

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

1 March 1948

UNITED STATES)

v.)

Case No. 000-50-5-26

Adolf Gustav LEHMANN, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 28 August - 9 September 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Adolf Gustav LEHMANN, Karl Theodor MOGLE, Ferdinand Alois WERNER, Hermann Paul ARNDT, Alois SEIBEL, Cyriakus WALDHEIM, Jakob PFLEIFFER, Johann Iwan KLAPPER, Julius MESSERSCHMIDT, Karl FLECK, Max KOURNER, Johann GRABOWSKI, Richard LUTZE, Karl Wilhelm SCHERR, Leonold PATOLLA, Paul POMMICH, Baptist KIRNER, Bernhard Gerhard GOEBEL, Johann WYHRT, 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, Gunskirchen, Gusen, Hinterbrühl, Lambach, Linz, Leibpass, 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.

(On motion of the prosecution the name of accused WALDHEIM was changed to read WALDHEIM (R 3).)

III. SUMMARY OF EVIDENCE: All the convicted accused were former SS non-commissioned officers of subcamp Melk, of Mauthausen Concentration Camp

during the period alleged in the particulars, and were shown to have held some position of authority and to have participated in the Mauthausen Concentration Camp mass atrocity. Prosecution's Exhibit P-Ex 13 (R 16, 17) is a certified copy of the charge, particulars, findings, and sentences in the parent Mauthausen Concentration Camp Case (United States v. Altfuldisch, et al., 000-50-5, opinion DJAWC, February 1947, hereinafter referred to as the "Parent Case"; see Section V, post).

Each of the incidents hereinafter mentioned in the evidence occurred at subcamp Melk, hereinafter referred to as "Melk", unless otherwise stated, Melk being a subcamp of Mauthausen Concentration Camp in Austria (Parent Case).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Adolf Gustav LUHMANN

This accused was deleted from the charge sheet, having died prior to the trial (R 3).

2. Karl Theodor MOEGLE

Nationality:	German
Age:	43
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Place:	MG
Findings:	G
Sentence:	4 years, commencing 5 May 1945

Evidence for Prosecution: The accused served in Melk as a guard from 27 July 1944 to 15 April 1945. He served six weeks as block leader. He was a guard on the inmate evacuation transport from Melk to Theresienstadt, 16 April to 3 May 1945 (R 21; P-Ex 14).

Fischer, a Polish inmate at Melk from September 1944 until April 1945, identified the accused (R 35), and testified that while he was in Melk he knew the accused as a guard. He testified that one day, at the place of work, an inmate had been very badly beaten by the man in charge

of the work detail, and that, while the inmate was being carried back to the camp by witness and three other inmates, the accused kicked up a piece of sod and placed it on the face of the beaten inmate. Witness removed the sod from the inmate's face to prevent suffocation, and for this was kicked by the accused, who then replaced the sod. The inmate died before reaching the camp (R 36).

Tadawar, a former Polish inmate at Molk from August 1944 until April 1945 (R 241), testified that while there he knew the accused as a guard in the tunnel construction detail and identified him in Court. Witness testified that when the inmates on the detail were marching out to work the accused used to beat them very severely on their heads with the butt of his rifle (R 243, 244).

Evidence for Defense: The accused did not testify (R 464, 466).

No evidence was presented by the defense.

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

Petitions: No Petition for Review was filed. Petitions for Clemency were filed by accused's wife, Mrs. Mina Hoegle, 31 January 1948; Bürgermeister of Seeburg, 18 August 1947; Hans Muhlhauser, undated; and Clergyman Breitschwerdt, 26 August 1947.

Recommendation: That the findings and sentence be approved.

3. Ferdinand Alois WEBER

This accused was neither served nor tried (R 3).

4. Hermann Emil ARNDT

Nationality:	German
Age:	43
Civilian Status:	Male Nurse
Party Status:	Member of Nazi Party since 1936
Military Status:	SS Sergeant
Flea:	NO
Findings:	G
Sentence:	8 years, commencing 8 May 1945

Evidence for Prosecution: The accused served in Melk as a guard from 1 September 1944 to 12 March 1945. He was a block leader from January 1945 to February 1945, then resumed his duties as guard. He took part in the inmate evacuation from Melk to Ebensee (R 21, 22; T-Ex 15).

Fischer, a Polish inmate at Melk from September 1944 until April 1945 (R 32), identified the accused, and testified that in the fall of 1944 a Russian inmate, who had tried to steal some soup from the kitchen, was chased by the accused and beaten so long that he fell down, covered with blood. The Russian was taken to the dispensary, and witness learned the next day that the inmate died (R 37).

Grzyb, a Polish inmate at Melk from August 1944 to April 1945 (R 140), identified the accused and testified that the accused was a block leader and that he saw the accused beat three brothers (R 144), probably of Polish nationality (R 151). The accused performed the beating together with the block eldest. The accused had more authority than the block eldest, and witness assumed that he ordered the block eldest to beat the inmates (R 144, 145).

Chiam, a Polish inmate at Melk from September 1944 until a few weeks prior to the evacuation (R 218), identified the accused and testified that he saw the accused beat a Polish inmate with the butt of his rifle until the inmate fell to the ground and was taken to the dispensary (R 218, 219). This incident took place at the gate while the inmates were going to work (R 219).

Hammermann, a Polish inmate at Melk from the summer of 1944 until April 1945, in an extrajudicial sworn statement, stated that the accused was a block leader; that he ordered the block eldest to kill a Polish inmate who had stolen a piece of rubber; and that the inmate was beaten to death by the capos. On another occasion the block leader ordered the capos to beat an inmate who had taken a pair of shoes from a dead inmate. The accused was present while the beating took place (R 256; T-Exs 44, 44A).

Evidence for Defense: The accused testified that he served in the

(R 379). For the first three months, while in Melk, he worked as a guard on work details or in the chain of guards around the camp. Later he worked in the troop kitchen outside the camp distributing food to the troops. In January 1944 he became a block leader, but in February 1945 he was relieved and again placed at the guard house (R 380-382). He testified that during his assignment at Melk he never mistreated an inmate (R 383). He denied beating a Russian inmate as testified to by witness Fischer (R 383). He denied the accusation of witness Grzyb about the beating of the three brothers (R 385); also the accusation of witness Ohiam about beating inmates with the butt of his rifle. He testified that he never had a rifle (R 385); that as a guard, he only carried a pistol (R 386).

Weiss identified the accused, with whom he served at Melk when the accused was a block leader, and testified that he never saw the accused mistreat inmates (R 319); that he knew him as a quiet, good man; that if the accused had beaten an inmate to death, the witness would have heard about it and he never heard of such a report (R 320).

Pflueger, in an extrajudicial sworn statement, stated that he knew the accused at Melk where both served as guards; that the accused was a very quiet and decent person; that he never saw him mistreat inmates and the witness would not believe him capable of having killed anyone. He also stated that the accused often played music with inmates in the camp and therefore must have been on good terms with them (R 392; D-Ex 3, 3A).

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

Petitions: No Petition for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

5. Alois STIDEL

Nationality: German

Age: 57

Military Status:	SS Master Sergeant
Place:	NS
Findings:	G
Sentence:	3 years, commencing 7 May 1945

Evidence for Prosecution: The accused served in Melk from 1 September 1944 to 21 April 1945 in different capacities. He took part in the inmate evacuation transport from Melk to Ebensee (R 21, 22; T-Ex 16).

Wolnuth, a Polish inmate at Melk from August 1944 until April 1945 (R 125), identified the accused and testified that he was detail leader of the outdetail Schachhaugh (R 125, 126). He testified further that in October or November 1944 he saw the accused give a Hungarian inmate a severe blow with the butt of his rifle because the inmate wanted to pick up something that was lying on the road (R 126). The beaten inmate had to be carried back into camp (R 126, 127).

Braun, a Hungarian inmate at Melk from July 1944 until April 1945 (R 222) identified the accused (R 224), and testified that a father and two sons, who were inmates of the camp, worked in one of its details, and that one day at roll call it was discovered that one of the two sons was missing. The accused ordered a capo to find out from the father where the son was. The capo then took the father to a shed and beat him. After returning to camp the accused made a report, and the two inmates, father and son, had to stand near the barbed wire for three days until the other son was found (R 224, 225). The witness stated that the incident was related to him by the father (R 224) who was a Hungarian national (R 233).

In a sworn extrajudicial statement, the accused admitted that the capo, who was his subordinate, following the disappearance of an inmate, took the inmate's father into a shed and beat him (R 257; T-Ex 46A, n. 2).

Evidence for Defense: The accused testified that he was transferred to the Tarnobrzeg SS in September 1944 from the air force where he had served since 1943 (R 393, 394), and that while in Melk he was a duty officer, an officer with kaserne duty, officer of the guards and guard (R 394). He

the father and brother of the escaped inmate into a little shack and beat them; that he, the accused, was horrified and ordered the capo to stop (R 397, 398). After this occurrence the accused had to stand ordinary guard duty (R 399). The accused testified further that witness Wolmuth must have been mistaken in identifying the accused as the one who hit a Hungarian inmate with the butt of his rifle (R 399).

Accused FLECK testified that the accused did not beat any inmates (R 334).

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

Petitions: No Petition for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

6. Cyriakus WALDHelm

This accused was neither served nor tried (R 3).

7. Jakob FRIEPPER

Nationality:	German
Age:	47
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS First Sergeant
Place:	MG
Findings:	G
Sentence:	Life Imprisonment

Evidence for Prosecution: The accused was acting first sergeant at Mauthausen from 15 August 1944 until 12 April 1945 when the camp was evacuated (R 347, 348). SS Captain Dinkel was the transport leader. The accused was next in command (R 162).

Grzyb, a Polish inmate of Mauthausen from July or August 1944 to March or April 1945, identified the accused (R 142), and testified that on the evening of the first day of the inmate evacuation march from Linz to Ebensee, he saw the accused and another guard take two Russian inmates out

and forth (R 143).

Gruner, a Polish inmate who took part in the evacuation march from Linz to Ebensee, identified the accused (R 156), and testified that the accused was the evacuation march commander (R 155). He testified that the accused threatened to shoot him merely because he wanted to relieve himself; that during the last night of the march in Gmunden, while the inmates were in the field, shots were being fired at inmates who raised their heads; and that the witness heard that many inmates were shot. The order to shoot must have been given by the accused because he was in charge (R 156).

Fordon, an SS man subordinate to the accused on the march, identified him, and testified that on the second day of the evacuation march from Linz to Ebensee, some inmates were very sick due to the fact that they had marched 32 kilometers the preceding day; that the accused then stepped forward and stated that the sick will have to be killed; that thereafter, upon order of the accused, Hierolt, a member of the SS, shot three inmates (R 163, 164).

Schraeder, a German inmate at Melk from February 1945 (R 189), identified the accused and testified that the accused kicked an inmate merely because he was marching off to work with a couple of sacks around his shoulders (R 190). The inmate fell to the ground; the accused gave him five or six additional kicks; and the inmate remained lying on the ground. This incident occurred at the end of March or the beginning of April 1945. The witness further testified that during the second day of the evacuation march he saw the accused take two Jewish inmates out of the column because they could not march any more, and after a short time he heard shots fired (R 191, 192).

Nachmann, a Polish inmate at Melk from August 1944 until April 1945 (R 200), testified that when the inmates marched out of the camp to work the accused was one of the persons who stood at the gate; that on one occasion the accused jumped into the ranks and kicked two inmates who were too weak to march; that the stricken inmates were taken to the

Braun, a Hungarian inmate at Melk from July 1944 (R 222), identified the accused, and testified that on the second day of the evacuation march he observed the accused push two inmates toward the rear of the column. Witness heard that they were both shot. One of the victims was a good friend of witness, and witness was sure that he never arrived at Ebensee (R 223).

Padawar, a Polish inmate at Melk from August 1944 to April 1945 (R 241) identified the accused (R 142), and testified that the accused was the one who gave orders during the evacuation march; and that during the day inmates were beaten and injured, and at night shots were fired (R 242). In the morning witness saw three or four dead bodies lying near him (R 243).

Joseph Kempler, in an extrajudicial sworn statement, stated that the accused was assistant leader of the inmate evacuation march from Melk to Ebensee; that many inmates fell out during the march; and that guards did not exert themselves to pick them up (R 197; P-Ex 36A).

Adolf Roegner, in an extrajudicial sworn statement, stated that he was an inmate at Melk from 2 February 1945 until 16 April 1945; that he often heard, when the inmates marched out, the accused give orders to set the dogs on the inmates; and that he saw the accused beat sick and weak inmates, of all nationalities, with his hands and trample them down with his feet (R 199; P-Ex 37A).

Evidence for Defense: The accused testified that he had been a member of the German air corps prior to his transfer to the Warren SS on 1 September 1944 (R 347); that he was in Melk from 15 August 1944 until 12 April 1945; that it was not part of his duties to accompany any of the inmate details; that he spent the greater part of his time in the orderly room which was located outside the inmates' compound (R 348); that he was never present at the gate when the details left the compound to go to work; that he was never inside the inmate compound; and that witness Schraeder was wrong in testifying that he saw the accused when the details moved off to work (R 349).

The accused also testified that he knew witness Fordon very well while in camp because Fordon was the accountant for the camp; that he had some difficulties with Fordon; and that, following a quarrel, their relationship became so strained that they did not speak to each other except in the line of duty (R 352, 353). The accused denied ever giving anybody an order that sick inmates should be "taken care of" (R 353). He further testified that the inmate evacuation march leader, Captain Dimel, went continually up and down the column inquiring if there was anything new (R 355); and that he, the accused, did not issue the order because he did not have the authority to issue orders (R 357). The accused also denied that he took two Russian inmates out of the column and marched them toward the rear (R 359).

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

Petitions: No Petition for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

8. Johann Iwan KLAPPER

Nationality:	German
Age:	45
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused served as a detail leader in Melk from 18 June 1944 to 13 April 1945. He took part in the evacuation from Melk to Ebensee (R 21; P-Ex 18).

Fischer, a Polish inmate of subcamp Melk from September 1944 to April 1945, who was also on the inmate evacuation march, identified the accused

of bread which had been thrown out from a passing truck; that the witness was beaten over the head by the accused; that two of the victims remained on the ground bleeding (R 33). The witness further testified that the accused also beat the inmates with the butt of his rifle (R 56); and that he saw the accused beat inmates with a stick when they had to line up at the termination of their work shift (R 33). These, however, were slight beatings (R 34).

Last, a Polish inmate at Molk from 25 August 1944 until April 1945, (R 114), identified the accused and testified that on the first night during the evacuation march from Linz to Ebensee, while the inmates were lying down, he saw the accused shoot one of them to death (R 115); and that on the third day of the march he saw the accused beat an inmate with his rifle butt to such an extent that the victim remained lying on the ground and was dead (R 115).

Nachmann, a Polish inmate at Molk from the end of August 1944 to early April 1945, identified the accused (R 200). He testified that the accused led a dog around, and one day, when the inmates were returning from work, the accused sicked the dog on one of the inmates who was too weak to walk; the inmate was severely bitten by the dog (R 205). The inmate fell to the ground and was beaten by two or three SS men. The accused also kicked the inmate (R 205, 206).

Ohian, a Polish inmate at Molk from September 1944 until four weeks prior to the liberation (R 218), identified the accused (R 219) and testified that during the evacuation march from Linz to Ebensee, there were many instances of mistreatment of inmates by the accused (R 220); that on one occasion the accused severely beat one inmate who wanted to pluck some grass to eat; and that on another occasion, when the inmates had to spend the night at Munden, the accused kicked an inmate on the head because, contrary to orders, he had raised his head (R 220).

Braun, a Hungarian inmate at subcamp Molk from July 1944 to April 1945 (R 222), identified the accused (R 225), and testified that the inmates, on their way to work, had to run up some 40 steps of the loading platform at

the railroad station, and that the accused beat with the butt of his rifle and kicked an inmate who was unable to run and had fallen to the ground (R 226). In this particular instance, the record refers to the accused as PFEIFFER, which evidently is an error (R 225-226).

Max Wrobel, in an extrajudicial sworn statement, stated that he met the accused in 1944 as a block leader at Melk and saw him daily at roll call and in the camp; that the accused would beat and mistreat inmates of all nationalities indiscriminately, especially Jews and Russians, and with all means at his disposal. The witness stated further that in the beginning of 1945 he was caught with a knife in his pocket, and was given five lashes with a leather strap by the accused (R 121; P-Ex 32).

Evidence for Defense: The accused did not testify, after having his rights explained (R 464). Weiss, a Czech former inmate at Melk from 1944 (R 269), identified the accused (R 271) and testified that, while there, he was assigned to the Flote detail; that shortly thereafter the accused became detail leader of that detail (R 270); that soon after the accused was assigned, the beating of inmates by the camp, which had been a common practice, ceased; and that the impression prevailed that the change was due to the efforts of the accused (R 271). The witness further testified that he saw no mistreatment of inmates either by camp, guards or by the accused while the accused was detail leader; that the accused improved the conditions of the inmates and permitted them to see newspapers by hiding some of them in boxes accessible to the inmates (R 272); and that he never saw the accused with a dog (R 275).

Abraham Kopelowitz, a Czech inmate at Melk from June 1944 to March 1945, in an extrajudicial sworn statement, corroborated the testimony of witness Weiss as to the improvement of conditions in the Flote detail following the appointment of the accused as leader of that detail, and also as to the fact that the accused was not a dog leader (R 286; D-Ex 2-2A).

Accused PFEIFFER, who was acting first sergeant, testified that the accused while in Melk never served as a dog leader (R 359).

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

Petitions: No Petition for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

9. Julius MESSERSCHMIDT

This accused was neither served nor tried (R 3).

10. Karl FLECK

Nationality:	German
Age:	43
Civilian Status:	Painter
Party Status:	Member of Nazi Party since 1933
Military Status:	SS Corporal
Firm:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused served as a guard in Melk from 1 September 1944 to 15 April 1945 (R 21; P-Ex 19).

Spira, a Polish inmate at Melk from August 1944 until April 1945 identified the accused (R 83). He testified that the accused beat a Polish inmate with a stick (R 87) following a complaint by a Russian inmate that a piece of bread had been stolen (R 83); that the inmate became unconscious and died the following day while on the way to work; and that the witness was also beaten by the accused (R 84).

Amsterdam, a Polish inmate at Melk from August 1944 to April 1945 (R 132), identified the accused, and testified that the accused always stood on the roll call square, beat inmates unmercifully (R 133, 134), and kicked them when they collapsed, and witness heard that they died (R 134). The witness testified further that he himself, because of blows received from the accused, was practically blinded and suffered a long infection (R 139).

Gruner, a Polish inmate (R 154) who spent eight months in Melk (R 158), identified the accused, and testified that he saw the accused at the roll call square checking the inmates; that those who did not stand properly would receive a kick in the belly; that the accused beat inmates at the railroad station while they were being loaded in cars; and that the accused used to carry a stick, wore high boots, and always kicked inmates (R 157). The witness testified that he did not see the accused cause anyone's death (R 159).

Nachmann, a Polish inmate of subcamp Melk from August 1944 to April 1945 (R 200), identified the accused, and testified that the accused gave the order that an Italian inmate who "scrounged" some potatoes, should be bound up to the girders of the hangar where the inmates were living (R 201, 202); that the inmate was tied to the wooden girder with his hands tied together and a rope around his waist; and that the following morning, between 0300 and 0400 hours, the witness saw the inmate still hanging there and he was dead (R 203).

Brenner, a Polish inmate at Melk from the summer of 1944 identified the accused (R 213). He testified that the accused was in the habit of searching inmates upon their return from the work detail; that on one occasion the accused found a knife and a few potatoes in the pocket of a Polish inmate; that the accused beat the inmate in the stomach and kicked him until the inmate collapsed; that he, the witness, carried the victim to the hospital; and that at this time the inmate was already dead (R 213). The witness further testified that the accused beat inmates every day; that some had to be carried to the hospital; and that all the inmates were afraid of the accused (R 214).

Rieger, a Polish inmate at Melk from August 1944 (R 234), identified the accused, and testified that while on a platform, on which the inmates returning from work were unloaded from the railroad cars in order to go back to camp, he saw the accused beat an inmate so severely that he died while being carried back to his block (R 235).

Padewar, a Polish inmate at Melk from August 1944 to April 1945 (R 241) testified that the accused, whom he identified in Court, was a block leader and always mistreated inmates on the roll call square by kicking and slapping them (R 245). The witness also testified that the accused was the most feared man in the camp (R 247).

Ewald Kolodziej, a Polish inmate at Melk from April 1944 to April 1945, in an extrajudicial sworn statement, stated that during the time he was in Melk he knew the accused as a roll call leader and work detail leader; that in his position as a capo he had occasion to observe the accused, using a rubber hose filled with sand, beat inmates who were standing on the assembly square; and that the victims were Russians, Poles, Hungarians, Greeks, and others (R 120; P-Exs 31, 31A).

Frankowski, a Polish inmate at subcamp Melk from June 1944 to April 1945, in an extrajudicial sworn statement, stated that he knew the accused in subcamp Melk from June 1944; that the accused was a detail leader in the underground factory; that on the assembly square of the factory the accused beat inmates of all nationalities with a rubber hose while they were lined up to go to work; and that the accused, while roll call leader at the roll call square, with great fury beat a Polish inmate who had fallen to the ground, kicked him, and jumped on his body. The accused also beat witness because of his inability to keep the fallen inmate standing up. The body of this inmate was carried to the hospital by the witness and another inmate. Prior thereto, by order of the accused, the inmate's shoes were removed because he would have no more use for them (R 122; P-Exs 33, 33A).

Evidence for Defense: The accused testified that he had been in the German air force since 1940 (R 324); that in September 1944 he was transferred to the Waffen SS (R 325); that while in Melk he performed only guard duty and was never a block leader (R 325); that he was never a guard in the tunnel construction detail (R 332, 333); and that on 7 May 1945 he reported voluntarily to a prisoner of war camp (R 333).

The accused specifically denied each and every accusation advanced by the witnesses who appeared against him and also the accusations contained in the two extrajudicial statements introduced by the prosecution (R 326-329). He testified that he was never inside the camp because guards were not allowed to go there (R 326, 328), and therefore he was never on the roll call square (R 326).

The accused further testified that as some witnesses described him as a big fat man (R 157, 158, 331; P-Ex 34), the witnesses who accused him must have thought that they were identifying one Lennart, who was a block leader and worked in the prison compound area (R 289). This possibility was also suggested by Noll (R 290) and again by accused FFEIFFER (R 362), even though other witnesses did not think that the two would easily be confused (R 303, 309, 317).

Noll, who had been stationed in Melk as an SS guard at the time the accused was there (R 287), testified that as far as he remembered, the accused was not a block leader, but that he was only a guard in the chain of guards and on outside details (R 289).

Five witnesses, who served as guards in subcamp Melk together with the accused, testified that the accused was not a block leader (R-302, that he performed his regular duties as a guard (R 302, 308, 314, 448, 451); 308, 314, 448, 451); and that the accused was not at the roll call square (R 304, 315). Accused FFEIFFER and ARNDT testified to the same effect (R 361, 362, 381).

Sufficiency of Evidence: The Court might well have concluded from the evidence that no mistake was made in the identification of the accused; that he personally mistreated, beat and killed non-German inmates; and that in his position of authority he participated in the execution of the common design alleged.

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

Petitions: A Petition for Review, not dated, was filed by Major Carl E. Whitney, defense counsel. A Petition for Clemency was filed by the accused, 26 December 1947.

Recommendation: That the findings and sentence be approved.

11. Max KORNBER

Nationality:	German
Age:	48
Civilian Status:	Unknown
Party Status:	None
Military Status:	SS Sergeant
Floa:.	NO
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was a guard and detail leader in Melk from 18 June 1944 until April 1945 (R 21, 22; P-Ex 20).

Balsam, a Polish inmate at Melk from August 1943 to April 1945, identified the accused and testified that the accused was a leader of the detail Melkendorf; that he was always cursing and beating inmates (R 66, 67); and that he saw the accused beat an inmate with a stick, causing the victim to fall to the ground and appear to be dead (R 67). The witness further testified that on the inmate evacuation march from Linz to Ebensee, which took four days (R 68) and in which several inmates were mistreated, the accused was a detail leader (R 69).

Priess, a Polish inmate in Melk from sometime in 1944 until the evacuation (R 74), identified the accused and testified that he saw the accused beat inmates at Melk with anything he had in his hand (R 75, 76); that the accused, while in charge of the work detail Weissen Freitag, beat an inmate to death because the inmate had gone to the kitchen to obtain something to eat (R 76).

Slivowicz, a Polish inmate at Melk from September 1944 until the end (R 90), identified the accused and testified that on the Czernoleski unloading detail the accused beat witness' brother with a club, causing him to fall to the ground. Witness took his brother to the dispensary, where he died two days later (R 91). Witness testified further that the accused mistreated inmates almost every day (R 92).

Rosenbaum, a Polish inmate at Melk from September 1944 until the end (R 104, 105), identified the accused and testified that he was a detail leader of the unloading detail Czerneleski; that he always administered severe beatings to the inmates assigned to that detail (R 105); that every day two or three inmates had to be carried home on a stretcher (R 105); and that some of them apparently were dead (R 106). Witness further testified that while he was standing on a freight car not working fast enough, he was beaten on the head with a stick by the accused (R 112).

Grzyb, a Polish inmate at Melk from August 1944 to April 1945 (R 142), identified the accused (R 144), and testified that the accused was a detail leader (R 145); that when the inmates were walking to their working place, the accused ran among them beating and kicking them (R 146); that when the inmates were climbing over the unloading platform, the accused beat one of them who was ill with a stick and caused him to fall down (R 146).

Padawar, a Polish inmate at Melk from August 1944 to April 1945 (R 241), identified the accused (R 244), and testified that he saw the accused, while accompanying a tunnel construction detail to work, administer severe blows to some of the inmates and that everyone was afraid of him (R 245).

Josef Hammermann, a Polish inmate at Melk from the summer of 1944 until April 1945, in an extrajudicial sworn statement, stated that the accused often beat inmates assigned to a lumber detail with a rubber hose and that those inmates were mostly Poles, Russians, and Hungarians. The witness also stated that the accused once beat a Hungarian inmate so severely that the inmate fell down (R 255; P-Exs 42, 42A).

Evidence for Defense: The accused testified that from August 1939 until September 1944 he served in the German air corps; that he went to Melk on 19 June 1944 and in September 1944 he was transferred to the SS (R 408); that most of the time he was a detail leader (R 409); and that from August 1944 until April 1945 he was leader of the Czerneleski detail (R 410). The accused testified further that the leader of the Melkendorf detail was SS Master Sergeant Franz Hoeger and not the accused

(R 410); that in his own detail the inmates were not mistreated (R 411); that he had never been a leader of the Weissen Freitag detail as testified to by Friess (R 412); that he never worked in the tunnel (R 412); that there was no kitchen near the work place of his detail and therefore the accused could not have beaten an inmate in the kitchen as related by Friess. The accused denied the accusation that he beat Slivowicz's brother (R 413). He testified that he was responsible for having a day room built for the comfort of the inmates (R 413, 414); that he was never a detail transport leader as testified to by Padewar (R 415); that no inmates from his detail were ever carried back to camp as a result of beatings (R 418); and that he never carried a club and never beat anyone (R 418). The accused testified further that he was not on the transport that left Melk for Ebensee but that he was the last man to leave Melk (R 420), and that he left with 18 horse-drawn vehicles and one motorcar column (R 420).

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

Petitions: No Petition for Review was filed. A Petition for Clemency was filed by the accused, 6 January 1948.

Recommendation: That the findings and sentence be approved.

12. Johann GRABOWSKI

This accused was neither served nor tried (R 3).

13. Richard LUTZE

This accused was neither served nor tried (R 3).

14. Karl Wilhelm SCHEER

This accused was neither served nor tried (R 3).

15. Leopold PATOLLA

This accused was acquitted (R 470).

16. Paul POMMERICH

This accused was acquitted (R 470).

17. Baptist KIERNER

Age:	48
Civilian Status:	Janitor
Party Status:	Unknown
Military Status:	SS Technical Sergeant
Plea:	NG
Findings:	0
Sentence:	6 years, commencing 8 May 1945

Evidence for Prosecution: The accused served as a guard and detail leader in Melk from May 1944 until April 1945 (R 21, 22, 455; T-Ex 23).

Triess, a Polish inmate at Melk from sometime in 1944 until the evacuation (R 74), identified the accused and testified that he saw the accused use a piece of wood to beat two inmates who were loading cement in the tunnel, because they were working rather slowly. When the work was over, the inmates were taken to the dispensary. Later, witness learned from other inmates that the two had died (R 77, 78).

Hammormann, a Polish inmate at Melk from the middle of 1944 until April 1945, in an extrajudicial sworn statement, stated that the accused was a detail leader; that when the inmates marched to work the accused gave the order that sick inmates who had fallen should be beaten by the guards. In the pit where the inmates worked, the accused gave the order that sick inmates had to lie outside. Together with a capo, the accused beat inmates while at work. The inmates were of Polish, Russian, Hungarian, and other nationalities (R 255; T-Exs 43, 43A).

Evidence for Defense: The accused testified that he served in the German air force; that he was transferred to the SS in September 1944 (R 455); and that while in Melk as a guard and detail leader (R 455) he never mistreated an inmate (R 456). He denied the accusation made by Triess (R 457) and testified that the work in the tunnel was supervised by civilian workers and no guards remained inside the tunnels (R 458).

Noll, a former guard at Melk (R 288), at present working with the American military police as a German policeman in Giesen (R 287), testified that he knew the accused fairly well (R 293); that the accused

had a good reputation; that the accused was a strict Catholic and, judging by his nature, witness did not believe that the accused would do the things with which he was charged. Witness further testified that the accused objected to being in Melk (R 294).

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

Petitions: No Petition for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

18. Barnhard Gerhard GOEBEL

Nationality:	German
Age:	50
Civilian Status:	Merchant
Party Status:	None
Military Status:	SS Technical Sergeant
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 7 May 1945

Evidence for Prosecution: The accused was assigned to Melk as a guard and detail leader from June 1944 until April 1945 (R 21, 22; T-Ex 24).

Stern, an inmate at Melk from February 1945 until April 1945, identified the accused, and testified that he knew the accused as leader of the Mayreder Kraus detail in which the witness worked (R 57); that on one occasion, when the inmates were marching to work, a Hungarian inmate suffering from diarrhea was not permitted by the accused to relieve himself; that when the inmate stepped to the side, the accused hit him on the back of the head with the butt of his rifle; that the inmate died the following day (R 58). Witness testified further that the accused beat inmates quite often, using his hands and sometimes a stick (R 58).

Sliwicz, a Polish inmate at Melk from September 1944 until the evacuation (R 90), identified the accused (R 93) and testified that he heard the accused tell the capo of a tunnel work detail that if a certain elderly inmate could not work any more, the capo should take him to the cement shack and finish him off; that later the same day when marching home, the witness saw two inmates carrying the dead body of the elderly inmate; and that the body had been beaten and was covered with blood (R 93, 94).

Evidence for Defense: The accused testified that he had served in the German air force from August 1939 prior to his transfer to Melk; that his duties, while there, consisted of escorting inmates to and from the place of work, and that he never beat an inmate (R 438, 439). He denied the accusations made by Stern and Sliwicz (R 439-441) and testified that as a detail leader, he never carried a rifle (R 439).

GRABOWSKI, who had served as a guard at Melk in the same company with the accused (R 432, 433), testified that he never saw the accused beat any inmate (R 433) and that as far as he remembered the accused carried a pistol (R 434).

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

Petitions: No Petition for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

19. Johann WEGERT

Nationality:	German
Age:	42
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Flea:	NO
Findings:	0

Evidence for Prosecution: The accused was a guard at Melk from August 1944 until April 1945 (R 21, 22; T-Ex 27).

Fischer, a Polish inmate at Melk from September 1944 until April 1945 (R 31, 32), identified the accused, and testified that he knew the accused as a guard in Melk and that he frequently saw him beat inmates when they walked to their work in the Melkendorf detail of which the accused was an escort guard; that the accused beat the inmates with his rifle (R 34).

Nachmann, a Polish inmate of subcamp Melk from August 1944 until April 1945 (R 200), identified the accused, and testified that he saw the accused mistreat inmates by kicking them with his foot and beating them with his rifle (R 206). The witness stated that when inmates were loaded into the railroad cars, there would be a big scramble to get into them, and some of the inmates who lagged behind were kicked by the accused or beaten by him with the butt of his rifle (R 206, 207).

Evidence for Defense: The accused did not testify (R 466). No evidence was introduced by the defense.

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

Petitions: No Petition for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

A. Jurisdiction:

1. Common Design as Separate Offense. The defense, after the arraignment of the accused but prior to the introduction of any evidence, moved to dismiss the charge and particulars against the accused on the ground that the Court was without jurisdiction. In support of its motion the defense relied upon an order by Military Tribunal III, Nurnberg, Germany (R 17-20).

The order referred to is a ruling on the defendants' motion

Nurnberg, Germany, The United States of America v. Josef Altstoetter,
et al. The pertinent part of this order reads as follows:

"Count I of the indictment in this case charges that the defendants, acting pursuant to a common design, unlawfully, wilfully and knowingly did conspire and agree together to commit war crimes and crimes against humanity as defined in Control Council Law No. 10, Article 2. It is charged that the alleged crime was committed between January 1933 and April, 1945.

"It is the ruling of this Tribunal, that neither the Charter of the International Military Tribunal nor Control Council Law No. 10 has defined conspiracy to commit a war crime or crime against humanity as a separate substantive crime; therefore, this Tribunal has no jurisdiction to try any defendant upon a charge of conspiracy considered as a separate substantive offense."

Without conceding that the jurisdiction of Military Government Courts is limited to the trial of those war crimes cases contemplated by Control Council Law No. 10, it is clear that this order has no application to the instant case because the charge and particulars thereunder do not allege a common design to commit a war crime as a "separate substantive crime." They allege that the accused "acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures,did.....wrongfully encourage, aid, abet, and participate in the subjection of[certain persons].....to killings, beatings, tortures,....." etc. Thus, the particulars in this case charge as an offense, the execution of a common design to commit described unlawful acts. They do not allege common design as a "separate substantive crime."

The significance of the ruling relied upon by the defense is clarified by the next to the last paragraph of the order which provides:

"Count I of the indictment, in addition to the separate charge of conspiracy, also alleges unlawful participation in the formulation and execution of plans to commit war crimes and crimes against humanity which actually involved the commission of such crimes. We, therefore, cannot properly strike the whole of Count I from the indictment, but, insofar as Count I charges the commission of the alleged crime of conspiracy as a separate substantive offense, distinct from any war crime or crime against humanity, the tribunal will disregard that charge."

The motion to dismiss was properly denied by the Court (R 20).

2. Universality of Jurisdiction Over War Crimes.

A validly constituted court of an independent state derives its power from the state. A state is independent of all other states in the exercise of its judicial power, except where restricted by the law of nations (S.S. Lotus, France v. Turkey, 2 Hudson World Court Reports 23). Concerning punishment for a crime of the type involved in the instant case, it has been stated that the sovereign power of a state extends "to the punishment of piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed" (Wheaton's "International Law", Sixth Edition, Volume I, page 269). Recognition of this sovereign power is contained in the provision of the Constitution of the United States which confers upon Congress power "to define and punish offenses against the law of nations," (Winthrop, "Military Laws and Precedents", Second Edition, Reprint 1920, page 831).

Any violation of the law of nations encroaches upon and injures the interests of all sovereign states. Whether the power to punish for such crimes will be exercised in a particular case is a matter resting within the discretion of a state. However, it is axiomatic that a state, adhering to the law of war which forms a part of the law of nations, is interested in the preservation and the enforcement thereof. This is true, irrespective of when or where the crime was committed, the belligerency status of the punishing power, or the nationality of the victims.

("Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pages 177-218; "Law Reports of Trials of War Criminals", by United Nations War Crimes Commission, 1947 (hereinafter referred to as "Law Reports"), Volume I, pages 41, 42, 43, 103; United States v. Klein, et al. (Hadamar Murder Factory Case), opinion DJAWC, February 1946; United States v. Weiss, et al. (Dachau Concentration Camp Case), opinion DJAWC, March 1946; United States v. Becker, et al. (Flossenburg Concentration Camp Case), opinion DJAWC, May 1947; United States v. Brust, opinion DJAWC, September 1947; and United States v. Otto, opinion DJAWC, July 1947.) A British court sitting in Singapore tried Tomono Shindo of the Japanese Army.

3. Co-belligerents of Germany as Victims. The particulars under the Charge allege that the accused participated, in pursuance of a common design, in the subjection of certain non-German nationals to killings, beatings, tortures, etc. In so far as the evidence adduced against accused SEIDEL is concerned, it is shown that the victims of his personal acts of cruelty were nationals of Hungary, a former co-belligerent of Germany. The evidence against accused GOEBEL shows that one of his victims was also a Hungarian national. The acts were committed at Melk, a subcamp of Mauthausen Concentration Camp. Although not raised during the trial, the question arises as to whether the Court in this common design case could appropriately consider illegal acts of the accused directed at nationals of a country which was at the time a co-belligerent of Germany.

It is emphasized that the charge alleges the execution of a described common design and not the commission of a single disassociated illegal act.

As to the universality of jurisdiction over war crimes, reference is made to paragraph 2, supra. Jurisdiction of the subject matter attaches in the instant case for the reason that one of the dominant objectives of the operation of the concentration camp was the subjection of nationals of the United Nations and neutral and stateless persons to killings, beatings, tortures, etc. Evidence showing that a particular participant in the execution of the common design tortured, beat, or killed one or more nationals of a country which was then a co-belligerent of Germany demonstrates the character of his participation and establishes that he, through example by such acts, encouraged others to commit similar acts of cruelty against inmates without regard to nationality. He thus maintained and furthered the overall objectives of the operation. The same would be true, if the evidence showed that the participant as an incident of the execution of the common design tortured, beat, or killed one or more German nationals. Accordingly, it would have been appropriate for the Court to have considered such evidence.

However, the question actually presented in the instant case is whether criminal acts by German national participants in the Mauthausen operation

directed at inmates who were nationals of nations then co-belligerents of Germany constitute war crimes.

International law is comprised of that body of rules and principles which govern the conduct of nations in their relations and intercourse with each other. The law of war constitutes a portion of that body of law. A violation of the law of war is a war crime. For an illegal act to be a war crime certain elements must be present, viz., (1) the act must be a crime in violation of international law; (2) there must be disparity of nationality between the perpetrator and the victim; and (3) the criminal act must have been committed as an incident of war.

It is obvious, in view of the disparity of nationality of the accused and such victims as may have been nationals of nations then co-belligerents of Germany, that an international crime is involved. Whether such violations of international law constitute war crimes depends upon whether the crimes were committed as an incident of war. The particulars allege that the victims were inmates of Mauthausen Concentration Camp or subcamps thereof. The evidence establishes that these inmates were being used as slave laborers in construction work and factory war production; that such operation was an incident of war; and that crimes committed against such slave labor inmates constituted war crimes.

Thus, it is clear, in view of the doctrine of universality of jurisdiction over war crimes discussed, supra, that the Court had jurisdiction of the persons of the accused and of the subject matter.

F. 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, European Theater, File AG 000,5 JAG-AGC, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). The convicted accused were shown to have participated in the mass

Parent Case, or in this subsequent proceedings, in concluding as to them that they not only participated to a substantial degree, but the nature and extent of their participation were such as to warrant the sentences imposed.

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

CLAUDIO DELITALA
Attorney
Post Trial Branch

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

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