

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

LFB/vmm

4 February 1948

UNITED STATES

v.

Theo Otto BERNHARDT, et al.

Case No. OOG-50-5-18

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 7-25 August 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Theo Otto BERNHARDT, Johann DOMIS, Emil HUB, Hans Clemens JUNG, Paul HACKL, Karl KUEHN, Heinrich LUETSCHER, Reinhard PURUCKER, Xaver STRAUSS, Walter TRUCKENBRODT, Fritz WAGNER, Ewald WLOTZKA, 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, Gross-Raming, Gunkirchen, 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 the convicted accused by their own admission were members of the SS at Mauthausen Concentration Camp and/or its subcamps for various periods of time within the dates alleged, and were shown to have actively participated in various ways in the Mauthausen

copy of the charges, particulars, findings and sentences in the parent Mauthausen Concentration Camp Case (United States v. Altfuldisch, et al., OOO-50-5, opinion DJAWC, February 1947, hereinafter referred to as the "Parent Case"; see Section V, post).

Not much weight was given to the testimony of the witness, Karl Emil Geiger.

The expressions "Statement" or "stated", appearing herein, unless otherwise indicated, denote extrajudicial sworn testimony.

#### IV. EVIDENCE AND RECOMMENDATIONS:

##### 1. Theo Otto BERNHARDT

Nationality:	German
Age:	31
Civilian Status:	Canteen Manager
Party Status:	Nazi Party 1937
Military Status:	Waffen SS, Master Sergeant
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 8 May 1945

Evidence for Prosecution: The accused testified and stated that he joined the Hitler Youth in 1933; that he joined the Nazi Party in 1937; and that he was assigned to Mauthausen Concentration Camp in 1940 as a civilian manager of the canteen. After he was drafted into the Waffen SS in November 1942, he continued the same work until 10 April 1945, rising to the rank of SS Master Sergeant (R 646-647, 652, 653, 656; P-Ex 26, p. 2).

Witness Geiger testified that he saw the accused, equipped with a steel helmet and armed with a rifle, taking part in the execution of 28 Russian prisoners of war in Mauthausen Concentration Camp in May 1942 and that the accused was often seen participating in shootings (R 43).

Three witnesses testified that in the period from 1942 to 1944 the accused was seen marching with execution details. On these occasions he was equipped with a steel helmet and armed with a carbine (R 67, 85, 112, 117, 315).

Another witness testified that in 1943 some Yugoslav inmates on the punishment detail were gathering scraps of food from the garbage barrels near the canteen. The accused beat them with a club until they were down and then kicked them. This witness testified further that in April 1945 after an air raid, seven American flyers were brought into camp. Two of the flyers were unconscious on a stretcher. After some interrogation the accused grabbed each conscious flyer by the neck and knocked his head against the wall. The flyers shouted with pain and bled from their noses and their foreheads. The accused then kicked the two unconscious flyers (R 98-100).

Another witness testified that in August or September 1944 he saw the accused beat severely a French inmate because he dropped some boxes of soda water; that he later found out that the inmate had two ribs broken as a result; and that he was told by a friend that this inmate was taken to the gas chamber. This witness testified further that the accused beat two Russian inmates with his fists and kicked them for picking up cigarette butts (R 28, 29). One of these witnesses testified that the accused kicked inmates and beat them with any available object so severely that medical treatment was required because they entered the SS messhall in an effort to find leftover food (R 65). Another witness testified that on one occasion when supplies were brought to the canteen, Polish inmates approached the trucks and tried to steal something; and that the accused beat them so severely with an oxtail whip that they could not get up (R 93, 96).

Evidence for Defense: The accused testified that he never conducted or attended an interrogation of captured flyers in Mauthausen Concentration Camp or elsewhere; that he never beat an American flyer; and that he never saw one. He testified that he never participated in an execution and that he never saw one (R 647, 648, 650).

The accused further testified that he did favors for the inmates by procuring delivery of materials they wanted (R 651).

A witness testified that the accused never beat inmates; that he was

known as a quiet man; that he often gave the witness food, lemonade and cigarettes; and that he was never heard to have any connection with executions (R 390).

Another witness testified that he never saw the accused mistreat inmates (R 538). An additional witness, who saw the accused on the average of once a day for two or three years, testified that he never heard that the accused beat inmates although he was a strict disciplinarian (R 514).

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. Johann DOMIS

Nationality:	German
Age:	38
Civilian Status:	Printer
Party Status:	Nazi Party 1933
Military Status:	Waffen SS, Sergeant
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 5 May 1945

Evidence for Prosecution: The accused testified that he entered the Allgemeine SS and joined the Nazi Party in 1933; that he joined the Waffen SS in November 1939; that he was assigned to Mauthausen Concentration Camp in November 1941, serving as a courier for the guards, orderly for the 4th, 6th and 7th Companies, and later worked in the inmate property room; and that he was promoted from corporal to sergeant while he was there (R 579-582, 589).

The accused state that he was promoted to Waffen SS Sergeant in 1942; that he was in charge of the inmate clothing storeroom in Mauthausen; that he slapped two inmates during the time he was at Mauthausen; that he served in Mauthausen main camp from 1941 until the liberation

Evidence for Defense: The accused testified that he never injured anyone, but he once slapped two German inmates, named Uneck and Schweigert (R 583-584, 585-586).

The accused asserted that he was drafted into the police. To corroborate this statement he introduced into evidence a copy of a draft notice (R 579, 580; D-Ex 3A).

A witness testified that the accused treated inmates well and was not seen to participate in executions (R 393).

Two witnesses testified that the accused treated inmates decently and was not seen to beat them (R 403, 428).

Another witness testified that the accused gave inmates bread, margarine, marmalade and cigarettes; that he was never seen mistreating inmates; and that inmates had a good opinion of him (R 410-411). One of these witnesses testified that inmates of all nationalities in the accused's detail received the same food and clothing (R 408).

Two other witnesses and one of the foregoing witnesses testified that the accused treated inmates decently; that he did not beat, slap or mistreat them; and that he was very friendly and not feared. The Spanish and French inmates said good things about him (R 431, 515, 682, 683, 688, 689). One of these witnesses testified that the accused frequently called inmates from the penal company and gave them better shoes (R 431).

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. Emil HIR

A nolle prosequi was entered in favor of this accused (R 308).

4. Hans Clomens JUNG

Nationality:	German
Age:	35
Civilian Status:	Mechanic

Military Status:	Waffen SS, Sergeant
Plea:	NG
Findings:	G
Sentence:	5 years, commencing 6 May 1945

Evidence for Prosecution: The accused testified that he joined the Allgemeine SS and the Nazi Party in 1933; that he was assigned to Mauthausen Concentration Camp in 1939; that he was assigned to the 2nd Guard Company in January 1940; that in the fall of 1940 he was transferred to the financial administration office and remained there until March 1945; and that he was then assigned to the active fighting group Upper Danube (R 621, 622, 626). The accused stated that he entered the Waffen SS on 20 September 1939; that he was promoted to Sergeant in November 1942; that he served in Mauthausen Concentration Camp as a guard in the 2nd Company; that from 22 September 1940 to 28 February 1945 he served as an administrative clerk; that he was connected with two inmate transports; and that from 1 March 1945 to 6 May 1945 he was a driver in a combat group Ober Donau (R 187; P-Ex 9A).

One witness testified that on one occasion he saw the accused marching with an execution detail in the direction of the execution place in 1942 and that Polish, Czech and Yugoslav inmates may have been among the victims executed (R 173, 174). Another witness testified that on the 4th or 5th of February 1942, at night, he saw the accused bring in a truck load of dead bodies and heard Sgt. Niedermeyer shout, "JUNG, don't unload them until I arrive", and that there was a machine pistol on the driver's seat (R 188-189). A third witness testified that in the fall of 1943 he saw the accused fall in with an execution detail of five others; that he saw this detail firing on the inmates who spoke a Slavic language; but that he did not see <sup>the</sup> inmates at that time because they were concealed from his sight by a building (R 196, 197).

Evidence for Defense: The accused testified that he never drove a truck while in Mauthausen Concentration Camp; that only professional drivers were permitted to drive the trucks; and that he did not have per-  
sonal knowledge of the time testified to by witness Ornstein (R 623, 624).

He was Officer of the Day on the evening the Russian inmates escaped from Block 20 and he did not leave the camp. He was not sent out on the search until the fourth day after the escape and at that time he did not see anyone (R 628-629). He was never assigned to a job in connection with an execution. He had Spaniards who worked under him for four years, he did favors for them and was not in contact with other inmates (R 622, 623-624, 625).

The accused was not a truck driver from 1938 to February 1945 (R 482, 484). A former inmate physician witness testified he observed the truck-load of dead Russian inmates as they arrived in camp and were unloaded and that he would have seen the accused had he been present. He knew the character of the general treatment of inmates by the accused and testified that new arrivals were treated decently. He never saw the accused beat or mistreat them. If an inmate had something which he was supposed to turn in, he overlooked it. He gave other inmates pieces of clothing or ordered it to be done (R 681-682, 688-689).

The accused did not mistreat inmates, they were given food in his office and it was not known that he participated in executions (R 464). The accused was good to inmates and nothing was heard against him. He was not seen present at the execution observed by the witness in August 1942. He never participated in executions (R 547, 549).

The accused did not strip new arrivals naked and force them to stand in the cold. They went into a heated bath and no instance of taking things from them for the SS was heard of by the witness (R 465-466).

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.

5. Paul HACKL

This accused was served but not tried (R 1).

6. Karl KUEHN

Nationality:

German

Age:	45
Civilian Status:	Telephone operator
Party Status:	Nazi Party 1931
Military Status:	Waffen SS, Sergeant
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 7 May 1945

Evidence for Prosecution: The accused testified that he became a member of the Nazi Party in 1931; that he joined the Allgemeine SS in 1933; that he entered the 12th Death Head Regiment in 1940; that he had an accident and was discharged as physically unfit for service; that in January 1941 he was sent to the central telephone switchboard at subcamp Gusen and remained there until 15 March 1943; that in February 1943, in subcamp Gusen, he was promoted to SS Sergeant; that he worked in the bread store at subcamp Gusen until 15 July 1943; and that he went to Mauthausen Concentration Camp at that time. He testified further that at Mauthausen Concentration Camp he worked in the food store room under accused WLOTZKA, buying food, loading and unloading the food and issuing it both to the SS and inmates' kitchens. He worked there until 15 March 1944 when he was sent to the orderly room of the administration until the 8th of August 1944. He worked in the inmate clothing department from 8 August 1944 to 7 April 1945 when he went to the active fighting group upper Danube. He served with this fighting unit until 20 April. He was arrested by the Americans on the 7th of May 1945 (R 594, 597, 598, 599, 600).

A former Austrian inmate, Halaba, stated that the accused took new clothes from the inmate clothing supply for his own use in Mauthausen Concentration Camp in 1943 and 1944 while the inmates were half naked and that he beat foreign inmates with his hands and fists while they were carrying clothes (R 207; P-Ex 11A). A former Polish inmate, Szymanski, stated that he spent four years in subcamp Gusen I; that he remembered that the accused was very brutal toward everybody; that he belonged to the group of guards who beat with thick clubs and with his steel helmet; that he kicked inmates during air raids; and that Polish inmates and



inmates of other nationalities were wounded and bled from his beatings. These incidents happened in 1943 and 1944 in subcamp Gusen I of Mauthausen Concentration Camp (R 209; P-Ex 12A).

Another former Polish inmate, Darowski, stated that he was an eye witness to beatings during air raids in subcamp Gusen I during 1943 and 1944, the victims of which were Polish inmates and inmates of other nationalities (R 211; P-Ex 13A)

Evidence for Defense: The accused testified that he never witnessed an air raid in subcamp Gusen I; that in such case, he had to remain on duty at the telephone switchboard; and that while on duty in the bread room, he was not permitted to leave. He further testified that he never took inmate clothing from Mauthausen Concentration Camp for his own use; that if inmates needed shoes or clothing, they got it; that he never beat inmates; that he does not know the witness Halaba; and that he had no contact with Polish inmates in subcamp Gusen I in 1944 because he left subcamp Gusen I on 15 July 1943 (R 205, 594, 595-596, 600; P-EX10).

The accused treated inmates well, he was not seen participating in executions and he gave extra clothing to the inmates (R 377-378). A former inmate who had worked under the accused for four years testified that the accused tried to see that the inmates did not starve and that the accused gave extra food to those working in his department. He gave extra food to those who were undernourished and on Christmas 1944 he gave cookies and cigarettes to his detail. Nothing indicated that the accused took part in executions (R 391-392).

The accused treated inmates well, never was seen to mistreat them, supplied his detail with clothing and shoes, permitted one to lie down when he was ill, and his general reputation among inmates was very good (R 457-458, 460, 675; D-Ex 4A). The accused acted humanly in his treatment of all inmates, he made life easier for them and he was transferred because of this (R 488, 490-491). The accused was helpful to the block leaders (R 503). He seldom came into the camp, therefore, the inmates would hardly know him (R 504). Nothing bad about his treatment was ever  
/of inmates

heard by those who worked under him (R 517). He was a good man, not disliked by the inmates. He gave them shoes if they asked for them and needed them (R 613). The accused was liked by the inmates because he was friendly. They gave him flowers and cigarettes on his birthday (R 604, 607).

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.

7. Heinrich Karl LUETSCHER

Nationality:	German
Age:	44
Civilian Status:	Business msn
Party Status:	Nazi Party 1935
Military Status:	Waffen SS, Technical Sergeant
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 8 May 1945

Evidence for Prosecution: The accused testified that he joined the Allgemeine SS in 1934; that he joined the Nazi Party in 1935 or 1937; that he was assigned to Mauthausen Concentration Camp in January 1940, serving as a guard until September 1940; that he then became clerk and orderly in the orderly room of the headquarters personnel department for SS men and served in this capacity until May 1944; that he was not at the camp after that date; and that the highest rank he held was technical sergeant. The accused testified further that he was a member of the SS Death Head Division, Mauthausen Concentration Camp; that in 1944 he received a decoration and citation along with three or four others from Col. Zierris; and that he conducted one transport from Flossenburg Concentration Camp to Mauthausen Concentration Camp (R 558, 559, 563, 564, 565, 566, 567).

An extract from list of recommendations for the KVK, II with swords, No. 25 CC Mauthausen, was introduced in evidence, the original bearing

a stamp of the Waffen SS and a signature, which was identified as that of Zierois, the camp commander of Mauthausen Concentration Camp. This extract recites the following: "SS Oberscharfuehrer (T/Sgt) LUETSCHER has shown himself to be very reliable in his work as a personnel specialist of the Headquarters Staff. Furthermore he participated several times in the execution of enemies of the State" (R 214, 216, 219; P-Ex 15, 15 A).

Evidence for Defense: The accused testified that he never participated in executions and that his duties did not require it. He witnessed a hanging of captured inmates who had escaped from the construction detail, which was done on order by cable from the Reich Security Head Office, Himmler. He had no duty in connection with inmates (R 559, 560, 568). The accused was not known to have participated in executions (R 526, 528). A stipulation was entered into as to the testimony of an inmate who worked under the accused to the effect that he did not participate in executions in 1944, nothing was heard about him doing so earlier and that he always treated inmates decently (R 557; D-Ex 2A). The accused was always very friendly and was not seen mistreating inmates (R 516).

Sufficiency of Evidence: The findings <sup>of guilty</sup> 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. Reinhard Josef PURUCKER

Nationality:	German
Age:	34
Civilian Status:	Unknown
Party Status:	Nazi Party 1933
Military Status:	Waffen SS, Master Sergeant
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he became a

member of the Allgemeine SS and the Nazi Party in 1932; that he was assigned to Mauthausen Concentration Camp in 1938 and remained there until the end of the war; that he was in charge of the inmate kitchen there from 1938 to February 1940; that he was in charge of the SS kitchen there from May 1940 to July 1941; that from July 1941 to June or July 1942 he was in charge of the SS kitchen in subcamp Gusen I; that for a portion of this time he was also in charge of the inmate kitchen in Gusen I; that about August 1943 he returned to Mauthausen Concentration Camp and took charge of the SS and inmate kitchens until 2 May 1945; that all the time he was at Mauthausen Concentration Camp and subcamp Gusen he was engaged in kitchen work; and that on 5 May 1945 he voluntarily went into arrest before the arrival of the Americans (R 703, 717-718).

The accused stated that he joined the Waffen SS in 1938 and that he was appointed SS master sergeant in 1943 (R 234; P-Ex 17A, p. 1, 2).

One witness testified that in August or September 1944 at Mauthausen Concentration Camp, near the kitchen, he saw the accused kick five to seven critically ill, newly arrived Jewish inmates; that he saw the accused fire shots at them with his revolver; and that the witness returned to the kitchen the next morning and saw that they were dead and covered with blood. This witness testified further that the accused caught a Belgian or French inmate, whom the witness knew as a sculptor, taking potatoes from the storeroom in 1943 or 1944; that the accused poured hot water on him; and that he saw the victim taken to the dispensary and later heard that he was taken to the gas chamber (R 30).

A second witness testified that on about 10 or 15 February 1945, 400 to 500 inmates escaped from the death block of Mauthausen Concentration Camp; that a large part of them were recaptured; and that part of the recaptured inmates were brought back alive and part of them were dead. A truck loaded with these victims entered the camp and stopped near the inmate bathhouse. This witness saw one inmate, who was wounded but still alive, thrown from the truck. He saw the accused appear with a hunting rifle and heard him say, "I was unable to shoot any deer while on the hunt.

I will shoot a deer here". He saw the accused draw his pistol and shoot the victim, who had raised himself from the ground and was standing beside the truck. This witness testified that the victim collapsed, dead (~~However,~~ he did not disclose the basis of his conclusion that the <sup>/victim</sup> died) (R 158).

In April 1945 a transport arrived from Auschwitz. These inmates who were sick were variously mistreated throughout the day and part of the night largely in the vicinity of the inmate kitchen. As the witness went into the kitchen at 0500 hours the next morning to get coffee for the night shift in the tailor shop he saw, among the dead inmates, one who was still alive. He saw the accused leave the kitchen, walk outside, and give this half dead inmate a so-called mercy shot, killing him (R 158, 159).

A third witness testified that from a distance of about 30 to 40 meters he saw the accused lined up with those firing when Czech and Polish inmates were killed in February 1945 (on cross-examination the witness testified that the incident occurred in 1941 or 1942) (R 175, 181, 182).

A fourth witness, a capo in the disinfecting barracks, testified that in June or July 1944 he was visiting a friend who worked in the crematory; that he saw the accused and the camp commander bring two dead bodies to the crematory; that the witness and his friend, Kanduth, saw the bodies and observed that they wore vests on which was written "Royal Air Forces", "Kentucky"; and that each body had a wound in its chest. Kanduth told the witness that the accused said to him (apparently referring to one of the victims), "Turn him around I have finished him off" (R 198, 199, 201, 203, 204).

A fifth witness, Kanduth, who worked in the crematory at Mauthausen Concentration Camp for four and a half years, testified that at midnight on 30 July 1944 he was taken from the crematory to the kitchen, where the camp commander's private car was waiting, to remove two bodies from this car; that they were bodies of British pilots; that they were taken to the morgue where the accused, the camp commander and two other SS men were present; that the camp commander ordered their personal effects removed and their clothing burned immediately; that the camp commander and

another inmate with the bodies; that the accused said to the witness and the other inmate, "Turn the one of them around". Then he said "I shot him because he was resisting"; and that after the accused left, the bodies were cremated (R 316, 317, 318).

A sixth witness testified that in the spring of 1942 at subcamp Gusen the witness and his friend, a Polish inmate named Dmorwiski, who was in a weakened condition, went to pick up a kettle of food from the kitchen; that the latter fell down; that the accused beat the fallen inmate several times on the body with a wooden stirring ladle two to two and a half meters long; that the accused said, "Bring that fellow into the potato cellar, we will refresh him there"; that in the evening the witness saw the corpse of his friend covered with bruise marks (R 241-243, 244, 246).

A seventh witness testified that in Mauthausen Concentration Camp in 1942 an inmate who worked in the kitchen was ordered by the accused to get some tools and go to the edge of the woods outside the camp and cut some branches off a fir tree. The witness saw the accused and another SS man follow the inmate. He saw, from a distance of about 250 meters, the accused shoot the inmate in the back with his carbine and saw the body brought back into the camp. The witness testified further that he knew that this victim was not a German. He often saw the accused administering slappings, kickings and beatings with an oxtail whip (R 249, 250, 256, 257, 259, 260, 261, 263, 264, 265).

An eighth witness testified that between 20 and 24 of July 1942 the accused participated in the mass beating of all the inmates in Block 3 at subcamp Gusen I, because they stole some wood. Each inmate received 25 to 30 blows with an oxtail whip and four of them suffered severe blows on the back in the region of the kidneys. They were admitted to the dispensary as a result. The witness heard that they died six or seven days later and he saw their dead bodies (R 88, 90).

A ninth witness testified that the accused was assigned as leader of a search detail when all the inmates of block 20 escaped from Mauthausen Concentration Camp in 1945; that the witness heard him say farewell with the hunter's greeting, "Good luck, hunter"; and that he was told by

Lieutenant Schultz, the leader of the political department, that almost 500 of the escaped inmates were either shot or beaten to death (R 178)

A tenth witness testified that it was general talk in the camp that the accused beat inmates and threw them in the potato vats containing cold water. The witness saw a Polish inmate beaten in front of the kitchen, taken inside and after four or five minutes thrown out wet (R 122-123).

An eleventh witness, who worked in the dispensary, testified that an inmate who was believed to have been either an Italian or a Croat, was sent to the dispensary unconscious from a head injury; that he was treated in the dispensary for about two months; and the skull injury resulted in epileptic fits and loss of memory. This witness testified that he asked the inmates who brought the victim in what caused the injury. They told him that the accused beat the victim on the head with a sharp object in the kitchen (R 269).

A twelfth witness stated that during the years 1940 to 1942, he observed a great number of executions in which Russian, Polish, Yugoslav and German inmates were the victims and that he nearly always observed the accused in the firing details on those occasions (R 310; P-Ex 21A).

The book containing unnatural deaths, Mauthausen Concentration Camp and its subcamps, which is Exhibit 22 in the Parent Mauthausen Concentration Camp Case, specifically line #264 of the page marked at the bottom thereof as 2077-2078, referred to in the present case as certified copy of page 26/27 of the book entitled "Unnat. Death Cases", recites: "Name of Prisoner, Soprun Tjereanty; Type, Russian civilian worker; Day of Death, 1 September 1943; Camp, Gusen; Kind of death, by shooting; Name of guard, SS T/Sgt. (Oscha) Reinhard Purucker" (R 234, 235; P-Ex 17A pp. 1, 2, P-Ex 18A).

A thirteenth witness testified that in February 1945 in the food store cellar the accused beat a Czech inmate severely and kicked him in the back, causing him to be sent to the infirmary for five weeks. This witness testified further that on the 7th or 8th of September he beat the witness and 14 other inmates (the witness did not state what he and the others were beaten with) (R 128).

A fourteenth witness testified that at the inmate kitchen during food distribution the accused beat inmates with an oxtail whip, causing several to fall down and to require <sup>some</sup> bandages (R 288). A fifteenth witness testified that during the period 1942 to 1945 the accused beat inmates on the potato peeling detail daily, if the potatoes were not peeled well (R 371-372).

Evidence for Defense: The accused testified that he worked from 8 to 300 inmates in the kitchens; that he had trouble from time to time with those who stole food when it arrived; that he did or said nothing to those who took some small item such as a piece of sausage; but that he slapped the faces or bottoms of those who stole larger items. He testified that he did not throw hot water on inmates, but in subcamp Gusen when he found inmates using the toilets in the food storage barracks he threw a bucket of cold water at them; that in 1944 inmates from transports were selected in groups of 100 for assignment to barracks, among which groups were Jewish children four to eight years of age; that these children were placed indiscriminately in these groups and in some instances their parents were in different groups from the children; that he gathered those children and took them to a place where he had prepared bedding; and that later he placed them with their parents.

The accused denied shooting the inmate near the entrance of the protective custody camp, who had been sent out to get branches from a fir tree. Concerning the flyers, he testified that the camp commander picked him up in his car on a road leading from the Vienna Ditch after he had been on a deer hunt; that the camp commander told him that he had shot two flyers while they were trying to escape; and that he had the bodies in the car. The camp commander ordered the accused to watch the bodies at the crematory to see that none of the personal effects were taken. He was in the crematory with the camp commander and two other SS men. He made no statement about who finished them off. He did not shoot them, nor did he see them alive.

The accused testified that on occasions he gave left over food to inmates. He did not participate in any executions, but if he had been



ordered to participate he could not have refused. He struck inmates with an oxtail whip and a club about one meter long and the size of a thumb. He asserted that the appearance of his name in the official records of Mauthausen Concentration Camp in connection with the shooting of a Russian civilian worker was an error.

A total of about 1200 inmates worked for him in the kitchens of Mauthausen and subcamp Gusen. Two former inmates, Polish nationals, brought him cigarettes in 1945 during his captivity in Regensburg. The accused asked why out of 1200 should there be only a single communist testifying against him (R 704-712, 714, 720).

It was not known that the accused shot a Jewish inmate who was dying and the witness did not see or hear anything about the accused being part of an execution squad (R 441, 452). The accused did not mistreat inmates in the SS kitchen and the witness never heard rumors that he did so. It was not known that he participated in executions (R 493, 495). Another witness never saw the accused do anything that was not right and never knew that he participated in executions (R 501).

The accused treated inmates well who worked in the kitchens. The witness, while an inmate working in the kitchen under the accused, was instructed to give special diets to the undernourished inmates, no distinction being made as to nationality. The accused ordered the witness to give a special ration of sausage to an old man who had been beaten up severely, having two ribs broken. The accused enjoyed giving an extra portion of food to an inmate caught stealing food. He would force him to eat it even if he had enough.

Cold water from the faucets or warm water from the kettles was sometimes thrown on inmates as a joke by the accused, but boiling water was never used. The witness never heard that food was taken from the inmate kitchen to the SS kitchen (R 438-441, 444, 455).

There were Polish, Spanish and Czech inmates working in the SS kitchen and there was no difference in the treatment they received from the accused (R 494, 497). Nothing was known to his disadvantage in regard to the treatment of inmates (R 530). A witness never heard that inmates

had been pushed into the potato vats (R 498). The accused was not known to have harmed anyone (R 40). The accused gave food and cigarettes to inmates of various nationalities while they were working in the potato cellar and the witness never heard that the accused beat inmates or throw them into the potato vats (R 422-423).

"Extract from list of Recommendations for KVK II with swords, # 25 CC Mauthausen" was introduced in evidence, the original bearing a stamp of the Waffen SS and a signature identified as the signature of Ziencis, the camp commander of Mauthausen Concentration Camp, which recites: "SS Hauptscharfuehrer (M/Sgt) PURUCKER has not only made himself well deserved with regards to rations supply for the troops, but has also shown himself at all times to be an experienced and extremely reliable CC NCO" (R 219; P-Ex 15A).

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. Donald J. Ross, defense counsel, 25 September 1947. Petitions for Clemency were filed by the accused, 23 October 1947; the accused's brother, John Purucker, 25 September 1947, 27 September 1947 and 8 January 1948; the accused's sister-in-law, Maria Luisa Ancolondo de Purucker, 29 September 1947; the accused's cousin, Carl Purucker, 10 October 1947; the accused's cousin, Max Schmidheim, 6 October 1947; the accused's cousin, Anne van der Moolen, 7 October 1947; Mrs. A. Soma, 29 September 1947; Ferdinand Haager, 16 September 1947; Hans Braun, 16 September 1947; Josef Radl, 21 September 1947; Mrs. Von Humann, 25 September 1947; Karl Pelikan, 26 September 1947; and Johann Schrenker, 27 September 1947.

Recommendation: That the findings and sentence be approved.

9. Xaver STRAUSS

Nationality:	German
Age:	38
Civilian Status:	Merchant
Party Status:	Nazi Party 1937
Military Status:	Waffen SS, Captain
Plea:	NG

Findings:

G

Sentence:

Life imprisonment

Evidence for Prosecution: The accused testified that he joined the Allgemeine SS in 1933 and the Nazi Party in 1937. He volunteered for the Waffen SS in 1934, was assigned to Mauthausen Concentration Camp in May 1940 and was promoted to Captain in April 1941. He further testified that he was transferred to the First SS Brigade on the central sector of the Russian Front in August 1942; that he returned to Mauthausen Concentration Camp at the end of February 1943; and that he remained there until 7 May 1945. He was administration leader and was responsible for transportation, accommodation and feeding of troops and inmates during the entire time he was at Mauthausen Concentration Camp (R 723, 724, 745, 749).

One witness testified that he worked in the inmate kitchen in Mauthausen Concentration Camp, and that in August 1944 he went to the garden shop to obtain vegetables for the kitchen; that he saw the accused beat a Czech inmate until he could no longer stand; and that two Russian inmates took the victim into the camp. This witness testified further that he returned to the camp later and saw, through a low window in the orderly <sup>/room</sup>, this Czech inmate hanging there; that he saw the accused beat the inmate for about 10 minutes; and that he then saw the guard remove the body from the orderly room toward the crematory. The victim was never seen again (R 31-32).

A witness, Geiger, testified that on 11 May 1943 in Mauthausen Concentration Camp around 2100 hours he saw the accused, the camp commander, and several other SS men in front of Block 11; that these SS men had 11 Russian officers undressed and standing at attention; and that they chased the Russian officers, by beating and kicking, into the cellar where the gas chambers and the rooms for neck shots were located. After a short time shots were heard and the accused and the other SS men came out laughing. When they were 30 or 40 meters away, the witness went into the cellar and saw dead bodies in five rooms. He counted 87 gun shot wounds in the bodies of the Russian officers. The witness inquired of the personal orderlies of these SS men as to the amount of ammunition left in their

in their pistol pocket or magazines, it being known to the witness that they carried two magazines of nine rounds each (R 47, 48).

A third witness testified that, from September 1942 until the end of 1943 in Mauthausen Concentration Camp, he saw the accused at least 30 times at executions. Sometimes the accused was in charge of the execution detail and sometimes he was merely present. The witness was a carpenter and saw these executions from a building where lumber was stored. He testified that his observation point was about 25 meters from the execution place. Yugoslav, Polish, Czech, Russian and Austrian inmates were the victims, and the accused usually gave a shot in the neck to those who were still alive after the initial volley (R 102, 103, 107). A fourth witness testified that from various hiding places he saw the accused at three executions when Russian, Polish and some German inmates were the victims (R 176, 177).

A fifth witness testified that he worked in the crematory from 9 May 1940 until 3 May 1945; that in September 1942 the accused with the camp commander and others went into the gas chamber; that 135 Czech female inmates, who were alleged to have participated in the Heydrich affair in Czechoslovakia, were taken in groups of 30 to this gas chamber. The accused and the others left after 15 or 20 minutes. The witness helped to remove the bodies. The hair of these bodies was cut, the gold teeth were removed and the bodies were burned. This witness saw the accused going to executions with his staff 30 to 40 times (R 314, 315).

A sixth witness testified that in May 1943 he saw the accused together with the camp commander and two others follow 300 inmates of all nationalities downstairs to where the gas chambers were located; and that after several hours the witness entered the gas chamber and saw the dead bodies of these inmates (R 330-332, 351-352).

A seventh witness testified that he worked as a barber in Mauthausen after 1942; that in August 1942, 61 Czech inmates were executed after having a document read before each one was shot; that the witness observed the execution from a distance of 20 to 25 meters through the fence; and that he saw the accused present with the camp commander and others, but

that he could not hear what was read from the document (R 552-553, 619).

An eighth witness, Ornstein, who worked in the crematory of Mauthausen Concentration Camp, testified that each time the accused visited block 20, dead bodies were received at the crematory and that the bodies did not look as if they had died a natural death. On some bodies it appeared that injections in the arm or around the area of the heart had been given (R 189-190).

A ninth witness testified that he worked as a painter in Mauthausen; that in 1942 or 1943 four inmates escaped by breaking through a wall and going out through the heating tunnel in which they had hidden some food, which food had been stolen from the food storehouse; that a friend of one of those who escaped worked in the food storehouse; that the accused suspected this inmate of supplying food to those who had escaped; and that the accused took him into a room for interrogation. The witness looked through a window and saw the victim with his hands and feet tied to a beam causing his back to be arched inward toward his stomach. He saw the accused press on the victim's back breaking it. He saw the accused throw the victim out of the room, kick him and say, "You pig, you just can be finished off". The witness was told that the inmate died before the next morning (R 251-253). This is corroborated to a considerable extent by the testimony of a tenth witness (R 362, 363, 365, 366).

An eleventh witness testified that he was an inmate doctor in Mauthausen; that in August 1943 in Mauthausen a German capo named Matucha and his two clerks, one a Czech inmate and the other an Austrian inmate, had conversations and exchanged letters with a civilian woman; that this correspondence was discovered by the SS; that they were interrogated, bitten by a dog and beaten by the camp leader Bachmeier (apparently the witness was told this); and that these victims were treated by this witness for several severe bites and other injuries. Later in the afternoon the accused with Bachmeier and the dog went into the bunker where the victims had been confined. After about an hour the corpses of Matucha and the two clerks were brought to the crematory where the witness was performing an

to new wounds on their bodies. The Spanish clerk in the bunker told the witness that the accused and Bachmeier set the dog on the victims and then hanged them (R 268-271).

Another witness testified (apparently referring to the incident testified to by the eleventh witness) that in August 1943 Matucha and his clerks had love affairs with some of the wives of the SS men including the wife of the accused; that this affair was discovered; that Bachmeier interrogated them, tortured them by hanging them by their hands, which were tied behind their backs, sicked the dog on them and used the oxtail whip on them until they confessed everything. They were lined up against the wall until about 0300 hours, at which time Bachmeier, in a drunken condition, came in and tortured them with the dog until 0600 hours and then stood them up at the laundry until noon. Strips of flesh were hanging from their arms and legs. Bachmeier then had them bandaged. They were then led to the bunker. The accused, Bachmeier and the dog went into the bunker about 1400 hours. After approximately an hour they came out. The victims were dead. The Spanish orderly from the bunker told the witness that they were torn up by the dog. The witness was told that they hanged themselves. Although the witness saw the torture by the dog and the dead bodies of the victims, the portions of his testimony concerning the accused are based on what he was told by others (R 284-285).

A thirteenth witness testified that it was general talk <sup>in the camp</sup> that some inmates from the settlement construction were brought into the camp for interrogation by Bachmeier. They were hung up on a tree near the orderly room for two hours and then driven on the camp road by the dog, Lord, who attacked them until they could not get up. They were taken to the bunker where the accused and the camp leader Bachmeier were present. It was rumored that they were torn up by the dog and that they died (R 146-147).

A fourteenth witness testified that in February 1944 he and two other inmates, a Czech and a Pole, being very poorly clad and having to be outside all the time, stole an overcoat and some linen. When the accused discovered this he asked the camp leader Bachmeier to fetch the dog. The

inmates were executed by jumping and hopping about on the roll

cell square until they could no longer move and were tortured with the dog, which bit and wounded them. They were then forced to stand during the night without bandages for their wounds. The Polish inmate died during the night. The Czech victim died in the punishment company the next day. This witness saw his body after he died (R 327-330, 340).

One of these witnesses testified that he was a block eldest in Mauthausen; that in 1944 the accused participated in the torture of American flyers by hanging them in the bunker by their hands, which were tied behind their backs (however, this witness did not see this) (R 150, 151, 153). A fifteenth witness testified that on 25 April 1945 five American flyers were brought into Mauthausen Concentration Camp. One was on a horse drawn vehicle. This witness saw the accused take one big American by the neck and beat his head against the wall (R 130-131).

A sixteenth witness testified that he heard Victor Monynes, an Austrian inmate, and Oron Reener, a German inmate, yelling while the accused beat them with an extail whip in the orderly room during an interrogation in 1944 (R 114, 116).

Evidence for Defense: The accused testified that he had nothing to do with the custody, punishing or the execution of inmates which was the responsibility of the camp commander, the prisoner compound commander, and the political department (R 724). He testified that witness Bleimueller, who testified that he saw the accused attend executions 30 times, was reprimanded often. During Christmas 1944 the accused slapped this inmate twice for stealing the usual tip of meat he gave the inmates who worked in his department (R 725). Witness Wiesendorf testified that the accused beat the inmates Monynes and Reener, but when Monynes was called by the prosecution to testify, he said nothing about such beating (R 725). The full ration was delivered to the bunker administration who cut it by two thirds on instruction from the camp commander. The accused had no authority to enter block 20, which was a separate department (R 726, 747). He did everything possible by various means to secure food (R 732). The food was adequate, the caloric content for non-workers was 1800, for workers, 2400 to 2800, for underground workers, 3400, prior to the last three or

four months.

The accused testified that he was sure the inmates could not remember the names of those who took part in executions even though they were in a position to see many of them; otherwise witness Buerger would not have said that the accused took part in one in August 1942, a time when he was at the front (R 727-728). The accused admitted that he was in the bunker when Matucha died. However, he asserted that on that occasion, he was accompanied by SS Captain Bachmeier, whose permission was necessary to visit the bunker; that he visited the bunker shortly before 1700 hours to see the noncommissioned officer, Weigel, from his kitchen, at the request of the wife of this noncommissioned officer; that the technical sergeant in charge of the bunker reported to SS Captain Bachmeier that Matucha was up again and getting better; that because he knew Matucha as a capo he asked Bachmeier what was the matter with Matucha, to which Bachmeier replied, "Well, Matucha has made some trouble with the girl of Ziemeis"; that Bachmeier asked if the accused would like to see Matucha, to which he replied, "Sure, let's go see him"; that Matucha was bandaged on the arms and head; that during the conversation Matucha stated to the accused that he had done something foolish; that Matucha asked for a cigarette, which the accused procured from Bachmeier; that Matucha said that he was no longer interested in living; that Bachmeier made some promise of promoting him to capo again; and that after some conversation they proceeded to see the noncommissioned officer Weigel and talked a good quarter of an hour. He testified further that when they were leaving, the technical sergeant in charge ran up and reported to Bachmeier that Matucha had hanged himself on the radiator by his suspenders. The dog, Lord, was not present at this incident. He asserted that the prosecution witnesses know nothing about this incident, which is indicated by the fact that witness Kanduth said it happened at 2030 hours and by the fact that at a line-up Kanduth charged the accused with having shot Matucha (R 728-730, 731, 739). The dog, Lord, incident about which witness Hartmann testified could not possibly have happened in Mauthausen Concentration Camp, because the dog was in subcamp Ebensee at that time. The accused reprimanded this witness



and had him relieved from the kitchen because he discovered that the witness had a previous conviction for raping his 11 year old daughter (R 731, 732).

The accused testified that he had never had an occasion to interrogate American flyers (R 732). The inmates he punished were mostly German and Austrian, the same as the kind appearing here as prosecution witnesses with 40 to 50 previous convictions. The only inmates who stole were Russians who stole mostly for the purpose of obtaining cigarettes. He never suggested that Bachmeier set his dog upon any inmate. He lived some 20 minutes drive away from the camp and was never there at night, when the witness Klein testified that five SS officers shot 11 Russian officers, and he never fired a shot from his pistol in or around Mauthausen Concentration Camp (R 733). He never heard of the gassing of the Czech women at Mauthausen Concentration Camp. The time set by the witness for this coincides with the time he was at the front (R 747). He never witnessed an execution, his place of work being some 500 meters distant. He surrendered to American authorities on 7 May 1945 (R 723, 748, 749).

Witness Emil Mueller testified that a Technical Sergeant Emil Mueller, with a same name as that of the witness, a block leader at Mauthausen Concentration Camp, kicked a German inmate, Albert, in the lower part of his belly, which must have killed him; that this happened between the bathroom and the laundry; and that during the roll call he was still alive. The witness did not remember that Albert was hung and did not hear that this inmate had his spine injured or broken (R 471-472, 481).

The witness never heard of the accused being involved in torturing inmates with the dog (R 478-480). SS Captain Bachmeier was seen to have set the dog, Lord, upon the inmate Matucha (R 318).

Two witnesses testified that the accused was a correct person and that they never saw him beat inmates. His distribution of food was just and he got extra milk for women inmates. He tried to secure the best food products for both the SS and the inmates (R 470-471, 475, 485, 539; D-EX 7A).

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. Donald J. Ross, defense counsel, 25 September 1947. A Petition for Clemency was filed by Josefa Bilimayer, 3 September 1947.

Recommendation: That the findings and sentence be approved.

10. Walter TRUCKENBRODT

A nolle prosequi was entered in favor of this accused (R 134).

11. Bernhard Fritz WAGNER

Nationality:	German
Age:	37
Civilian Status:	Accountant
Party Status:	Nazi Party 1937
Military Status:	Allgemeine SS 1933
Plea:	NG
Findings:	G
Sentence:	5 years, commencing 20 May 1945

Evidence for Prosecution: The accused testified that he joined the Allgemeine SS in 1933; that he joined the Nazi Party in 1937; that he was employed as an accountant and receptionist in a factory until 6 September 1939, when he was drafted into the Waffen SS; that he went to Mauthausen Concentration Camp and served as a guard until August 1940; that at this time he was transferred to the camp administration; and that his duties there were in connection with billeting, care of tools and distribution of laundry (R 635-636, 640, 641).

A witness, Geiger, testified that the accused beat inmates with an oxtail whip when they complained justly of not getting enough soap during the issue; that he forced the inmates of the block to pay for any lost utensil used by that block; that the accused was seen by the witness to have participated in executions of Polish inmates at least five times, after the Heydrich affair in 1942; and that on these occasions he was dressed in the regular service uniform, including steel helmet, and armed with a carbine (R 44-46). Another witness, Kulke, testified that he saw the accused proceed to executions with the detail on two occasions in 1942

the accused was executed (R 175-176).

Another witness, Klein, testified that the accused beat inmates on three or four occasions; that he beat them with a broomstick on the head and body; and that as a result several had to go to the dispensary to have their heads bandaged. He beat an inmate for wearing a towel as a necktie and he beat others for stealing soap (R 287). Another witness testified that the accused beat inmates frequently in the laundry room when they brought damaged articles of clothing into the laundry and that after he used a broomstick on an inmate three or four times, the inmate would collapse (R 369-370).

Evidence for Defense: The accused testified that he had six inmates working under him; that he had no trouble with any of them; but that he did have trouble with their capo, Kulka. The accused testified further that after Kulka had beaten three of these inmates, the accused forbade it. He testified that pursuant to his request in 1940, he was transferred to the Russian front in 1943 (R 637, 639). The accused admitted that he slapped an inmate named Gruber for stealing some instruments and a haircutting machine from him. He asserted that he was never on an execution detail, but that he did wear his steel helmet in 1943 during drills and air raid alarms (R 638, 639). He asserted that he tried to make conditions better for the inmates by giving them extra bread and meat and a half day off from duty (R 640); and that neither the witness Klein who worked in a locked barracks and could not get out except at the noon break, nor the witness, Geigar, who also testified against him, were ever in his office (R 674).

A witness who worked in the clothing room testified that the accused left Mauthausen Concentration Camp in the fall of 1943 and that if he had returned later, the witness would have known about it, inasmuch as he would have come to the clothing room for clothing (R 544-545). Another witness testified that the accused was decent toward all inmates; that he was unable to find out anything against him; and that the accused never participated in an execution (R 375, 549). The accused did not beat or mistreat inmates (R 478, 556). A former inmate, who saw the accused frequently, testified that his treatment of inmates was not bad and that he

never saw the accused mistreat them. He saw many executions, but he never saw the accused participate in one (R 612, 614, 617).

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.

12. Ewald WLOTZKA

Nationality:	German
Age:	38
Civilian Status:	Railroad employee
Party Status:	Nazi Party 1932
Military Status:	Waffen SS, Sergeant
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he became a member of the Allgemeine SS in 1931 and the Nazi Party in 1932. He was drafted into the military service in 1939, receiving training at Prague, and came to Mauthausen Concentration Camp in 1940. He served as a guard in the first company until 1942 and then went to the camp administration and became assistant to the person in charge of the food storeroom. In 1943 he took charge of the food storeroom and remained in charge until the Americans arrived (R 692). His duties were to see that all food that came in was properly distributed (R 693, 694).

Witness Geiger testified that in March 1942 in the penal detail 60 to 70 Dutch Jewish inmates were carrying heavy stones and that one of them collapsed under his load near where the accused and camp leader Bachmeier were standing. The accused approached the inmate, kicked him and shouted at him to get up and continue walking. The victim raised himself up on one arm and said a few words to the accused, after which the accused drew his pistol and fired two shots into the body of the victim. The dead body

A second witness testified that he saw the accused fall in with execution details several times when Russian and Polish inmates were killed (the witness did not reveal the source of his information that the details actually performed executions) (R 176).

A third witness who was a block eldest testified that in 1944 transports brought inmates from subcamps to Mauthausen Concentration Camp; that the inmates were interrogated by the political department; that the accused was present almost always and supplied the Gestapo, who did the interrogating, with oxtail whips for use on the inmates; and that the witness saw an interrogation of some inmates when they were beaten so severely that they had blue spots over their bodies and could hardly walk. In 1945 two of these inmates died eight or ten days later in the Russian camp as a result of these mistreatments. He testified that he knew they died because he had possession of their files.

The accused reported inmates for stealing food while helping to unload the trucks. They were either sent to the punishment company or received such beatings from the roll call leader that they died as a result (this witness did not testify concerning a specific instance of death) (R 143-145). A fourth witness testified that he worked in the refrigerator room at Mauthausen; that in March 1944 the witness saw a Russian inmate lying in the corridor outside the refrigerator room in a puddle of blood; and that he tried to help him to his feet. The accused told the witness, "I'll beat you to death the same way as this Russian Bandit". The Russian inmate who had a fractured skull fell down again and was put in a box and sent to the camp where he died (the witness intimates that he was told that the inmate died (R 226)). The accused was the only detail leader in the refrigerator room where this wounded Russian was found. In 1944 this same witness saw the accused beat a Yugoslav inmate so severely that he was unrecognizable and looked like a mass of blood. He was always seen in the refrigerator room with an oxtail whip and was seen to use it more than a thousand times. Inmates were beaten so severely that they remained on the ground. He was employed as a beater and the name of the accused was

known throughout the camp as a sadist (R 223-225).

A fifth witness testified that the accused was an SS sergeant in charge of the food store; that he was quite a brutal beater; that he kicked the inmates, used iron bars and a stick on the inmates frequently; and that he was dreaded by the inmates because he was like a madman with foam on his lips when he was beating (R 101).

A sixth witness, a former inmate doctor, testified that sometime after 1942 he treated a Russian inmate who had a double fracture of the lower jaw. The victim stated that the accused beat him because he had picked up crumbs of bread and was caught eating them. The wound became infected, pneumonia developed and the inmate died. Several cases of mistreatment by the accused were treated by this witness. The accused had a reputation for being brutal and the inmates were very afraid of him (R 273, 277).

A seventh witness testified that in February 1944 the witness and two Russian inmates went to the storeroom for 20 cans of meat and the accused sent them to the cellar. He then came down to the cellar and asked "What are you doing here in the cellar?", and then beat them indiscriminately with an oxtail whip. The two Russian inmates were taken to the dispensary. The witness was told by Bachmeier that they died as a result of this beating (R 333-334, 343).

An eighth witness testified that in July 1942 at the storeroom where bread was being unloaded, a Polish inmate picked up a piece of bread. The accused beat him with his hand and the inmate refused to release the bread. The accused then took a piece of wood and beat the inmate until he was on the ground. He was taken to the dispensary and never seen again (the record does not show whether the witness saw or heard this) (R 71-72).

A ninth witness testified that three Russian inmates who had been working on a food transporting detail in March 1945 stole something to eat. The accused beat them with an oxtail whip for about 10 minutes as a result of which they required medical attention (R 129-130).

Evidence for Defense: The accused testified that he was not a member of a beating detail at Mauthausen Concentration Camp and never heard of it.

He did not recall that any inmate died as a result of his mistreatment. He voluntarily participated in the surrendering of the Mauthausen Concentration Camp to the American authorities on 5 May 1945 and at that time no inmate stood up and charged him with an offense. He did strike inmates several times because they stole things. He received no orders pertaining to food for block 20 and knew nothing about the block 20 affair. He did not have anything to do with the protective custody camp but issued all the food for the inmates to the kitchen chefs (R 692-695).

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. Donald J. Ross, defense counsel, 25 September 1947. Petitions for Clemency were filed by the accused, 7 November 1947 and 5 December 1947; Mrs. Gerda Allen, 30 October 1947; Arnold Damaschke, 1 November 1947; Stefan Malleschitz, 1 November 1947; and Karl Kaufmann, 25 November 1947.

Recommendations: That the findings and sentence be approved.

#### V. QUESTIONS OF LAW:

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

Motions to Dismiss: The Court's denial of the defense's motion for a finding of not guilty as to the accused Johann DOMIS and Heinrich LUETSCHER after the prosecution rested was proper (R 386-387, 388). It is not error for a war crimes tribunal to deny a motion for a finding of not guilty at the end of the prosecution's case if it believes there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Change 1 to Title 5, "Legal and Penal Administration" of "Military Government Regulations" published by Office of Military Government for Germany (US), 27 March 1947 and Section 501, p. 409, "Manual for Trial of War Crimes and Related Cases", 15 July 1946). Similar practice is followed in courts-martial (Par. 71, d, "Manual for Courts-Martial, US Army", 1928).

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). All 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 that the nature and extent of their participation were such as to warrant the sentences imposed.

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

VI. CONCLUSIONS:

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

L. F. BENSON  
Major FA  
Post Trial Branch

Having examined the record of trial, I concur, this 1946  
day of March 1948.

5/7  
G. E. STRAIGHT  
Lieutenant Colonel, JAGD  
Deputy Judge Advocate  
for War Crimes