 the accused wore an air force uniform and in 1945 an SS uniform; that the accused continuously beat inmates; that in November or December 1944, while the detail was going to work at subcamp St. Georgen, the accused hit an inmate, who was walking in the same row with the witness, over the head two or three times with a rubber stick; that in April 1945 at subcamp Gusen II, during an air attack, while running from the camp to the tunnels, he saw the accused, who was standing at the entrance to the tunnel, hit a Polish Jew on the head with the butt of a machine gun, and that, on leaving the tunnel, he saw the inmate lying dead with his head crushed (d 16, 17, 18, 20, 22).

Another witness testified that the accused wore the uniform of the German air force and was leader of the guards at subcamp Gusen II; that, at the end of September or the beginning of October 1944, inmates from subcamps Gusen I and II came to the tunnels during an air raid; that from a distance of about four meters he saw the accused beat an Italian Jew named Vittorio, who was in witness's group from Gusen I, until he fell down; that the accused then kicked him and jumped on his chest, finally killing

him by standing on his throat; and that after the raid two inmates carried the body out of the tunnel and in the evening it was taken to the crematory (d 34-36).

Another witness testified that the accused wore the air force uniform until shortly before the liberation when he changed to the SS uniform; that before he knew the accused, he had heard of him as a notorious beater; that one Sunday in March or April 1945 in Gusen II, the accused was walking around the fence inside the camp about two meters from block 9, where Hungarian Jews were billeted; that two Jews came out of the block and stood near the fence whereupon the accused, without warning, shot at them with his pistol; and that one fell immediately, shot through the stomach and spine and the other died 20 or 25 minutes later on the same spot (d 41, 42).

another witness testified that he was an inmate at Gusen I from 1943 until the liberation; that the accused first wore an air force uniform, then an SS uniform; that on a Sunday morning early in 1945 while running into the tunnel during an air raid alarm he saw the accused hit a French inmate on the head with some object; that the French inmate fell from the blow and was stepped on by other inmates running into the tunnel; and that the inmate died and was loaded onto a cart and taken to the crematory (d 61, 62).

Another witness testified that about September 1944, the accused shot a Spanish inmate from Gusen II, who was late in entering the tunnel during an air raid alarm, with a pistol; that the Spaniard fell on his face and, when witness left the tunnel about an hour and a half later, the victim was lying dead at the entrance to the tunnel; that he observed the Spanish inmate at a distance of about eight meters and could see that he was shot in the neck; and that the accused was about 10 meters and witness about 18 meters from the inmate when the accused shot him (d 64, 65).

another witness testified that in March or April 1945 at Gusen II, all invalid inmates were required to fall out, strip and go to block 16; that at about 1700 hours, as he boarded the train to go to work, he saw inmates being chased out of the block through the windows; that the accused was

standing at one window with a thick rubber club or wooden stick; that the inmates were too weak to jump out of the window, so when they approached it, the accused beat them with a stick; and that when witness returned the next morning at 0630 hours, the whole block of inmates including French, Czechs, Poles, Czech and Russians lay dead in front of the block, black and blue and with their faces covered with blood (d 25, 26).

A defense witness testified that the accused was a noncommissioned officer with the protective custody camp guards at Gusen and sometimes was a detail leader (d 72). The reporter's notes on the testimony of one witness, having been lost, it was stipulated (see d 219) that he had testified that the accused wore an air force uniform until January 1945, then the SS uniform; that in March 1945, at Gusen II, the accused took an inmate, of unknown nationality, out of formation because the inmate had wood under his clothing and beat him until he collapsed; and that later the inmate was wrapped in a cement paper bag and carried out dead (d 224).

Evidence for Defense: The accused testified that he entered military service 26 August 1939 and was discharged 1 July 1940; that from July 1940 until 10 September 1943 he was a stoker with the army headquarters in Trier; that from 10 September 1943 to the end of the war he was again in military service; that he became a guard at Gusen II in July 1944; that sergeant was the highest rank held by him; that he had suffered from asthma for five or six years and did not have the strength to throw an inmate to the ground and step on him; that he never mistreated, killed, tortured, or shot an inmate, nor did he aid or assist in doing so; that he performed his duties at Gusen against his will and had tried to get away by reporting sick, but had been told by the doctor that, if he continued to do so, he would be locked up with the inmates; that he seldom went to the air raid shelter; and that the inmates from Gusen II were never taken to air raid shelters but were chased into a meadow. He denied he was a detail leader (d 93-96, 97, 102-104, 106, 109).

A defense witness testified that he knew the accused from the end of June or the beginning of July 1944 to the end of the war; that he knew the accused as a quiet, decent man, and that the accused had the reputation in

the camp of being a peaceful man; that he never saw nor heard of the accused committing any acts of violence or cruelty; and that the accused suffered from asthma and was given light duties. The witness admitted that he only saw the accused when he came to the office of the company where witness worked and that he knew nothing concerning mistreatment of inmates at Gusen II (d 72-75).

Another witness, a member of the SS on guard at Gusen, also testified that the accused's reputation in camp was that of a peaceful man and that he never saw him commit any acts of violence or cruelty toward the inmates, but admitted that his knowledge of the accused's reputation came only from discussion with other SS or air force men and not from discussion with the inmates (d 78, 83).

A prosecution witness testified that the accused was at first not a bad man, but changed when he got into the SS uniform (R 224).

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 WEIDHOFER

Nationality:	Austrian
Age:	38
Civilian Status:	Baker - Street Car Construction Foreman
Party Status:	None
Military Status:	None
Flea:	NG
Findings:	G
Sentence:	15 years, commencing 9 March 1947

Evidence for Prosecution: The accused testified that he went to sub-camp Gusen in 1943 and was there until the liberation (d 187, 189). A witness testified that he knew accused for four years, was sure of his identity and that the accused was known as "Gypsy"; that he knew a gypsy named Weiss and did not confuse the accused and Weiss; that in the fall

of 1943, in Gusen I the accused was a member of the camp police and supervised the issue of packages; that a Polish inmate, who was trying to push forward, was beaten by the accused until he fell, then the accused began to kick him and trample on his throat, keeping his foot on his throat for a few minutes, then leaving him lying on the ground; that about 30 minutes later the block clerk came, undressed the dead inmate and wrote a number on his chest; that he often went to get packages and that the accused always beat inmates who were there; and that later, in 1944, the accused was an auxiliary capo in St. Georgen (A 47-52, 206, 207).

Another witness testified that the accused was known as "Gypsy" and was a member of the camp police; that about October 1943 at Gusen I, between blocks 23 and 24, he saw the accused hit a Polish inmate from block 22, in the head; that the inmate fell and the accused kicked him in the face; that after several minutes of such treatment the accused left, and the block clerk from block 22 came and wrote a number on the inmate's chest which was done only when an inmate was dead; and that he later saw the dead body during roll call (A 63-66).

Another witness testified that he was an inmate at Gusen I from May 1940 to May or June 1944; that the accused, who was known as "Gypsy", was a member of the camp police and about February 1944 was on duty where parcels were issued; that the inmates started pushing and the accused hit a Polish inmate, named Wojciechowski, on the head several times with an ox-tail whip; that the inmate fell and the accused continued to beat and kick him until he became unconscious and was carried away; and that he saw the inmate's dead body two hours later (A 40, 41, 43, 46).

Another witness testified that he knew the accused since 1942; that in Gusen I the accused was known as "Gypsy" and was a member of the camp police; that in August or September 1943, the accused beat inmates with a rubber cable, about 70 centimeters long, for pushing when they came to get their parcels; and that a Pole was beaten by the accused until he fell down, then kicked by him so severely that he died. The witness further testified that in November or December 1943 he was told that three men were to be drowned; that the accused and two others went into the washroom after

which the witness heard terrible screams for help; that the accused and the others came out in 30 to 45 minutes and the witness then went into the washroom and saw three inmates, one Dutch, one Polish and one Belgian, lying dead on the floor, apparently drowned (A 23-25, 27).

Another witness testified that about April or May 1944, at Gusen I, he went to the mail room to get a parcel; that the accused, who was known as "Gypsy", was there as a member of the camp police for the purpose of keeping order; that the accused hit a Russian prisoner of war on the head twice with a thick stick, which the witness believes was a shovel handle, then started to kick him, one kick hitting the prisoner in the groin; and that the prisoner was unconscious and was taken to the washroom by some of the inmates (A 33, 34, 38).

Another witness testified that at Gusen II the accused was a capo of the transport column, where inmates were forced to carry heavy weights, from the end of May until the Fall of 1944; that one day he saw the accused beat inmates with the handle of a shovel because they were unable to lift the weights to their shoulders; that a young Polish inmate was beaten until he was unable to get up; that he saw the victim collapse in the rail-road car returning to camp and never saw him in the detail again; and that he thought the Pole was dead when he was taken from the car (A 10-14).

Another witness, in his extrajudicial sworn statement, stated that, about November 1944, at a distance of about 10 or 12 meters, he saw the accused beat an inmate, named Gilly, with a tool handle, until Gilly collapsed; that the accused beat Gilly several times during two following days; and that the victim suffered severe pains in his back and died on the third day. The witness further stated that about January 1945, from a distance of about 15 or 20 meters, he saw the accused beat a French captain named Peccresse on the head and back with a tool handle, because the inmate had dropped a bag and broken it. Peccresse died a few days later (A 58; P-Ex 9). This testimony, the beating of Gilly, is corroborated by the extrajudicial sworn statement of another eyewitness, who stated in addition, that Gilly was French, that he died in bed, and that he helped take the clothes off the body. He further stated that he spent a year in

the accused's block and slept in a bed facing that of the accused; that there was never a day that the accused did not beat inmates; and that the accused beat him (a Frenchman) over the head and back with a stick because he touched the accused while withdrawing the handle of his shovel (d 59; P-Exs 10a, 10B).

A former Polish inmate in an extrajudicial sworn statement stated that he was in Gusen II from August 1944 until two weeks before the liberation; that the accused was the capo on a detail constructing underground tunnels; that he saw him practically every day; that in August 1944 the accused beat him over the head with a club; that the accused often beat French, Russians, Poles and others; that in September 1944 he saw the accused beat three Hungarian Jews with a blackjack and club so viciously that they had to be carried to the sick station; and that two days later he saw their dead bodies outside the washroom (d 57; P-Ex 7). Another former Polish inmate in an extrajudicial sworn statement stated that he came to Mauthausen in January 1944, remained for two months and then was sent to Gusen II where he remained for about eight months; that he knew the accused, who was a capo, for about six months; that in the underground construction site, where the accused worked, and on the way back from work, the accused beat French, Russian, Polish and other inmates indiscriminately and often so severely that they had to be carried back to camp; and that he saw the dead bodies of some several days later; that at Gusen II, about two months after his arrival at the underground construction detail, the accused beat him with a club (P-Ex 8).

Evidence for Defense: The accused testified that he never killed or mistreated inmates; that he was a victim of mistaken identity, although he did not know the name of the gypsy he resembled; and that he was never a member of the camp police at Gusen, but was an assistant capo (d 186, 188, 194). Witness Folger, a convicted accused in another Mauthausen subsequent proceedings, United States v. Firner, et al., Case No. 000-50-2-42, testified that he knew the accused from about the beginning of 1944 to about March 1945 in Gusen I; that the accused was in bad physical condition; that he did not know the accused as "Gypsy" but knew another man who looked similar to accused, who was with the camp police and was known

as "Gypsy" (d 132-134). Witness Kansmeier, a convicted accused in another mauthausen subsequent proceedings, United States v. Bertsch, et al., Case No. 000-50-5-29, testified that he knew the accused in the infirmary in Gusen I in November 1943 and later in May 1944 in Gusen II; that the inmate in camp known as the "Gypsy" was Robert Weiss; and that he, the witness, and the accused were being held responsible for this Weiss' actions. The witness admitted he did not mention Weiss at his own trial (d 143, 144, 154).

Another witness testified that he knew the accused from 1943 until the liberation. He thought both he and the accused were transferred to Gusen II about March 1944. He once saw the accused laid over a wooden horse and beaten with a cable by the SS. The accused was called "Gypsy" in the camp. The witness once asked him if he were a gypsy. The accused answered no (d 165, 166, 168, 173).

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

The Court may well have concluded from the evidence that there was no doubt that the accused was correctly identified. The evidence to establish his participation in the offense alleged is clear. 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 Franz and Maria Babl, November 1947; by the accused, 4 January 1948; and by Hubert Guttenger, a prisoner at War Criminal Prison No. 1, Landsberg, Germany, undated.

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.

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). The accused were shown to have participated in the mass atrocity and the Court was warranted from 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 which resulted in injustice to the accused.

VI. CONCLUSIONS:

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

LIMA V. NUNES
Captain AGD
Post Trial Branch

Having examined the record of trial, I concur, this _____ day of _____ 1946.

C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes