

war criminal is a primary requisite. The United States has custody of the accused.

While the existence of a state of war is a necessary condition precedent to the existence of a "war crime", it is not a sine qua non of jurisdiction of an independent state to try and to punish an offense against the law and customs of war. That power stems from the sovereign character of an independent state. Therefore, it rests on a basis apart from actual participation in warfare as a belligerent. That it is not a belligerent is logically unimportant to the jurisdiction of a sovereign state. By the same token, a neutral nation, securing physical custody of a war criminal, would have jurisdiction to try and to punish him for the commission of a war crime. Time of entry of the sovereign state into warfare is immaterial to judicial power of the state over the offense. Furthermore, providing the offense charged is a war crime, the time of commission of the offense is neither causative nor determinative of the existence of the jurisdiction of a sovereign state's validly constituted courts over either the offense or the offender. The fact that the accused may have committed the offense prior to the entry of the United States into war with Germany does not bar the United States from jurisdiction to try and to punish the accused for the offenses charged. Time of commission is inconsequential to the judicial power of the United States over the offenses.

Participation in warfare accentuates the primary interest of the independent state in the enforcement of the laws and customs of war and does, in most instances, strongly induce the state to exercise its jurisdiction. The present case is an example.

It is stated by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pp. 177-218, "Universality of Jurisdiction of War Crimes" that, "every independent state has jurisdiction to punish war criminals in its custody regardless of the nationality of the victim, the time it entered the war, or place where the offense was committed".

atrocities. Prosecution's P-Ex 3 (R 9) is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp case (United States v. Weiss, et al., 000-50-2, opinion DJAWC, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post).

Not much weight has been given to the testimony of Karl Kraemer.

IV. EVIDENCE AND RECOMMENDATIONS:

Ernst SCHMIDT

Nationality:	German
Age:	39
Civilian Status:	Unknown
Party Status:	Communist
Military Status:	None
Flea:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	Life imprisonment

Evidence for Prosecution: The accused entered the Dachau Concentration Camp in 1936 as a political prisoner and, except for a period of about six months in 1939 and 1940, was an inmate until the liberation in 1945 (R 130). During 1942 he was block eldest in block 25. This was an invalid block containing sick inmates, some of whom died almost every day. Block 25 was built to accommodate 208 inmates, but as many as 1,150 were housed therein at one time. As many as three inmates were placed in beds intended for one (R 130, 131). The unsworn pretrial statements of five Catholic priests, former inmates of Dachau Concentration Camp, showed various incidents of mistreatment of inmates by the accused. In November 1942 the accused frequently beat, kicked and terrorized inmates without reason and subjected them to various other forms of mistreatment (R 10; P-Ex 4A). In 1942 the accused flogged and beat inmates with the buckle end of a strap until the inmates were bleeding. Others he kept outside regardless of the weather, causing numerous deaths (R 11; P-Ex 5A). In June 1942 the accused severely beat a bishop (R 14; P-Ex 7A). During the period from July to October 1942, he mistreated unclothed invalids by

forcing them to remain outside. On one occasion he tied up a Russian inmate and severely beat him. He also poured cold water over naked inmates (R 12; P-Ex 6A). In 1942 the accused treated new arrivals brutally and forbade anyone to assist them (R 14; P-Ex 7A). In August 1942 he struck a priest several times and then took him to a washroom where his naked and bruised body was seen lying a short time later (R 44, 45, 191; P-Ex 10A, P-Ex 11A, P-Ex 12A, P-Ex 13A). Also in August 1942 another sick priest was beaten and kicked so severely that he died a few days later (R 44; P-Ex 11A). During the same month he caused the death of a German inmate by brutally beating him and then forcing him to sleep naked on the floor (R 187; P-Ex 13A).

The extrajudicial statements of other former inmates showed that in December 1942 the accused beat and kicked an inmate so severely he had to be carried to his barracks, and that the accused otherwise mistreated inmates and insulted them in a vulgar manner (R 42; P-Ex 8A). After administering a severe beating to one inmate he placed the man under a window without any cover where he died during the night (R 43, 198; P-Ex 9A, 15A).

Rehbein, an inmate at Camp Dachau from May 1943 until 1944, testified that the accused was block eldest in invalid block 25 and that he beat Poles, Russians, Germans, Austrians and Frenchmen with whatever instrument he could lay his hands on. The accused chased this witness and other inmates of the invalid block, who were clad only in drawers and undershirts, outdoors in bitterly cold weather and poured water on them. On one occasion this witness saw the accused in the washroom washing blood off himself near some dead bodies of inmates (R 15-18; corroborated as to beatings R 20, 36, 37, 41).

Grellinger, a former inmate, testified that in August 1942 the accused and a room orderly named Josef, beat to death an inmate who was unable to get out of his bed (R 28, 30, 34).

Otto, a former inmate clerk in block 25, testified that during a three weeks' period in 1942, from 9 to 13 of the then approximately 500

inmates of block 25 died daily (R 36-39; corroborated R 107).

Farmer, a Catholic priest who was an inmate at Camp Dachau from 1941 until 1945, testified that it was generally known that the accused had beaten inmates to death (R 46, 47).

The accused admitted in his testimony that he was an inmate of the Dachau Concentration Camp from 1933 until the liberation, except for a seven month's period in 1939 and 1940 (R 130). He admitted serving as a block eldest (R 130), and also admitted slapping and kicking inmates (R 148).

Evidence for Defense: In an unsworn pretrial statement, Albert Theis, a former inmate who is now an adjutant in the Luxembourg army, described the treatment he and other inmates received from the accused as kind. He stated that the accused performed favors for inmates at considerable risk to himself (R 123; D-Ex 1A; corroborated R 124, 126; D-Exs 2A, 3A, 4A).

Schuster, a German inmate at Camp Dachau from 1934 until 1944, testified that he and other inmates, who would have known the fact had it occurred, heard nothing of this accused administering beatings to inmates (R 54-55; corroborated R 67, 71, 89). He stated the accused hid inmates to keep them off invalid transports (R 55; corroborated R 89, 92, 121). At other times he procured additional items of food, clothing and tobacco for them (R 68, 105). Zimmermann, a former inmate, testified the accused placed himself in/ ^{extreme} jeopardy by secretly helping inmates (R 92). Mursch, a former SS master sergeant at Camp Dachau, testified that a member of the SS with the same name as the accused was a block leader during 1942 and 1943, and that he was so brutal to inmates that many of his victims were taken to the hospital where they later died (R 82). Otto, a former inmate, testified that sometimes the accused had to use force to control the inmates in his block (R 40; corroborated R 108). The accused testified that during 1942 he was block eldest in block 25 (R 131). This block contained sick inmates suffering from many diseases for which there was a total lack of medicine (R 132). The accused admitted beating in-

mates only when it was necessary as in maintaining discipline to insure that food was fairly distributed (R 133, 134). He denied ever beating the priest Porecki (R 138). He testified he was punished for letting the inmates celebrate Christmas and New Year's Eve (R 139, 140).

Karl Kraemer, a former inmate, testified that in 1942 he observed the treatment of inmates by the accused, and that he never saw or heard of any beatings or mistreatments by the accused (R 114).

Sufficiency of Evidence: The Court was warranted in concluding from the evidence that the accused knew of and willingly participated in the mass atrocity operation at Camp Dachau. Moreover, the evidence shows his personal conduct toward the inmates to have been exceptionally brutal.

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

Petitions: A Petition for Review, with 18 attached statements in the nature of Petitions for Clemency, was filed by Major A. R. Myatt, defense counsel, 2 September 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.

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). The accused was 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 that he not only participated to a substantial degree

but that the nature and extent of his participation were such as to warrant the sentence 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 the sentence be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

GEORGE M. LENTZ
Captain, JAGC
Post Trial Branch

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

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



PHOTOGRAPH

(Please photo photo here)



GERPRINT IMPRESSION

RIGHT HAND

1. Thumb	2. Index finger	3. Middle finger	4. Ring finger	5. Little finger

LEFT HAND

1. Thumb	2. Index finger	3. Middle finger	4. Ring finger	5. Little finger

Four fingers taken simultaneously

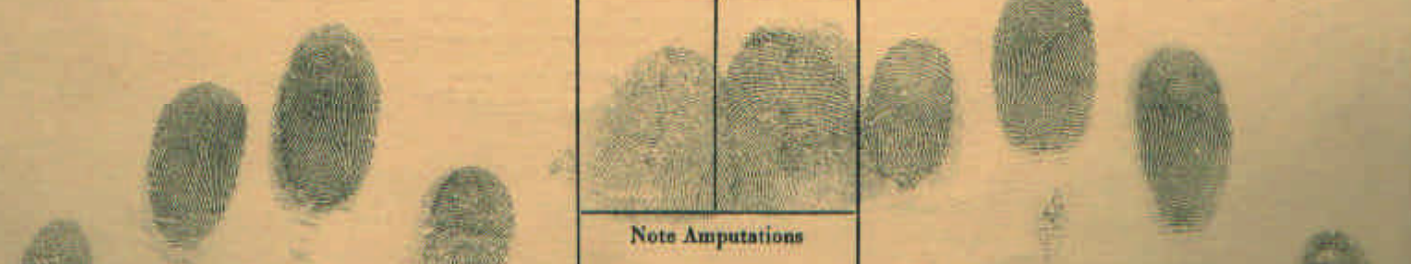
Four fingers taken simultaneously

LEFT HAND

Left thumb

Right thumb

RIGHT HAND



Note Amputations

