

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

9 January 1948

UNITED STATES)

v.)

Case No. 000-50-5-9

Josef LURAN, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 26-28 August 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Josef LURAN (and) Mathias FLINDT, German nationals or persons acting with German nationals, acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses and indignities, did, at or in the vicinity of the Mauthausen Concentration Camp, at Castle Hartheim, and at or in the vicinity of the Mauthausen sub-Camps, including but not limited to Ebensee, Gros-Raming, Gunskirchen, Gusen, Hinterbrühl, Lambach, Linz, Leiblfass, Molk, 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: Both of the accused were members of the SS at Mauthausen Concentration Camp and some of its subcamps for considerable periods of time between the dates alleged, and were shown to have participated in the Mauthausen Concentration Camp mass atrocity as detail leaders and/or block leaders.

Prosecution's Exhibit P-Ex 3 is a certified copy of the charges, 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; R 62).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Josef LUXAM

Nationality:	Yugoslavian
Age:	49
Civilian Status:	Business Man and Printer
Party Status:	Unknown
Military Status:	Waffen SS Technical Sergeant
Plea:	NG
Findings:	G
Sentence:	20 years, commencing 11 May 1945

Evidence for Prosecution: The accused joined the Waffen SS on 16 February 1942 and after performing various duties in the Mauthausen Concentration Camp and in subcamps Steyr, Gros-Roding and Wiener-Neudorf, he was transferred on 12 January 1944 to subcamp Ebensee where he was a work detail leader until the liberation (R 213; P-Ex 5). He became a technical sergeant in an SS death head unit on 1 November 1944 (R 182). Witness Farke, a former inmate of subcamp Ebensee, testified that in January 1945 he was placed over a bread box and hit by the accused on his back 50 times and in his eye one time, resulting in permanent injury to one of his eyes. This punishment was administered because the witness had placed a rubber hose over his shoes to prevent slipping in the snow (R 9, 10, 11). The same witness testified that in December 1944 at subcamp Ebensee, he saw the accused lash a weak Hungarian inmate 25 times because he was late for roll call. This inmate was taken to the dispensary and later the witness was told by an orderly at the dispensary that the

inmate had died two days after his arrival there (R 12-15). The same witness, and two additional witnesses, testified that daily during mealtime at the stone quarry at subcamp Ebensee, the accused severely beat Spanish, Hungarian, French, Russian, Polish and Jewish inmates with an oxtail whip, club, cable, or leather whip, on all parts of the body because there was confusion during the serving of the food and because the inmates did not work fast enough (R 18, 19, 32, 33, 57, 58). One of the above witnesses testified that between 8 and 15 November 1944 at subcamp Ebensee, the accused administered 30 blows to each of two Hungarian Jewish inmates. These victims were carried to the dispensary the same evening in an unconscious condition. The accused also gave the witness 40 blows (R 33-37).

A fourth witness testified that between 1 and 26 August 1944 in subcamp Ebensee, he saw the accused hit a Russian inmate 40 to 50 times with a cable or an oxtail whip on all parts of his body while he was being held on a bench by five other inmates. Raw flesh was visible on the buttocks of this victim over an area about the size of two hands (R 115-118). During the same period of time this witness saw the accused kick another Russian inmate in the testicles and chin while he was lying prostrate. That evening the witness was told by a clerk at the dispensary that this inmate had died (R 118, 119). On another occasion, the accused ordered the witness to discontinue giving first aid to a Polish inmate whose leg was crushed while working on the accused's detail. Later, the witness saw this inmate in the dispensary. He was dead (R 119-121).

Evidence for Defense: One witness testified that the accused was responsible for the distribution of food to the inmates at the stone quarry and that it was necessary to administer punishments in the form of beatings to maintain order (R 167). Another witness testified that the accused beat to insure a proper distribution of food at the noon meal and to prevent

some inmates from being deprived of their meal (R 173, 174).

The accused testified to this effect and, also, that he made a false report to protect two Polish inmates who otherwise would have been punished for starting a fire in a barracks (R 176-178, 182). He denied that he had killed any inmate or had beaten anyone to the extent that death resulted, although he admitted that he had punished 20 to 30 inmates with an oxtail whip or leather hose (R 178, 179). Another witness who was in subcamp Ebensee from about June 1944 until May 1945 in almost daily contact with the accused testified that he never saw or heard that the accused had killed anyone, but that he did beat inmates for theft, sabotage, or other violations (R 150). The accused further testified that he lashed two Polish inmates because they had burglarized a building during an air raid blackout in the winter of 1944-1945 and he beat another Polish inmate on the buttocks because he had cut a machine bolt to make shoe soles. If these inmates had been reported to the camp authorities, which was the accused's duty, they would have been hanged (R 161). The accused did not make reports of infractions of the rules by inmates but punished them on the spot (R 153, 167). The accused warned the inmates of subcamp Ebensee of the Camp Commander's intentions to kill all inmates upon the approach of enemy forces (R 162).

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

Petitions: No Petitions for Review were filed. A Petition for Clemency was filed by defense counsel, Mr. R. E. Welch, 22 September 1947.

Recommendation: That the findings and sentence be approved.

2. Matthias FRINDT

Nationality:	Czechoslovakian or German (R 3, 197)
Age:	23
Civilian Status:	Student

Party Status:	Unknown
Military Status:	Waffen SS, Private First Class
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused was assigned to Mau-thausen Concentration Camp as a member of an SS death head unit on 20 February 1943 and remained there until 19 November 1943. During this period he was in training and performed guard duty (R 207). From 19 November 1943 to 5 May 1945 the accused performed duties as a block leader in subcamp Ebensee (R 15, 80, 207).

Two witnesses testified that they were present when the accused beat Polish, Russian, Spanish, Czechoslovakian and Jewish inmates on several occasions with an oxtail whip or rubber hose while they were going to the air raid shelter during air raid alarms (R 16, 100). A third witness testified that he was present in March 1945 during an air raid alarm in subcamp Ebensee when the accused beat inmates with a club as they were going through the gate to the air raid shelter. On one occasion, to avoid this mass beating, a Greek inmate was forced by other inmates into the electric wire at the side of the gate and he was electrocuted (R 37, 38, 50-54). A fourth witness testified that during an air raid alarm in August 1944 a Polish inmate who was standing behind the witness wanted to sit down and the accused beat him to death with his rifle. After the alarm was over, the dead body of this inmate was brought into camp and was seen by the witness (R 80, 81, 91, 92).

A fifth witness testified that shortly before Christmas 1944 at subcamp Ebensee, the accused heard a mentally unbalanced Polish inmate singing an anti-German song. The witness was present when the accused beat this inmate with a stick, on several occasions that day, until the inmate was covered with blood. Although the

witnesses testified that in February 1945 in subcamp Ebensee, he saw the accused give a Hungarian inmate 25 lashes and then hit him four or five times in the face with a club. This inmate was taken to the dispensary in a bleeding condition. The witness never saw him again, although he had previously lived in the same block with the victim and worked on the same detail with him (R 84-86).

A sixth witness testified that in subcamp Ebensee during November 1944, he saw the accused and other block leaders administer 20 to 25 blows to inmates 12 to 16 years of age, using an oxtail whip or cable, because they had stolen potatoes. The accused himself beat several of these young inmates (R 122, 123). This witness further testified that on one occasion during November or December 1944, while he was Block Eldest of Block 20 where there were a number of French inmates, a French inmate was too sick to attend roll call. The witness was present when the accused and two other block leaders came to the block where this inmate was lying in a lower bunk. The accused jerked the sick inmate to the floor and beat him with an oxtail whip or a piece of wire and kicked him. The witness then carried the victim to the roll call square. The next morning the witness took him to the dispensary and was later told by the doctor that the inmate had died within an hour (R 124-127). The witness further testified that in February or March 1945 at subcamp Ebensee he saw the accused severely beat two female Jewish inmates, one a Czech and one a Hungarian, with an oxtail whip or a piece of wire (R 127-129).

One of the above witnesses testified that near the end of 1944 at subcamp Ebensee, he saw the accused and another block leader strike a sick Russian or Polish inmate several blows with the leg of an oak stool because he had not attended roll call. Later the witness saw the body of this inmate in the crematory (R 95-97). Two of the above witnesses testified that, on one

occasion at outcamp Ebensee, they saw the accused select four Ukrainian inmates and require them to hang two other inmates who were Ukrainians or Russians (E 42, 99).

Another of the above witnesses testified that, about March 1945 while he was spraying a barracks, he saw, through a window, the accused and two others bring four recaptured Russian escapees into a washroom and order some capes to hold the heads of two of them in barrels of water until they drowned; that later he saw them take another of these Russians to a deep pool of water in the center of the camp where camp police drowned him by holding him under the water with poles; and that he saw the accused and another take the fourth Russian into a block where the witness later saw him hanging. These incidents took place over a period of time between 1430 and 1700 hours the same day. The accused remembered the time because it was time for him to return his spraying apparatus (R 64-66).

Evidence for Defense: The accused testified that he never killed an inmate; that no one died as a result of his beating or mistreatment; that the testimony pertaining to his participation in the mistreatment of the four captured Russian inmates is untrue (R 197, 200); and that the procedure used upon capture of an inmate after his first escape was to question him, give him 25 lashes and an escape mark on his back and chest. If an inmate with an escape mark escaped and was recaptured, the camp leader gave the order that he had to vanish (R 198, 199). The accused denied that he participated in beating an inmate during the latter part of 1944 because he did not attend roll call (R 201-203). He further denied that he beat an inmate at the camp entrance to such an extent that he died, or that he selected inmates to hang other inmates of the same nationality (R 203).

A former inmate, who knew the accused at subcamp Ebensee from the latter part of the year 1944, testified that he never

witness, a former member of the Waffen SS who had known the accused since 1943 in subcamp Ebensee, testified substantially to the same effect (R 166).

Sufficiency of Evidence: The Court was warranted by the evidence concerning the nature and extent of his participation, particularly that showing his mistreatment of inmates which resulted in death to several victims, in its findings of guilty. The sentence is not excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by defense counsel, Mr. R. E. Welch, 18 September 1947, 19 September 1947, and 13 October 1947; Max Kraemer, 15 September 1947; Franz Frindt, Johanna Frindt, Josef Frindt, Anna Frindt, 16 October 1947; Jan Ulbricht, 20 October 1947; Andreas Schilling, 19 November 1947; the accused, 22 November 1947; Anton Klein, 19 November 1947; Franz Frindt, 16 November 1947; and the President of the Dolny Turcek Local National Committee, 30 November 1947.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: The jurisdiction of the Court to try accused LUKAN was questioned by the defense on the ground that he is a Yugoslavian national (R 218). The record does not disclose with certainty whether accused FRINDT is a Czechoslovakian national or a German (R 197).

Both Yugoslavia and Czechoslovakia are members of the United Nations. War criminals, brigands, and pirates are the common enemies of all mankind and all nations have an equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated in "Whentson's International Law", Volume 1, Sixth Edition, at page 269, that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever and

sentenced, which sentences have been approved and carried into execution, in the Parent Case (United States v. Altfuldish, et al., opinion DJAWC, February 1947), and in the Belson Concentration Camp case, British Army of the Rhine, December 1945. Apparently all concerned with the reviews and approvals in these cases considered the universality of jurisdiction over war crimes to be so well recognized that discussion was not necessary. Military Government Courts have jurisdiction over the nationals of any country, who are in the United States Zone of Occupation, except as to certain classes of American and other nationals, e.g., military personnel, which are not pertinent to the jurisdictional question here involved. Concerning jurisdiction over war crimes, no limitation is imposed. (See Section 5-300.2 and 5-300.3, Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947). Concerning the general question of universality of jurisdiction over war crimes see "Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pp. 177-218.

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

Application of Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Case, including the findings of the Court therein that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGC, subject: "Trial of War Crimes Cases," 14 October 1946, and the Parent Case). All of 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 the sentences be approved.

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

WILLIAM A. OATES
Major CAC
Post Trial Branch

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

C. E. STRAIGHT
Lieutenant Colonel, JAGD
for War Crimes.