

DEPUTY JUDGE ADVOCATE'S OFFICE  
7708 KAR CHINES GROUP  
EUROPEAN COMMAND  
APO 407

15 March 1948

UNITED STATES

v.

Case No. 000-50-5-10

Georg RACH, et al.

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 25 June to 3 July 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Georg RACH, Christoph PFANNENBERGER, Heinrich STUMPF, Alois OBERMEIER, Kaspar HEIMZ, Ernst REICHERT, Heinz Martin VAESSEN, Josef LATZEL, Laureano RAVAS, Rudolf ROEDER, Wolfgang TREUER, 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 Subcamps, including but not limited to Ebensee, Gross-Raming, 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, 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: All of the convicted accused were members of the Waffen SS at Gusen I, a subcamp of Mauthausen Concentration Camp, for considerable periods of time between the dates alleged, and were shown to have participated in various capacities in the Mauthausen Concentration Camp mass atrocity. Prosecution's Exhibit P-Ex 2. (R 11) is a certified copy of the charge, particulars, findings, and sentences in the parent Mauthausen Concentration Camp Case (United States v.

referred to as the "Parent Case"; see Section V, post; R 11).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Georg BACH

Nationality:	German
Age:	44
Civilian Status:	Unknown
Party Status:	Member Nazi Party
Military Status:	Waffen SS Sergeant
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 8 May 1945

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he was a member of the Waffen SS from 7 November 1939 to 8 May 1945 and that he served at subcamp Gusen I of Mauthausen Concentration Camp from 10 January 1940 to April 1945 (R 130; P-Ex 11A). The accused testified that he served at Gusen I as an officer's orderly until June 1940. Thereafter he served as a clerk in the billeting administration office under the economic department, and as a detail leader in the supply room. He was also in charge of the troop barracks (R 214, 215, 223, 229).

One witness, a former Czech inmate of Gusen I (R 38), testified that the accused's duties included the distribution of laundry, brooms, soap, coal, and wood to the inmates. The accused's reputation was not good. The witness heard that the accused beat inmates (R 39, 44). Frequently at the barracks administration building the witness saw the accused beat inmates with a stick about 120 centimeters long (R 44). On two occasions he saw the accused chase inmates out of the barracks administration building, run after them and hit them once or twice on the back with a stick, sometimes very hard (R 45).

A second witness, a former Polish inmate of Gusen I (R 55), testified that the accused was in charge of the supply of laundry and all toilet articles for the camp. Several times in the supply room during 1942, the witness saw the accused beat inmates while they were getting soap and other articles (R 57, 60). He hit them two or three

times with his hand, but hospitalization was never necessary (R 60).

A third witness, a former German inmate and capo in Gusen I (R 131, 136), testified that he knew the accused when he was in charge of billets. During the winter of 1943-1944 in block 13, he saw the accused beat an invalid Czech inmate (R 133).

A fourth witness, a former Spanish inmate of Gusen I (R 113, 114), testified that he knew the accused when he was in the clothing room; that in June 1943 he saw the accused beat with his fist an inmate barber named Juan Manzano; and that Manzano fell to the ground and bled from the mouth. The accused gave as his reason for the beating that Manzano worked very little (R 114-116, 118).

Another witness, a former German inmate of Gusen, stated in an extrajudicial sworn statement that while he was a clerk in the accused's laundry detail, he was beaten by the accused for making a disapproving remark about a radio report concerning a victory of the German troops in their invasion of Russia. The accused hit him in the face many times and gave him five to ten blows on the back with a stick (R 93; P-Ex 8A).

Evidence for Defense: The accused testified that he never beat any inmates and specifically denied the beating incidents related by five prosecution witnesses (R 215, 216, 218, 219, 222, 223, 225, 226). He stated that his quarters and office were outside the protective custody camp and that he was not allowed to enter the protective custody camp except on official business, which occurred from twice weekly to once in six months (R 216, 222). He denied that he was a block leader in the clothing storeroom (R 226).

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. Christoph PFAFFENBERGER

Nationality: German

Age: 44

Civilian Status:	Unknown
Party Status:	Member Nazi Party
Military Status:	Waffen SS Technical Sergeant
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 8 May 1945

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he was a member of the Waffen SS from 28 March 1940 to 8 May 1945; that he served in Gusen I from 14 May 1940 to 8 May 1945 in various capacities; that he was a guard from 14 May 1940 to 30 August 1941; that he was ill from typhoid from 30 August 1941 to 16 December 1941; that he was instructor, group leader, sergeant of the guard and guard leader from 16 December 1941 to 19 March 1943; that he was platoon leader and instructor with training company from March to August 1943; and that he was first sergeant of company from September 1943 to 8 May 1945 (R 130; P-Ex 12A).

One witness, a former Polish inmate of Gusen I (R 65), who identified the accused as having been in charge of all the guards around the camp at Gusen I and the upper stone quarry, Kastenhofen (R 68, 78), testified that on 20 or 30 occasions he saw the accused beat inmates with his hands or with a stick (R 68, 74). At the railroad station during air raids the accused appeared to enjoy beating inmates while hurrying them into shelter (R 68). Often he kicked the inmates or beat them with a long object encased in leather (R 74). Some of the inmates who were beaten were hospitalized (R 69). During December 1943 or early 1944, one Polish inmate was taken to the infirmary as a result of a beating by the accused (R 69, 70). The witness was told by a doctor that the inmate died the next day and was taken to the crematory (R 69). On about 25 July 1944, the witness saw the accused beat and kick American flyers after they had parachuted into Gusen I. From a distance of 15 to 20 meters, he saw the accused beat and kick one flyer, probably an American, while he took him from the gate to the guardhouse. The flyer fell down twice while being

beaten. When the flyer fell down the accused kicked him five to seven times and gave him several blows in the chest and the stomach. After the beating the flyer was taken to the infirmary. The chief inmate doctor there said that the flyer died two days later (R 69, 74, 75). However, the witness testified that he was not sure that the flyer died from the beating by the accused because it was possible that the flyer received a further beating at the guardhouse (R 75).

A second witness, a former Polish inmate of Gusen I (R 12), who failed twice in Court to identify the accused (R 13, 18), testified that in the kitchen he saw the accused beat inmates with a wooden stick resulting in the death of some victims. He saw the corpse of one victim in the crematory (R 14). The accused worked in the kitchen. The witness saw him there on three or four occasions, but only briefly in passing because he was afraid of him. The witness knew that he was called PFAPFENBERGER (R 14, 18, 23, 24).

Another witness, a former French inmate of Gusen, stated in an unsworn pretrial statement that the accused, as "adjutant" of the 21st Company at Gusen, was "particularly savage" during air raids while getting the inmates into the shelters. The accused posted the SS guards and himself at points where the inmates were forced to pass. Armed with a club, the accused hit those who passed within his reach. The witness further stated therein that this happened often, although he recalled no particular case. During the air raids 34,000 inmates were forced into the shelter through three doors. After each alarm five to ten inmates were brought back dead from beatings (R 82; P-Ex 44).

Evidence for Defense: One witness, a former SS sergeant who was stationed at Gusen I from 1940 to 1945 (R 144, 146), testified that the accused was acting 1st sergeant of the 21st Company and that his duties included the assignment of the guards and the inside work of the company. His duties did not frequently require him to circulate around camp (R 150).

A second witness, a former SS Technical Sergeant who was stationed at Gusen I from 18 February 1940 to 10 April 1945 (R 198, 204), testified

(R 199).

The accused testified that while he was at Gusen I he never beat an inmate (R 239). He became acting 1st sergeant of his company in 1943 (R 232). As such his duties pertained to the internal matters of the company and the orderly room (R 233). After such assignment he did not perform guard duties nor have any connection with the protective custody camp (R 243). Entrance to the protective custody camp was strictly forbidden (R 233). Instructions prohibited the beating of inmates by the guards (R 241).

The accused denied beating a flyer at Gusen I and testified that as acting 1st sergeant he was in the air raid shelter with his company when the flyer parachuted to the ground. Afterwards he went to the company area and stayed there (R 237). He thought that the accusing witness must have made an error in identification because in a previous trial Master Sergeant Georg Seebach, who had a broken nose shaped very much like his, was alleged to have been involved in the flyer incident (R 237, 238). The accused was never inside a kitchen at Gusen and called attention to the fact that the accusing witness failed to recognize him in court (R 240, 241). He denied ever standing at the entrance of the tunnel shelters during air raids and beating inmates with a club. He further testified that during air raids his duty was to assure the safety of his men with whom he remained in the air raid shelter (R 236).

By his testimony, a former guard at Gusen corroborated the testimony of the accused to the effect that he resembled Master Sergeant Georg Seebach. On 25 July 1944 after an air attack on Linz the witness encountered Seebach marching a flyer to the camp (R 366-368).

**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. Heinrich STUMPF

Nationality:	German
Age:	49
Civilian Status:	Unknown
Party Status:	Member Nazi Party
Military Status:	Waffen SS Technical Sergeant
Plec:	NG
Findings:	G
Sentence:	10 years, commencing 5 May 1945

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he was a member of the Waffen SS from 15 May 1940 to 20 September 1940. From 7 April 1941 to the end of the war he served at Gusen I (R 130; P-Ex 13a). The accused testified that at Gusen I he was a sergeant and a member of the guard until February 1943. Thereafter, he was an SS detail leader in the construction headquarters (R 248).

A witness, a former Spanish inmate of Gusen I (R 95, 96), testified that at Gusen I he worked for the accused who was in charge of the water installation detail (R 96, 98). During air raids in 1944 he saw the accused beat inmates of various nationalities with rubber covered pieces of aluminum or copper cable about two and a half to three feet long and one centimeter thick. On one occasion in 1944, the accused injured the eye of a Polish inmate during a beating. Medical treatment was required for the victim's eye which remained bandaged for a long period of time (R 96, 97, 106).

A second witness, a former German inmate and capo at Gusen I (R 131, 136), testified that he knew the accused from 1942 or 1943 to the liberation as a detail leader and block leader (R 133, 134). He saw the accused, with a tree root 70 to 80 centimeters in length, beat a Czech capo of a detail which hauled wood and coal into camp (R 134, 137, 138).

A third witness, a former Polish inmate of Gusen, stated in an

extrajudicial sworn statement that he knew the accused as an SS technical sergeant in charge of the work shops at Gusen I from 1942 to 1945. The accused had a bad reputation among the inmates. On six or seven occasions in 1944 and 1945 from a distance of 30 to 40 meters he saw the accused beat inmates with a wooden stick, including Russians, Poles, and Spaniards, because they took potatoes. He usually gave them 25 severe strokes across the body. The accused also reported many inmates to the SS which resulted in further beatings (R 87; P-Ex 7).

Evidence for Defense: One witness, a former SS sergeant and construction detail leader at Gusen I (R 157, 159), testified that the accused worked under him and that he saw him several times daily. He never saw or heard of the accused beating inmates with an iron cable nor did he ever see the accused with a stick or gun. The witness worked with the second witness for the prosecution but that witness never told him that the accused had beaten a Czech inmate (R 157, 159, 162).

The accused testified that as a guard he was not permitted in the prison compound (R 249). The first prosecution witness was relieved from an assignment by the accused for sleeping on the job. The accused denied beating with a rubber cable or stick. He also denied carrying a stick or hitting an inmate in the eye (R 253, 256). He admitted that he carried a pistol (R 256).

The accused denied beating a Czech capo and asserted that the second prosecution witness could not have seen him administer such a beating because the witness worked a distance out of camp (R 254, 257). He testified that he could not have had a bad reputation among the inmates, basing his conclusion on the fact that they came to him for advice and had confidence in him (R 255, 257). He admitted that on three or four occasions, while going from his workshop to the supply warehouse, he met inmates who had filled their clothing with potatoes. He stopped them and required them to return to the warehouse with the potatoes. He denied beating them. He testified that, if he saw inmates with only a few potatoes, he did not worry about it (R 252).



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.

4. Alois OBERMEIER

Nationality:	German
Age:	47
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS Major
Plea:	NG
Findings:	c
Sentence:	10 years, commencing 9 May 1945

Evidence for Prosecution: The accused became a member of the Waffen SS in 1930 (R 270). He served as an SS captain and SS major at subcamp Gusen I from February 1940 to early 1945, first as company commander and thereafter as battalion commander in charge of guard troops (R 14, 40, 131, 183, 220, 259, 278, 278, 297, 300, 310, 324, 345, 371, 377).

One witness, a former Polish inmate (R 12), testified that the accused was an SS major in charge of all guards in Gusen I and that he issued orders to line up guards for executions (R 14, 15, 36). On one occasion, while delivering letters to the office of the accused, the witness heard the accused tell his subordinates, who were sergeants and technical sergeants, that an execution was to be held and to line up some guards (R 15, 24, 25, 33, 34). The witness later saw this execution, at which six inmates were shot (R 34, 35).

A second witness, a former Czech inmate at Gusen I (R 38), testified that the accused was an SS major and battalion commander in charge of all guards. He asserted that the accused was in charge of all executions (R 40). The accused did not carry out the executions, but as battalion commander everything went through his hands (R 45). About 20 July 1944 the witness saw a group of 20 men arrive from Mauthausen. Later he heard at the officers' club where he was chief waiter that they had been executed (R 45, 46, 53). He did not know who was in charge of the execution, did not see any bodies, and did not hear the accused give

testified that part of the accused's guard battalion, a portion of a company commanded by the accused VAEGGEN, participated in the capture and liquidation of 300 Russian prisoners of war who had escaped from Mauthausen (R 42). Some of the prisoners of war were liquidated when they were recaptured and some of them were taken to Mauthausen and killed (R 42, 50). He did not know whether the accused personally participated in the liquidation of these inmates (R 42, 50).

A third witness, a former capo and German inmate at Gusen from 1940 to 1945 (R 131, 136), testified that the accused was a captain and battalion commander of guards at Gusen (R 131). He asserted that in May 1943 while he was in the cement storeroom with other inmates, he saw an execution of approximately 13 Polish inmates take place between two new stone buildings in blocks 6 and 7. He was about four meters distant from the execution and 20 meters distant from the detail that did the shooting. The witness testified that he saw the accused at the execution. He saw the accused arrive at the execution with the camp commander. He heard accused VAEGGEN give the order to fire (R 131, 132, 137).

Evidence for Defense: One witness, a former member of the Waffen SS who served at Gusen I as company clerk until 1942 and thereafter as battalion clerk (R 198, 199), testified that the guard battalion and its headquarters were located outside the inmate compound. The accused was responsible for the security of the camp and had no concern with the amount or grade of work produced by the inmates. The accused was not in charge of the block leaders nor detail leaders (R 200) (Corroborated as to location of guard battalion, R 324). The accused was not permitted inside the prison compound without authority of the camp commander (R 200, 201). The witness further testified that as battalion clerk he never received an order requiring the accused to provide an execution detail. Although he heard of executions, he never heard of such a detail. He heard or knew that the guards were instructed not to beat inmates (R 205, 206).

Seidler was in charge of the staff in the camp commander's office. It was a separate unit and included 80 to 90 men with two or three leaders who did not belong to the guard battalion. He asserted that Captain Seidler, who had jurisdiction of the inmates, took his orders from Lieutenant Colonel Ziereis, the camp commander, and was deputy camp commander when Ziereis was absent. He further testified that the rank of the accused gave him no authority over Captain Seidler (R 322-324) (Corroborated R 292, 296, 309-310, 316, 371, 373, 374).

Accused HEINZ testified that the accused was the next ranking officer to the camp commander, but that the accused had no influence in the inmate compound. He stated that Captain Seidler could issue orders to the accused concerning the number of guards to be furnished (R 282, 283, corroborated R 373, 374).

The accused testified that as guard battalion commander he was in charge of four companies with a strength of 150 each. He had no control over the headquarters staff, the administration, sub units of the administration, and the economic office. He received his orders from the camp commander. SS Captain Seidler was in charge of the headquarters staff (R 259, 260). Captain Seidler required him to furnish guard details and had authority to specify the number of guard posts to be established. The accused and Captain Seidler worked at cross purposes because Captain Seidler's duties consisted of the administration of the camp while the accused's duties were of a military nature. Captain Seidler reported him frequently to the camp commander because he did not post sufficient guards, because he admonished the captain for beating an inmate and because he allowed inmates to receive food at the troop kitchen (R 260, 261). He never operated nor had anything to do with a punishment company. He allowed no mistreatment of the inmates and required his troops to receive daily instruction on the subject. They were told that they could not talk with nor mistreat inmates, nor force inmates to work (R 266) (Corroborated, R 294). The company commanders were instructed

resisted (R 266) (Corroborated R 288, 294, 324). In 1940 he punished four guards for mistreatment of inmates and thereafter never saw nor heard of any mistreatment of inmates by guards (R 267, 270). Once he reported an officer for mistreating inmates. He was removed from the guard troops at Gusen and sent to another camp (R 270) (Corroborated as to instructions concerning treatment of inmates R 190).

The accused further testified that he was not allowed to go into the inmate compound to select inmates for execution (R 261). He stated that he was once present at an execution as a spectator. In July 1944 he attended and witnessed an execution of five inmates who had been sentenced to death for looting during an air raid on a town in Austria. It was the second execution to take place in Gusen. Accused VAESSEN, an SS first lieutenant, and SS First Lieutenant Mueller with eight guards were detailed for the execution by the camp commander. Prior to the execution the accused, in his office, passed on to accused VAESSEN the order for the formation of the detail. He received the order by telephone from the camp commander. The execution took place in the security camp between two barracks next to the electrically charged fence. Accused VAESSEN and four guards made up the firing squad. Before the execution was carried out he heard the camp commander read to the man to be executed and to the guards the execution order which came from the headquarters in Berlin signed by General Kaltenbrunner (Chief of Himmler's Reich Security Head Office). He once saw the order but did not read it. After reading the order, the camp commander ordered accused VAESSEN to carry out the execution. The five inmates were shot individually by four guards from a distance of 20 meters. He and accused VAESSEN would have been courtmartialed, if they had not carried out the camp commander's orders (R 261, 264, 265, 272, 274, 275) (Corroborated R 279-281, 327-330). The accused testified further that in 1943 similar orders for an execution detail were given to him by the camp commander. At that time SS First Lieutenant Riemer carried out an execution which involved two Russians who had been sentenced to death

by the "people's court" for sabotage (R 261, 262).

The accused stated that the first prosecution witness had never been in his headquarters (R 268). He never gave an order for an execution to SS noncommissioned officers or men (R 269). The accused admitted that the fourth prosecution witness may have seen him as a spectator at executions and may have seen him coming into the inmate compound with the camp commander, but stated that the witness was wrong as to the number of inmates executed and must have made a mistake of one year as to the date of the execution (R 269).

Sufficiency of Evidence: The accused occupied one of the more important positions at Gusen I and the SS guards under his command furnished guard service throughout the camp making it impossible, in general, for inmates to escape from the camp, as well as making it impossible for them to avoid specific cruel and inhuman punishments and assignments. By his own admission he attended at least one execution and his SS troops served on execution details. The Court might well have concluded from all the circumstances, including the evidence of the accused's rank and position at Gusen I, that he did not act unwillingly or under the immediate compulsion of superior orders; and that he failed to meet the burden of proof required by pertinent authorities discussed in Section V, post. 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. Kaspar HEINZ

This accused was acquitted (R 304).

6. Ernst REICHERT

Nationality:	German
Age:	60
Civilian Status:	Unknown
Party Status:	Member of Nazi Party

Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he was a member of the Waffen SS from 29 August 1939 to 1 October 1940 and from 16 February 1941 to 5 May 1945; that he served from 29 August 1939 to 1 May 1945 at various concentration camps in various capacities; that he served as a guard leader and block leader at Gusen from 28 July 1941 to 1 May 1945; that at Gusen he was a guard leader in Lungitz from 28 July 1941 to 15 March 1942 and in St. Georgen from 15 March 1942 to 1 August 1943; and that he was a block leader of block 3 from 1 August 1943 to 1 May 1945 (R 130; P-Ex 15A).

One witness, a former Polish inmate of Gusen from 1940 until the liberation (R 65), testified that the accused was his block leader at Gusen. When he first knew him he was a detail leader in the brick-works (R 66, 71). He saw the accused beat inmates at camp, inside the barracks and during the distribution of Polish and Red Cross packages to the inmates (R 66). The accused beat with his hands or a stick, and kicked the inmates (R 67). He saw the accused beat inmates on 20 or more occasions (R 72). He struck inmates when they were too slow in signing their names or when they complained of getting too little from their packages (R 67).

The witness further testified that the invalid inmates at Gusen, who were being prepared for extermination, were kept in block 32 (R 67, 72). These inmates were killed by lethal bathing (R 67) (Corroborated R 138). On one occasion in May or June 1944 he saw the accused with 70 to 80 men in the bathhouse (R 67, 68). On cross-examination the witness testified that he saw the accused giving baths to inmates in the bathroom. He saw about 20 inmates perish. These were inmates from block 32 (R 72). On further cross-examination the witness testified that he heard the accused tell the block eldest to send the inmates over to the bath. This was in the summer of 1944. He testified that

several occasions that the accused had been there with other SS men (R 73, 74). [The cross-examination was not very effective, but the witness did not directly recant. having seen the accused in the bathhouse giving the baths].

A second witness, who was a Spanish inmate of Gusen from February 1941 to 5 May 1945 (R 96), testified that many times he heard of inmates dying from lethal baths (R 100). When he was in block 22 he was within 10 meters of the bathhouse. He saw SS men pass by, go into the bath, and heard screams. Afterwards he saw the SS men come out (R 100). He believed that the majority of inmates who died in camp were victims of the baths (R 102). The showers had three water outlets. These outlets were first closed and then the water was turned on until it reached a depth of 40 or 50 centimeters. Then the sick inmates were forced to get into the water by striking or kicking them. After 10 or 15 minutes the inmates were obliged to get out of the water. There were many who could not get up and who died. Sometimes there were some inmates who were stronger than others. They were returned to the block. When the showers were completed in 1942, there were periods when this procedure happened daily. Afterwards there were times when it happened two or three times weekly (R 100).

A third witness, a former Waffen SS sergeant and construction detail leader at Gusen who appeared as a defense witness for accused STUMPF, testified that he did preliminary work in the construction of the bathhouse in the inmate compound at Gusen I, which was finished in 1941 or 1942. It measured 10 meters by 25 meters including the heating installation and dressing rooms. There was only one bathhouse in the inclosure (R 161).

A fourth witness, a former Polish inmate, testified that he knew the accused at Gusen during the years 1942, 1943, and 1944. The accused was a block leader who had some details under him. He distributed packages in the camp office (R 88). The witness further testified that during a roll call he saw the accused beat an inmate who was standing next to



and collapsed after one blow. The accused kicked him several times after he fell to the ground (R 89, 90, 91). The witness testified that he saw the accused in the spring of 1943 beat inmates on 12 to 15 occasions (R 89).

A fifth witness, a former German inmate and capo at Gusen (R 131, 136), testified that he knew the accused at Gusen as a detail leader, as a guard leader, and as a block leader. He saw the accused beat inmates (R 134).

Evidence for Defense: One witness, an Austrian inmate of Gusen from 1940 to 1945 (R 306, 309), testified that he never saw the accused hit anyone (R 315). The witness further testified that he knew about the baths at Gusen, but did not see the accused administer any (R 307). The baths took place between 1940 and 1942 (R 307, 308, 317). He stated that 90 percent of the inmates and other personnel at Gusen knew about the invalid baths (R 320).

A second witness, a former Spanish inmate (R 113, 114) who was a prosecution witness against other accused, testified that he had seen the invalid baths administered, but never after 1 January 1942 (R 117). He never heard that any deaths by bathing occurred in 1942, 1943, or 1944 (R 117, 118).

The fifth prosecution witness testified during examination by the Court that the invalid baths were administered between the year 1941 and February or March 1942 (R 138).

The sixth prosecution witness, a former Czech inmate at Gusen (R 38), testified that the accused had a good reputation (R 41).

Two defense witnesses, both former members of the SS who served at Gusen I (R 144, 145, 153), testified that they never heard that lethal baths were administered at Gusen (R 146, 155). Two additional defense witnesses, both former members of the SS who served at Gusen I (R 180, 194, 195), testified that they never heard of inmates dying at Gusen I because of being given cold water baths (R 185, 197).

In his testimony the accused denied mistreating inmates during

did not beat inmates in his detail (R 292). He was not permitted to go into the inmate compound at will (R 290). He never went into the inmate compound to select inmates for the invalid baths (R 292). He never heard of inmates dying of cold water baths (R 300). He sometimes saw three to five dead inmates at roll call but did not know the cause of death (R 300-301). He denied participating in bathing 70 or 80 inmates in the bathhouse (R 295, 299). He further testified that as a block leader of block 3 he went into the inmate compound each evening (R 299, 302). Very few in his block died (R 302).

Sufficiency of Evidence: The Court was warranted by the evidence as to the nature and extent of his participation in its findings of guilty. That he beat inmates on many occasions and that he beat one inmate quite severely is established. It is also established that he held relatively important positions. However, it is not satisfactorily established that the accused participated in lethal bathings. The sentence is excessive.

Petitions: A Petition for Review was filed by defense counsel, Major L. F. Benson, 7 July 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved but that the sentence be reduced to a term of 12 years, commencing 1 July 1946.

7. Heinz Martin VAESSEN

Nationality:	German
Age:	33
Civilian Status:	Unknown
Party Status:	Member Nazi Party
Military Status:	Waffen SS First Lieutenant
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 5 May 1945

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he was a member of the Waffen SS from 31 August/1945.  
1939 to 5 May

From 6 April 1941 to 15 April 1945 he served at Gusen I as an SS lieutenant and as a company commander (R 130; P-Ex 16A).

Seven witnesses described the accused's participation in executions, most of them asserting that he was in charge of the shooting detail and gave the orders to fire (R 15, 19, 24, 25, 26, 27, 56, 59, 60, 62, 83, 109, 110, 115-117, 131, 132, 137; P-Ex 5A, 9A pp. 2-4, 10A, pp. 5, 7).

An eighth witness, a former Czech inmate of Gusen (R 38), testified that part of the company of guards which the accused commanded participated in the capture and liquidation of 300 Russian prisoners of war who had escaped from Mauthausen (R 42). Some of the prisoners of war were liquidated when they were recaptured, and some of them were taken to Mauthausen and killed (R 42, 50). He heard the accused in the officers' club say that 270 had been captured (R 49). He did not know whether the accused personally participated in the capture or the liquidation of these inmates (R 42, 50). One of the preceding witnesses testified as to beatings by the accused (R 15).

The accused stated in an extrajudicial sworn statement that he knew of about four or five executions that took place at Gusen while he was company commander. He believed that his company furnished men for the executions two or three times. Once in July or August 1944 he was in charge of one section of an execution squad. His section executed five inmates. Four men fired once at each inmate. It was possible some of the victims were foreigners (R 110; P-Ex 10A, pp. 2, 3).

Evidence for Defense: Two witnesses, both former SS guards at Gusen (R 153, 180, 183), testified that they never saw or heard of the accused conducting an execution at Gusen I (R 154, 182). One of the witnesses testified further that, if the accused had conducted an execution, the order would have come from the battalion commander or the camp commander. The accused or the battalion commander could not have selected inmates for execution (R 154). The second witness testified that, if the accused received an order to supply an execution detail, he would have had to comply (R 182). The accused had nothing

to do with inmates, except to guard them (R 181).

A third witness, a former SS guard in the accused's company at Gusen I (R 194-196), testified that he never heard of the accused conducting an execution (R 196). As company clerk from December 1940 to March 1944 he never furnished the accused with a list of men required for the firing squad (R 196).

A fourth witness, a former SS guard in the accused's company at Gusen I, testified that he never saw the accused conduct an execution or beat an inmate (R 172).

The accused testified that he never struck inmates for failing to remove their caps when passing (R 338). He had nothing to do with inmates other than to guard them (R 324). He was designated by the camp commander to be present at executions on three occasions. He carried out one execution (R 323). That execution occurred in late July or early August 1944. Accused OBERMELER called him into his private office and instructed him to be at the entrance to the protective custody camp at 1400 hours with 10 men, presumably for an execution. The camp commander (SS Colonel Ziereis), SS First Lieutenant Schultz, SS Captain Vetter, the camp doctor, and two high ranking officers of the Wehrmacht He saw the camp commander read something, presumably their personal data, attended the execution. The camp commander told those in the detail not to have any pangs of conscience because the men to be executed had been condemned to death for taking property from the German people under cover of darkness. After the camp commander, Colonel Ziereis, read one or more sentences, he ordered the accused to proceed with the execution (R 327-329, 337, 338). The accused asserted that he could not have refused that assignment without expecting to receive the highest punishment before an SS Court (R 330).

The accused admitted that on about 2 February 1945 he and about 60 guards of his company participated, under orders from the camp commander, in a one day search for some Russian inmates who had escaped from Mauthausen. During that search they did not find any inmates. The accused admitted that in the officers' club he mentioned

that of the 250 Russian inmates who had escaped a certain number had been recaptured (R 334, 341, 342).

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.

8. Josef LITZEL

Nationality:	German
Age:	44
Civilian Status:	Stonemason
Party Status:	Member of Nazi Party
Military Status:	Waffen SS Private First Class
Plot:	NG
Findings:	G
Sentence:	Life Imprisonment

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that from January 1942 to 5 May 1945 he worked for the German Earth and Stone Works at St. Georgen and Gusen. At Gusen he was a technician stonemason from January 1942 to October 1943 and a master stonemason thereafter. He was a member of the Waffen SS from 11 May 1942 to 8 May 1945 (R 130; P-Ex 174).

One witness, a former Polish inmate clerk and messenger at Gusen I from May 1940 to May 1945 (R 12, 18, 21), testified that the accused was a stonecutting engineer at Gusen I but was not in charge of a detail. The accused wrote punishment reports on those inmates who did not do well at stonecutting. About twice daily the witness saw the accused take down the numbers of inmates who did not work well. That information was sent over to the clerk's office (R 21). Those inmates were then sent to the penal company which was engaged in a tunneling operation. Some of the inmates did not return (R 16). The witness saw the corpses of some of his acquaintances, who had been stonecutters, brought back from the penal detail (R 16, 17). At Gusen most of the inmates were Poles, but there were also Belgians, French, Dutch, Czechs, Russians, and Germans (R 17).

A second witness, a Polish inmate of Gusen I from 6 June 1940 to February 1943 (R 55), testified that when he knew the accused he was a civilian technical overseer of the processing of stone. He controlled about 80 to 100 inmates, who worked on the rocks in the upper quarry at Kusterhafen (R 58, 60, 61). All of the civilian workers issued orders

to the detail leader for the punishment of inmates (R 58). The accused was one of the masters who made recommendations for punishment of inmates. He also reported the grade and amount of work done by inmates (R 58, 59, 61).

A third witness, a Polish inmate of Gusen from 1940 until the liberation (R 65), testified that during the time the witness was at Gusen the accused was a technician controlling the stonecutting plants there. Near the time of the liberation the accused was also in charge of the underground extensions added to Steyr and Messerschmidt. From 1941 to the end the accused was in charge of the stonecutting workers. The accused designated inmates for punishment details. He made out the reports, but was not allowed to beat inmates. Once he beat an inmate (R 70, 71). Near the end of 1942 the witness received 25 blows with a club in the detail leader's office because of a report by the accused that he had cut some stones improperly (R 71, 76). He saw the report which provided that he was to be punished for breaking away the corner of a stone (R 76).

A fourth witness, a Polish inmate at Gusen I from 2 August 1940 to the end (R 116), testified that the accused worked with the stonecutters and was responsible to the engineer Wolfram, manager of the German Earth and Stone Works (R 119, 128, 129). The accused had something to do with the supervision of the capos. He had authority to transfer inmates to the penal detail, where they were beaten and forced to do very heavy work (R 120, 122). The witness testified that he heard the accused give an order transferring some inmates to the penal detail (R 120, 122). The witness testified that he knew a Spanish inmate who was sent to the penal detail by the accused. He did not return (R 120, 121). After the Spaniard had been working in the penal detail for some time, he was taken to the dispensary and was not seen any more (R 120).

Evidence for Defense: One witness, a German inmate at Gusen I from 1943 to 1945 (R 164, 165) and an assistant capo at Gusen II for eight weeks in 1944 (R 166), testified that he saw the accused several times in the stonecutters' shop (R 165). He never saw or heard of the accused

beating on inmate (R 165, 166). The witness testified that the accused was not authorized to send an inmate to the penal company. That had to be done through Wolfram. However, the accused could recommend inmates for the penal company (R 168).

A second witness, a German inmate from 16 August 1940 to 8 April 1945 (R 131, 136), after testifying for the prosecution was recalled and testified that he knew the accused following 1943. The witness worked for him for six or seven months in tunnel works No. 3. The accused was a civilian worker in charge of the stone masons. The witness never saw the accused beat inmates (R 169, 170). He never heard of the accused making reports which caused inmates to be sent to the penal company (R 170).

A third witness, a former member of the SS who worked for the main office of the economic administration in the stone quarry at Gusen I from 1941 to the end (R 177, 178), testified that he knew and worked with the accused following 1941 (R 177). He never saw the accused beat inmates. He never heard of the accused reporting them or causing them to be sent to the penal company. The accused had no authority to send inmates to the penal company (R 178).

The accused testified that he was never in the inmate compound at Gusen I. He was in the German Earth and Stone Works in Gusen. From the beginning of January 1942 until 1 October 1943 he was a stone cutter technician. Thereafter, until the liberation of the camp, he was a stone cutter foreman. The only capacity in which he served at Gusen was as a technician (R 347, 355). He was never in charge of all the stone quarries in the area nor was he in charge of all the underground extensions at Steyr and Messerschmidt. However, the tunnel operation in St. Georgen was his responsibility (R 354). His duties consisted of preparing budgets, work slips, stone cutting blue prints, listing measurements and checking completed work (R 349). He was responsible for the quality and quantity of stonework (R 351). His duties took him to the stone cutting shops in Gusen I, Gusen II, shop 19 and three shops in stone quarry Kastenhofen (R 349). He received his orders from the manager of the earth and stone works (R 350). The accused supervised 600 inmate



workers in 1942 and, at the time of the liberation about 200 inmate workers (R 349). The accused passed on the orders he received to the individual shops. In 1942 and 1943 there was a civilian foreman in each shop. The accused had no disciplinary authority over the inmates and never exercised any (R 350). If an inmate's work was not up to the standards required, he made no report (R 358). He never reported inmates who knocked corners off stones (R 352). He had no authority to transfer inmates. Those orders came from the work management in St. Georgen (R 354). While in Gusen he made only one report about an inmate. Under instructions from Wolfram, he made a report on his stone cutter capo who was thereafter demoted (R 351, 352). There was a penal company at Gusen I. He did not know whether inmates were transferred from the stone quarries into this penal company. He had nothing to do with the stone quarries. No Spaniards from the stone cutting detail were ever transferred to the punishment detail (R 354, 355). He admitted that he could recommend that any worker on the stone cutting detail be relieved. He denied that he tried to liquidate the inmates (R 364).

Sufficiency of Evidence: The Court was warranted from the evidence as to the nature and extent of his participation in its findings of guilty. However, it is not established that he or others at his direction indulged in severe beatings or beatings generally. The accused was in charge of a work detail and knew that those he reported would be the victims of beatings and cruelties. The sentence is excessive.

Petitions: A Petition for Review was filed by Major L. F. Benson, 7 July 1947. Petitions for Clemency were filed by: Rudolf Kansmeyer, 4 June 1947; Josef Weisseneder, 20 August 1947; Herbert Rose, 10 October 1947; Karl Prammer, 18 October 1947; Wilhelm Seidler, 19 October 1947; Paul Wolfram, 22 November 1947; the accused, 24 November 1947; Anna Letzel and Pauline Dirnberger, 25 November 1947; Johann (Hans) Folger, 29 November 1947; Karl Mummenthay, 30 November 1947; Laureano Navas, 30 November 1947; Josef Reinold, 1 December 1947; the accused, 2 December 1947, 3 December 1947; Rudolf Mittman, 26 December 1947; and Rudolf

Ronge, unacted.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for five years, commencing 6 July 1946.

9. Rudolf ROEDER

This accused was acquitted (R 395).

10. Laureano NAVAS

A nolle prosequi was entered in favor of this accused (R 11).

11. Wolfgang TREUER

This accused was apparently not served. He was not before the Court and was not tried (R 1).

V. QUESTIONS OF LAW:

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

Administrative Determination of Guilt, Beatings, Shootings, and Hangings: Accused OBERMAYER and VAESSEN participated in one or more executions of inmates by shooting. These executions were performed with a degree of formality. The defense counsel did not assert in his final argument or in his Petition for review that the executions were legal. However, both accused implied by their testimony that they considered the executions to be legal.

There is evidence that in most instances an order was read. Accused OBERMAYER described one such order as being from Berlin, later he described it as being by General Kaltenbrunner (in charge of Himmler's Reich Security Head Office) (at 263-265, 275, 279, 280). It was not seriously contended that any of the victims had been tried and sentenced by a court of law.

It appears that these orders were pursuant to the "Night and Fog Decree" issued by Hitler, 7 December 1941, and discussed by the "International Military Tribunal, Nuremberg", Volume I, pages 232, 233, whereby punishment power was vested in the Gestapo after administrative determination of guilt. Under the procedure therein prescribed, punishment orders were issued after receipt of files and reports from local Gestapo agents.

While under international law a person who has been found guilty of acting as a spy or of having committed a war crime may be legally executed, the execution must be preceded by a proper trial and sentence by a legally constituted court. Moreover, the Geneva Convention specifically prohibits measures of reprisal against prisoners of war (Volume II, Oppenheim, "International Law", Sixth Edition, pages 331, 456, 457; article 30, Annex to Hague Convention No. IV of 18 October 1907 and Article 2 of the Geneva (Prisoners of War) Convention of 27 July 1929, both set forth in TM 27-251, War Department, U. S. Army. "Treaties Governing

Seventh Edition, pages 220, 240; and Law Reports, Volume I, page 31).

The United Nations War Crimes Commission in commenting upon the British *Almeida* Case stated as follows:

"The rule of law on which the decision of the Military Court is based is, therefore, the rule that it is a war crime to kill a captured member of the opposing armed forces or a civilian inhabitant of occupied territory, suspect of espionage or war treason, unless their guilt has been established by a court of law" (Law Reports, Volume I, page 44).

It is irrelevant that the executions may have been legitimate in the eyes of German jurists and that no violation of domestic law resulted (Law Reports, Volume I, page 54). Similarly, it is stated in "International Military Tribunal, Nuremberg", Volume I, page 223:

"On the other hand the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorizing action moves outside its competence under international law."

Regardless of the preceding consideration, the defense failed to meet its burden of going forward with the evidence to establish that the killings were justifiable. While not applicable as such to war crimes trials, the rule as to affirmative defenses in homicide cases in American municipal criminal law has been stated as follows:

"Generally, in criminal cases as in civil cases the burden of proving affirmative defenses rests upon the defendant at all times. Accordingly, after the state has made out its case by evidence, in a prosecution for homicide, the accused must assume the burden of establishing circumstances of justification, excuse, or mitigation. The prosecution being entitled to the benefit of the presumption of an intent to take life, where a person has been killed by the infliction of a wound or by some other means calculated to produce death, the accused must assume the burden of proving that there was no intent to take life or that the killing was justifiable or excusable, or, at least, of raising a reasonable doubt in his favor. In order for the accused to overcome the inference or presumption of malice arising from proof of the intentional use of a deadly weapon in committing a homicide, he must prove circumstances of extenuation or excuse, unless such facts appear in the evidence produced by the prosecution. It is generally agreed that the accused is not under any obligation to introduce evidence to show mitigation, justification, or excuse if the proof on the part of the prosecution shows it" (26 American Jurisprudence 352).

This mass atrocity involved thousands of concentration camp inmates. Hundreds of the inmates daily were subjected to beatings, tortures,

methods were numerous and were common occurrences. It is quite improbable that any of those who were in the camp a few days could have believed that any of the beatings or killings were legitimate. It must have been apparent to them that the entire operation was contrary to universally accepted standards of human conduct. Under such circumstances it is all the more appropriate that the burden be on the defense to go forward with the evidence to establish that the beatings and the killings in general or in particular were justifiable.

Thus it appears (1) that the beatings, shootings, and hangings following administrative determination of guilt were illegal; (2) that the defense failed to meet its burden of going forward with the evidence to establish that such punishments were legal; and (3) that none of the accused believed they were legal.

Superior Orders: The accused OBERHEIM and VLESSEN sought to justify their actions by evidence to show that they were 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 (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

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; United States v. Beck, et al., opinion DJAWC, December 1946; and United States v. Stroop, et al., (Superior Orders Case) opinion DJAWC, September 1947.)

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 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 the nature and extent of their participation were such as to warrant the sentences im-

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 of the Court be approved. It is recommended that the sentences be approved, but that the sentences to imprisonment for life as to accused LATZEL and REICHERT be reduced to imprisonment for five years and 12 years, respectively, both commencing 1 July 1946.

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

SAMUEL P. ROACH  
Major AGD  
Attorney  
Post Trial Branch

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

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