

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

5 April 1948

UNITED STATES)

v.)

Hans GIOVANAZZI, et al.)

Case No. 000-50-5-12

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 25 July 1947 - 11 August 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Hans GIOVANAZZI, Richard NUSZKOWSKI, Alois RANMANS, Theo SCHMITZ, Georg SEEBACH, Robert SCHLEIFER, Otto WICHMANN, Heinrich WAGNER, Leopold WINTER, Ferdinand WEISHAR, Florian STUETZ, and Robert WERTES, 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, Gunskirchen, 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, 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, stationed at Mauthausen Concentration Camp or its subcamps for considerable periods of time between the dates alleged and were shown to have participated in the Mauthausen Concentration Camp mass atrocity.

Prosecution's P-Ex 2 (B 14) is a certified copy of the charge, particulars.

findings and sentences in the parent Mauthausen Concentration Camp Case (United States v. Altmeppen, et al., 000-50-5, opinion DJMTC, February 1947, hereinafter referred to as the "Parent Case"; see Section V, post).

Unless otherwise indicated, an item referred to as a "Statement" is in the form of an extrajudicial sworn statement.

Not much weight is given herein to the testimony of witness Karl Geiger.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Hans GIOVANAZZI ✓

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

Evidence for Prosecution: The accused testified that he joined the Waffen SS in 1940 (R 476); that he was a member of the medical corps in the camp hospital at subcamp Gusen from the summer of 1943 until January 1944 (R 478); that in January 1944 he went to a medical corps school in Berlin, returning to the camp hospital at Gusen in March 1944; that he left Gusen for Mauthausen at the end of September 1944 and served at Mauthausen until about Christmas 1944; that he was in Berlin in January and February 1945 (R 476); that he returned to Gusen for about a month beginning in March 1945 (R 476); that his duties included supervision of the roll call and inspection of the hospital for cleanliness (R 477); and that he knew that some inmates were killed at Gusen by being given injections (R 478, 479).

The accused stated in his Statement that he was a German national, formerly Italian; that he was a guard at subcamp Gusen from 9 August 1940 to 29 November 1940; that he was a member of the medical corps at Gusen

served as a member of the medical corps in Mauthausen from 1 September 1944 to 21 December 1944 (R 345; P-Ex 11A). Bousel, Kowalski, Lubos and Kushelev testified that the accused was chief of the dispensary in Gusen, a subcamp of Mauthausen Concentration Camp, from the spring of 1943 to the early part of 1944 (R 14, 15, 157, 177, 266).

Wierzchowski, a former lawyer and judge, testified that following the summer of 1941 he worked as an assistant to Dr. Kaminski in the pathological department of the Gusen hospital; that in the course of his duties he performed autopsies on bodies brought in from the dispensary; that in his opinion the causes of death in some instances were injections with toxic fluids such as benzine and hydrogen peroxide; and that from 10 - 25 injections were given each week (R 69-71, 85). The bodies of inmates killed by injections were brought from the dispensary to the pathological department about once or twice a week (R 71). The accused, as chief of the dispensary, was the deputy of the camp doctor and could make decisions regarding the admission or release of inmates from the dispensary, in the absence of the doctor (R 73).

Kushelev, a Russian doctor and formerly an inmate of Gusen, testified that he worked in the dispensary from about May 1943 until the liberation; that inmates were killed by being given injections in block 31, room B in the dispensary of subcamp Gusen; that from the window of block 30 he saw the accused going into block 31 with a package; that he saw seriously ill patients being carried into a room in block 31; that he saw the accused enter this room; that he heard screams coming from this room; that he saw bodies thrown into the street from a window; that he saw these bodies taken into the pathological department; and that he was told by Doctor Kaminski and Wierzchowski that the bodies showed evidence of injections (R 265-267, 276, 278). This witness testified further that these incidents occurred about once a week from the beginning of 1944 until 1945; that the victims were both civilian and prisoner of war inmates (R 279); that among the victims were Italians, Frenchmen, Poles, Russians, Greeks, Belgians, Arabians, ~~Spaniards, Hungarians, and Dutchmen~~ (R 280).

Binet stated in an unsworn pretrial statement that he heard that the accused was in charge of giving deadly injections (R 336; P-Ex 3A). Le Gallo stated in his Statement that he was told that the accused gave fatal injections to inmates in Gusen and that he saw him slap inmates there (R 338; P-Ex 4A). Boussel, Loureau and Lubos testified that the accused was responsible for determining to which block infirm inmates were assigned (R 16, 45-47, 235). These three witnesses also testified that he assigned a large number to block 31, which action was in effect a death sentence (R 16, 47, 48, 190, 236, 237, 238). Miloszewski stated that the accused, who replaced SCHMITZ in the dispensary, did not like to give injections and was quite reluctant to let Kaferboeck give them on orders of Dr. Vetter, the camp doctor, and that the accused frequently assisted in the selection of inmates for the invalid transports which were formed for the purpose of sending the inmates to other camps for extermination (R 342; P-Ex 7, p. 6, second section).

Kowalski testified that on an occasion in 1943 the accused came to his block; that he saw the accused select one Spanish and one French inmate who were skilled at breaking stones; that these inmates never came back to camp alive; that the next day he saw their bodies in the crematory; that he saw that the bodies had been mutilated by the removal of sections of skin which were tattooed; and that he later saw these sections of skin in the accused's office (R 156, 157).

Evidence for Defense: The accused testified that he never gave injections (R 477), although he admitted that such injections were given during his time at the dispensary (R 479). He denied that he ever selected anyone for these injections or chose inmates for invalid transports (R 477). He denied that he ever asked for any tattooed skin, or that he ever had any in his possession (R 477, 478). He stated that his only duties were the cleanliness of the dispensary and the taking of roll call (R 477). He asserted that he came to the dispensary in the summer of 1943 (R 478).

Prosecution witnesses Boussel, Loureau, Wierzchowski and Lubos testified that they never saw the accused slap or beat inmates (R 40, 56,

79, 235). Miloszewski stated in his Statement that after the accused replaced SCHMITZ the number of deaths in block 31 decreased (R 342; P-Ex 7 p. 6, second section). Wierzchowski testified that the accused did not select inmates for extermination and that he heard such selections were made by the camp doctor (R 84). He never heard of the accused requesting tattooed skin (R 71).

De Resmini, a former Italian inmate, who spent six weeks in the dispensary, stated in his Statement that the accused brought him painting material, called him "Maestro", smiled at him, gave him milk and vitamins, obtained an easy detail for a friend of his, hid him, the witness, in the dispensary after he had recovered and on one occasion shook hands with him (R 481; D-Ex 9A). Di Belgiojoso, another Italian inmate who knew the accused at the dispensary, stated in his unsworn pretrial statement that the accused was "correct and humane" and that he especially helped Italian inmates (R 481; D-Ex 10A).

Sufficiency of Evidence: The Court was warranted from the evidence as to the nature and extent of the accused's participation in its findings of guilty. It is clear that many inmates were killed by injections in the dispensary, which was to some extent under the control of the accused. It is also clear that the injections must have been given with the knowledge of the accused. However, the evidence does not satisfactorily establish that the injections were given at the direction of the accused and, more particularly, it does not establish the true nature and extent of the accused's control over the dispensary and those who worked therein and gave the injections. The sentence is excessive.

Petitions: A Petition for Review was filed by Mr. Claudio Delitala, defense counsel, 12 August 1947. Petitions for Clemency were filed by accused, 23 October 1947, and one, undated; Alois Madlmayer, 23 October 1947; Dr. Helmut Vetter, 5 November 1947; Hans Glas, 15 November 1947; Karl Kaufman, 25 November 1947; Prof. Aldo Carpi DeResmini, Dr. Lodovico Barbiano di Belgiojoso and Prof. Carlo Vallardi, 28 October 1947; Prof. De Resmini and six co-signers, undated; Prof. De Resmini, 23 January 1948; Prof.

Carlo Vallardi, 21 October 1947; accused's father, Hans Battista Giovanazzi, 29 November 1947; Emillie de Zordo Di Davida, undated; Ignaz Mumelter, 25 August 1947; Johann Schick, 26 August 1947; Luisa Fellicetti, 25 August 1947; and Paul Schmied, 25 August 1947.

Recommendation: That the findings and sentence be approved but that the sentence be commuted to imprisonment for life.

2. Richard NUSZKOWSKI

Nationality:	German
Age:	44
Civilian Status:	Unknown
Party Status:	Nazi Party 1941
Military Status:	Waffen SS Sergeant
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 5 May 1945

Evidence for Prosecution: The accused stated in his Statement that he joined the Waffen SS on 25 May 1941 (R 345; P-Ex 12A). He stated in his Statement and also testified that after serving in other concentration camps he was assigned to subcamp Gusen in January 1943, where he remained until March or early April 1945 as a guard and guard leader (R 345; P-Ex 12A, R 373, 374).

Boussel and Folger testified that the accused was, at various times, on duty at the entrance to the air raid shelter tunnel and frequently beat and kicked the inmates and also pushed them with his rifle butt in order to hurry them (R 22, 282). Witness Folger was indefinite and ambiguous in his testimony (R 282). Boussel also testified that an Italian inmate died from an infection resulting from these beatings (R 28, 29). In four instances blows by the accused resulted in the death of inmates (R 24).

The accused testified that it was "possible" that he pushed inmates to hurry them (R 377).

Geiger testified that he saw the accused mistreat inmates often while the shifts were changing (R 315, 316, 326).

Evidence for Defense: The accused testified that he never beat or mistreated any inmates (R 374, 375). He admitted that he had escorted inmates to the tunnels when the shifts were changed (R 374) and that inmates were beaten to hurry them into the tunnels during air raids (R 375). Zwick, a former guard, testified that he worked in the same detail with the accused; that the accused never beat or mistreated an inmate (R 379); and that he had nothing to do with hurrying inmates during air raids (R 381). He never saw any inmates beaten during air raids (R 382). Weber, who only knew the accused until 1942, testified that the accused never beat or mistreated inmates (R 388).

Prosecution witness Bousnel testified that the accused was not in the SS but was an inmate and a capo (R 40).

Sufficiency of Evidence: The Court was warranted from the evidence as to the nature and extent of the accused's participation in its findings of guilty. However, witness Bousnel who testified as to severe beatings by the accused remembered him as an inmate and as a capo. Geiger's testimony as indicated at the outset hereof is of doubtful quality. Folger was indefinite in his testimony. The sentence is excessive.

Petitions: A Petition for Review was filed by Mr. Claudio Delitala, defense counsel, 12 August 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for three years, commencing 5 May 1945.

3. Alois FANHANE ✓

Nationality:	German
Age:	36
Civilian Status:	Teacher
Party Status:	Nazi Party 1938.
Military Status:	Waffen SS Sergeant
Flea:	NG
Findings:	a
Sentence:	20 years, commencing 5 May 1945

Evidence for Prosecution: The accused stated in his Statement that he joined the Allgemeine SS 1 November 1938 and the Waffen SS 13 November 1939. He served as clerk in the property room at subcamp Gusen from 13 March 1941 to 31 January 1944, when he was transferred to Buchenwald Concentration Camp (R 345; P-Ex 13). Kowalski and Rinker placed the accused at Gusen throughout 1944 and the early part of 1945 (R 163, 406). Kowalski, Kaminski and Reuter testified that the accused was in charge of the inmate personal effects room at Gusen (R 163, 220, 394). Stantke, Kowalski and Lubos testified that the accused had frequent duties of an undisclosed nature in the kitchen (R 58, 163, 183, 239). Rinker also testified that the accused was required to be present in the inmate compound at roll call (R 409).

Stantke and Kowalski testified that during 1943, 1944, and 1945, the accused frequently beat inmates of various nationalities (R 58, 60, 164, 187). Glowacki stated in his Statement that the accused several times beat inmates severely, including a Polish priest, Marian Gutovsky, and a Spanish captain, Hernandez Gonzales (R 343; P-Ex 8 p. 5). Lubos testified that he saw the accused give an inmate 25 blows with a stick in the kitchen, in the fall of 1943 (R 240). Stantke and Kowalski testified that these beatings by the accused were frequently administered with a cowhide whip (R 60, 164) and that on several occasions during the same years, while the accused was present in the kitchen, he punished inmates by holding their heads in a barrel of water (R 59, 60, 185). Stantke further testified that in some instances the accused held their heads under water for two or three minutes at a time (R 59, 60). Kowalski further testified that in 1944 on one occasion, when the accused came into the kitchen, he ordered that two Russian inmates be given 25 strokes to be followed by cold baths. As a result one of them died. It was probable that the second inmate died too [He does not explain how he knew the first victim died or why he believed it probable that the second victim died] (R 162, 163). Inmate clothing entrusted to the responsibility of the accused often disappeared (R 166). Kaminski testified that the accused was frequently responsible for the misappropriation of such property during

Evidence for Defense: The accused testified that he was at Gusen from February 1941 to 5 January 1944 (R 414); that he returned to Gusen for one day on the 29th of January 1944, and that he was immediately transferred to Buchenwald Concentration Camp, never returning to Gusen thereafter (R 415). He did not go to the kitchen more than five or ten times altogether. He had no duties there (R 415). Furthermore, he never was in the kitchen in 1944 or 1945 (R 418). He admitted that he slapped two inmates, both Germans, on two different occasions to keep them from assaulting other inmates (R 416, 417). In ^{his} testimony he also denied that he was responsible for misappropriating any inmate property (R 418, 423).

Weber and Reuter testified that the accused left Gusen for Oranienburg in January 1944 (R 389, 394) and, with the possible exception of one day when he returned for his personal effects, he was not in Gusen after January 1944 (R 395). Reuter further testified that the accused only entered the inmate compound when the inmates were "paid out" and that he never heard of any of the inmate property being missing (R 397). Rinker, a former inmate, testified that the accused was not a beater (R 406). Skantke testified that the inmates beaten by the accused were usually those caught organizing something [stealing] (R 58).

Sufficiency of Evidence: The Court was warranted from the evidence as to the nature and extent of his participation in its findings of guilty. It is clear that he administered many beatings. However, it is not established that inmates were killed by him or at his direction, nor is it satisfactorily established that beatings by him resulted in serious injuries to the inmates. The sentence is excessive.

Petitions: A Petition for Review was filed by Mr. Claudio Delitala, defense counsel, 12 August 1947. A Petition for Clemency was filed by accused, 28 December 1947.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for 10 years, commencing 5 May 1945.

4. Theo SCHMITZ

Nationality:

German

Age:	43
Civilian Status:	Unknown
Party Status:	Nazi Party 1937
Military Status:	Waffen SS Sergeant
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused stated that he joined the Waffen SS 1 October 1940. He served first at subcamp Gusen as a guard until May 1941, when he was assigned to out-details. He returned to Gusen 2 November 1942, where he served as a guard and as a member of the medical corps until 10 January 1944. He returned to Gusen 30 October 1944 as a member of the medical corps in the troop dispensary, where he remained until 28 April 1945 (R 345; P-Ex 14). He testified that late in 1942 he was assigned to the collected men's dispensary at Gusen. He was transferred to the inmate dispensary in June 1943, where he remained until 8 January 1944. He also served in the dispensary from November 1944 to April 1945 (R 459). He further testified that during the period November 1944 to April 1945 injections were given in the dispensary to inmates for the purpose of killing them. The accused admitted that he gave an injection to one inmate at his request (R 459-461).

Kowalski, Kaminski and Kushelev testified that the accused was chief of the dispensary during his last period of service at Gusen (R 158, 223, 269). Kowalski and Kaminski also testified that he was chief of the dispensary during his entire service at Gusen (R 158, 223). Boussel and Lubos testified that the accused decided to which block, if any, sick inmates were to be sent (R 16, 238, 239). Many were selected by him for block 31, which virtually meant a sentence of death (R 16-18, 235, 236, 239). This last testimony was corroborated by the testimony of Kowalski and the Statement of Rawicz-Lesiak, a former inmate (R 190, 340; P-Ex 6). Kowalski testified further that the accused frequently ordered that cold baths be given to invalids whereby many inmates of various nationalities either drowned or

Miloszewski, a physician and former inmate, stated in his Statement that he saw the accused give injections of lethal substance to the inmates who then died; that he joked about their death agony; and that the accused ordered 20 inmates daily from room B block 31 to the septic department of block 27, where they received injections and died (R 342; P-Ex 7, pp 4 Part (2), 6 Part (2)). Kowalski testified that, on one occasion when injections were being given, he saw the accused through a window going from bed to bed followed by a capo with bottles; that he saw the accused lean over various beds; and that he saw the bodies of the dead inmates shortly thereafter (R 159-161, 187, 196-200). Kushelev testified that he saw the accused enter a room where injections were given once every week or two while injections were being administered (R 269, 279). Kaminski testified that he was told that the accused gave injections (R 233, 317). Kaminski, Rawicz-Lesiak and Miloszewski asserted that the accused selected the victims for injections (R 223, 340, 342; P-Ex 6, P-Ex 7, p. 6 Part (1)). Kowalski testified that the block eldest told him that the accused ordered that inmates be injected (R 181, 201). Kushelev testified that the victims included both civilians and prisoners of war of various nationalities (R 279). Wierzchowski and Lubos testified that one day in February or March 1945, an inmate physician, Dr. Kaminski, kept them out of the crematory when they went individually to see him because he had told them that the accused had taken a Russian inmate there to be injected because he had stolen bread (R 202, 203, 206, 208, 239, 252). Similarly, Rawicz-Lesiak, a former inmate, stated in his Statement that in June 1943 another Russian was caught stealing bread and at the direction of the accused was taken to block 31 for an injection; that the witness was told he died therefrom; and that thereafter the accused stated publicly that a similar fate awaited anyone who stole bread (R 340; P-Ex 6).

Boussel testified that the accused selected inmates to be sent on invalid transports for extermination at other camps (R 21). Miloszewski stated in his Statement that on one such occasion the accused ordered that the inmates be not fed while they were awaiting shipment on an invalid

transport. This order was given about two weeks before the transport left. Consequently, many of the inmates died from starvation (R 342; P-Ex 7, p. 7 (2)). Wierzechowski testified that the accused requested sections of tattooed skin taken from selected living inmates (R 72, 84).

Geiger testified that he heard that the accused participated in injections and selected inmates for transports (R 317, 318).

Evidence for Defense: Boussel and Wierzechowski testified that the accused did not mistreat the inmates (R 40, 79).

The accused testified that the death injections were given by the block eldest as ordered by Major Krebsbach (R 460). The victims were selected by the doctors. The accused had nothing to do therewith (R 460). He further testified that he performed only one lethal injection. He gave it to a German inmate, who was incurably ill, at the inmate's own request (R 461). The accused denied that he selected inmates for invalid transports (R 462); that he injected the Russian who stole bread (R 462); that he ever sent any inmate to a cold bath (R 474); and that he ever harmed an inmate (R 463). He further testified that he had seen injections given (R 466). He admitted that he had asked for a piece of tattooed skin, which he claimed was for the purpose of instructing a group of enlisted men (R 462). He explained that the tattooing helped to demonstrate the effect of burning on the skin (R 469). He denied in his testimony that any inmate was put to death to get the skin, but asserted that some tattooed skin was already in the crematory (R 470).

Sufficiency of Evidence: The Court was warranted from the evidence as to the nature and extent of his participation in its findings of guilty. It is established that as chief of the dispensary lethal injections were given by him. The sentence is not excessive.

Petitions: A Petition for Review was filed by Mr. Claudio Delitala, defense counsel, 12 August 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

5. Georg SEEBACH

This accused was served but not tried (R 13).

6. Robert SCHAEFER

Nationality:	German
Age:	42
Civilian Status:	Unknown
Party Status:	Nazi Party 1933
Military Status:	Waffen SS Sergeant
Floor:	NO
Findings:	G
Sentence:	5 years, commencing 25 May 1945

Evidence for Prosecution: The accused stated that he joined the Waffen SS 1 January 1940. He served as a guard at subcamp Gusen from 1 February 1941 to 1 March 1942. From the latter date until the liberation, he served as a machinist at the stone works at St. Georgen, which was a worksite of subcamp Gusen (R 345; T-Ex 15). Lubos identified him as a civilian mechanic at the stone works (R 262, 263). Folger testified that he was in charge of the rock crusher (R 283) and that he later drove a locomotive (R 287).

Lubos and Folger further testified that the accused frequently beat inmates (R 240, 283). Lubos testified that he reported inmates to the camp administration for formal punishment (R 240). Folger testified that the accused beat a group of young Polish and Russian inmates with a stick (R 287). On another occasion he slapped a number of inmates for taking excelsior at the railroad station to use as bedding (R 283, 288).

Evidence for Defense: No evidence was presented by the defense (R 482).

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

Petitions: A Petition for Review was filed by Mr. Claudio Delitala, defense counsel, 12 August 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

7. Otto WIEHMANN

This accused was neither served nor tried (R 13).

8. Heinrich WAGNER

Nationality:	German
Age:	35
Civilian Status:	Unknown
Party Status:	Nazi Party 1938
Military Status:	Waffen SS Sergeant
Place:	NO
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused stated in his Statement that he joined the Allgemeine SS 1 November 1934 and the Waffen SS 1 November 1940. He served at subcamp Gusen from 1 November 1940 to April 1943; at subcamp Wiener-Neustadt from April 1943 to November 1943; at subcamp Dippoltsau from November 1943 to April 1944; and at subcamp Ebensee from April 1944 to April 1945. He further stated therein that all of his duties were performed as a guard, except at the last mentioned camp, with regard to which he did not describe his duties (R 345; T-Ex 16). Former inmate Kaminski stated in his Statement that the accused was at Gusen from March 1943 to April 1944 (R 344; T-Ex 9, p. 1).

The accused testified that he was at Gusen from November 1940 until June 1943; that he was a guard at Wiener-Neustadt until November 1943; that he served at Dippoltsau from November 1943 to the end of April 1944; that thereafter he served at subcamp Ebensee; and that he was a dog leader during his entire service following January 1943 (R 434, 435). Fajkus and Kupfer identified him as a dog leader at subcamp Ebensee (R 88, 425).

Witness But testified that on one occasion the accused beat an inmate with a stick until he was apparently dead (R 110, 111). This inmate was a Jew of unknown nationality, perhaps Polish or Hungarian (R 112) but, in any case, a non-German (R 116). The witness, a Pole, testified that, in November or December 1944, in the stone quarry at Ebensee, the accused set his dog on him, assaulted him with a club, and kicked him for having picked up a piece of scrap rubber. He was injured so seriously that he had to go to the

hospital (R 108-110). Witness But further testified that he saw the accused beat a Jew to death with a club at the stone quarry (R 110, 111). Pionkowski testified that the accused beat to death with a stick a Polish Jewish inmate by the name of Moniek. The witness saw the events leading up to the beating and saw the dead body soon afterwards, but apparently did not see the actual beating (R 128). The witness, a Pole, testified that he too was kicked by the accused and underwent an attack by the accused's dog. He still carried scars, which he exhibited to the Court (R 127).

Kaminski stated in his Statement that while the accused was at Gusen as a work inspector, he forced two Russian inmates to carry heavy stones at double time until the victims dropped them from exhaustion, whereupon he picked up the stones and beat them to death (R 344; P-Ex 9, p. 2).

Fajks, a former inmate of subcamp Ebensee, testified that in the fall of 1944 the accused captured an escaped Russian inmate. The accused set his dog on the inmate. The victim bled from the attack (R 88, 89, 103).

Evidence for Defense: Kupfer, a former inmate, testified that he had frequently repaired watches and radios at the request of the accused at Ebensee during the period between May 1944 and the Liberation. The accused frequently gave him food (R 426, 431). The accused had a good reputation and never beat inmates (R 425-426). The accused's dog was trained to "grab" inmates (R 429), but it was very friendly toward the witness (R 428). The son of Kupfer, who was also an inmate, in a joint unsworn pretrial statement with his father, corroborated this testimony and stated that the accused delivered food to the inmates purchased at his own expense (R 443; D-Ex 1).

In an unsworn pretrial statement five persons jointly stated that the accused brought Kupfer to their home near Ebensee where he was permitted to make small repairs on their radios in exchange for food, and that they never saw the accused mistreat an inmate (R 444; D-Ex 2). Turle, a former capo, in an unsworn pretrial statement, stated that the accused was never inhumane toward the inmates (R 447; D-Ex 3).

The accused testified that his dog was not trained to bite inmates, but to bark and stop them if they attempted to escape. The dog frequently became excited and had to be restrained (R 440). He testified further that he requested transfer to combat service (R 440). A Russian inmate who escaped in the fall of 1944 broke into houses and strangled one woman. He joined in the search for the inmate as a dog leader but arrived after the inmate had been caught in a shed (R 435, 436). He explained that this inmate was accompanied back to camp (R 436). He specifically denied being involved in each of the incidents covered by the prosecution's evidence (R 436). He denied that he was in Gusen when the Russians, referred to in P-Ex 9 (R 343), were alleged to have been killed (R 442, 443).

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

Petitions: A Petition for Review was filed by Mr. Claudio Delitala, defense counsel, 12 August 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

9. Leopold WINTER

Nationality:	German
Age:	49
Civilian Status:	Unknown
Party Status:	Nazi Party 1939
Military Status:	Luftwaffe, Waffen SS Technical Sergeant
Plea:	NO
Findings:	C
Sentence:	10 years, commencing 7 May 1945

Evidence for Prosecution: The accused stated in his Statement made in December 1946 that he joined the air corps 15 August 1939 and was transferred to the Waffen SS 12 December 1944. He was assigned to subcamp Wiener-Neudorf on 3 September 1944. He remained there until 2 April 1945 when he left with an inmate transport for Mauthausen. He stated further therein

that he arrived at Gusen on 15 April 1945, where he remained until 3 May 1945. He was a detail leader at Wiener-Neudorf and a guard at Gusen (R 345; D-3x 17).

The prosecution witnesses, however, placed the accused at Gusen earlier than 15 April 1945. Tamoryk stated in his statement that the accused was in Gusen in the summer of 1943; that he saw him nearly every day until May 1945; that in the summer of 1943 he saw him beat a Polish inmate to death at the stone quarry with a club; that he saw the dead body; and that he frequently saw the accused beat inmates (R 344; D-3x 10). Weis, a former inmate of Gusen, testified that the accused was there in December 1944; that in the winter of 1944-1945 the accused forced inmates out of the dispensary and caused them to stand on the roll call square naked for about two and one half hours; and that as a result about 112 of them died (R 137, 138). The accused also kicked the witness (R 139). Schneider, a former inmate of Gusen, testified that in the winter of 1944-1945 the accused, dressed in inmate clothing, beat a young Russian inmate until he collapsed (R 212-214, 217, 218). The witness placed this incident at a considerable period of time before the liberation (R 218).

Evidence for Defense: It was stipulated that accused's soldier's record of service shows that he was transferred from the air corps to a guard company of the air corps at Wiener-Neudorf on 2 October 1944 (R 365). Schuldt, Roggan and Rupp, former SS men, testified that they know the accused at Wiener-Neudorf in December 1944, where he was stationed as a guard or detail leader and that he remained there until April 1945 (R 366-368, 371, 372, 383-386). Wiener-Neudorf was 200 to 300 kilometers from Gusen (R 371, 384).

The accused did not testify until after he had been found guilty. He then testified that he was not in Gusen at any of the times alleged. He was in Wiener-Neudorf from October 1944 to 5 April 1945, when he left on an inmate transport arriving at Gusen on 15 April 1945. He remained at Gusen until 3 May 1945 (R 489).

Sufficiency of Evidence: The Court was warranted from the evidence as to the nature and extent of his participation in its findings of guilty. He admitted service as a detail leader. However, the evidence fails to establish that he was at subcamp Gusen during 1943 or 1944. Hence, the evidence as to beatings administered by him there is not persuasive. The sentence is excessive.

Petitions: A Petition for Review was filed by Mr. Claudio Delitala, defense counsel, 12 August 1947. Petitions for Clemency were filed by Dr. Hielsch, German attorney, 31 March 1948 and 6 March 1948.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to ^{imprisonment for} three years, commencing 7 May 1945.

10. Ferdinand WEISHAR

This accused was served but not tried (R 13).

11. Florian STUETZ

Nationality:	German
Age:	23
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS Corporal
Flea:	NG
Findings:	G
Sentence:	30 years, commencing 5 May 1945

Evidence for Prosecution: The accused stated that he joined the Waffen SS 4 April 1942. He served at Mauthausen Concentration Camp and its subcamps Gusen and Wien-Schwechat continuously from 25 July 1942 to 9 April 1945 as a messenger, driver, guard and assistant block leader. He served also as a guard on four inmate transports between September 1943 and September 1944 (R 345; P-Ex 18).

Kowalski testified that, in 1943 while at Gusen, the accused beat inmates of various nationalities with a stick and with his hands and kicked them in order to rush them into the air raid shelter during air raids (R 164, 165). In 1944 the accused was assigned to a railway un-

Karl Geiger testified that, while at Gusen in August 1944 (R 329), the accused upon one occasion beat a number of inmates who were not moving into the air raid shelter fast enough to suit him (R 312). Two of them, a Yugoslav or Pole and a Frenchman, were trampled to death by other inmates (R 312, 322-324). Four inmates were beaten by the accused so severely that they died (R 322-326). Geiger further testified that the accused used his rifle butt in administering these beatings (R 313).

Evidence for Defense: Kowalski testified that the accused treated his detail at the railroad station very well, although he thought this may have been influenced by the fact that these were mostly stronger, better off people, who were smuggling and the accused knew he could profit in dealing with them (R 165). Schrader and Gettesmann, former SS men, stated in their unsworn pretrial statements that the accused was recalled from Wien-Schwechat and given 21 days arrest for having done favors for inmates (R 449; D-Ex 7; R 450; D-Ex 8).

In his testimony the accused admitted that he once slapped an inmate for stealing bread (R 452). He denied that he had beaten any inmates causing their death (R 453) and stated he was never a guard at the air raid tunnel (R 454), although he admitted that inmates were beaten upon occasion while going into the air raid tunnel (R 455).

Geiger, who testified regarding the beatings which resulted in death, stated that the accused had always been good to the inmates, except for that one occasion, and that he was surprised to see him behave in that manner (R 312, 320).

Sufficiency of Evidence: The Court was warranted from the evidence concerning the nature and extent of his participation in its findings of guilty. However, after excluding the testimony of Geiger as to beatings which allegedly resulted in deaths, there remains only the testimony of Kowalski which does not establish that the beatings were severe. The sentence is excessive.

Petitions: A Petition for Review was filed by Mr. Claudio Dalitala, defense counsel, 12 August 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for five years, commencing 5 May 1945.

12. Robert WEFERS

This accused was acquitted (R 488).

V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the persons 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 JG-460, 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 participated to a substantial degree. However, the nature and extent of the participation on the part of GIOVAMAZZI, NUSZKOWSKI, BANHANS, WINTER and STUETZ were not such as to warrant the sentences imposed, as indicated by the recommendations made as to each in Section IV, supra.

Motion for Findings of Not Guilty: At the close of the prosecution's case, the defense moved that findings of not guilty be made as to accused WINTER and WEFERS for the reason that the prosecution had failed to establish a prima facie case (R 349). It is not error for a war crimes tribunal to overrule a motion for findings of not guilty made at the close of the case for the prosecution, if it believes that there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Title 5, "Legal and Penal Administration" of "Military

Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947). The motion was properly overruled (R 352). A similar practice is followed in courts-martial (Paragraph 71, d, "Manual for Courts-Martial, U.S. Army", 1928).

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

VI. CONCLUSIONS:

1. It is recommended that the findings and sentences as to all the convicted accused be approved; but that the sentence as to accused GIOVANNZZI be commuted to imprisonment for life; that the sentence as to accused NUSZKOWSKI be reduced to imprisonment for three years, commencing 5 May 1945; that the sentence as to accused DANHANS be reduced to imprisonment for 10 years, commencing 5 May 1945; that the sentence as to accused WINTER be reduced to imprisonment for three years, commencing 7 May 1945; and that the sentence as to accused STUETZ be reduced to imprisonment for five years, commencing 5 May 1945.

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

ROBERT E. BACHMAN
Captain USAF
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