

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

17 February 1948

UNITED STATES)

v.)

Case No. 000-50-2-115)

Johann KOENIG, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 29 September - 7 October 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

FIRST CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Adolf Eschner, Johann Koenig, Rolf Kurz, Ernst Hermann Paulus, Georg Pfeuffer, Artur Schaefer, Karl Heinrich Schneider, Paul Willi Walter Steinka and Karl Johann Wachberger acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the German Reich in exercise of belligerent control.

SECOND CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Adolf Eschner, Johann Koenig, Rolf Kurz, Ernst Hermann Paulus, Georg Pfeuffer, Artur Schaefer, Karl Heinrich Schneider, Paul Willi Walter Steinka and Karl Johann Wachberger acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of 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 German Reich, to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: The accused were members of the SS with various duties at subcamp Allach for considerable periods of time between the dates alleged. There were inmates in subcamp Allach of many nationalities, including Russian and French prisoners of war. The accused personally beat and mistreated many inmates. Prosecution's Exhibit P-Ex 10 (R 12) is a certified copy of the charges, particulars, findings and sentences in the Parent Dachau Concentration Camp Case (United States v. Weiss, et al., Case No. 900-50-2, opinion DJAWC, March 1946, hereinafter referred to as the "Parent Case"). Little weight was given to the testimony of witness Karl Kramer.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Adolf ESCHNER

This accused was not served nor tried.

2. Johann KOENIG

Nationality:	German
Age:	48
Civilian Status:	Laborer
Party Status:	NSDAP since 1937
Military Status:	SS Staff Sergeant
Flea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	Life imprisonment

Evidence for Prosecution: The accused served as a guard leader and detail leader at subcamp Allach from September 1943 to April 1945 (R 203).

Witness Westerbarkey, who was an inmate at subcamp Allach from March 1943 to 1945, testified that he knew the accused (R 13). At subcamp Allach the civilian inmates included Dutch, Belgian, Luxembourg, French, Spanish, Portuguese, Romanian, Bulgarian, Greek, Polish, Russian, Czech, and American nationals; and the prisoners of war includ-

He saw the accused when he brought his detail from work into camp. The accused searched the inmates. He frequently saw him beat the inmates with his hands. He testified that the accused at the BMW factory beat inmates with a rubber truncheon or some iron instrument. Those that were so beaten by the accused had to be sent back to the dispensary ^{at camp} (R 15). If these severely beaten inmates were not able to return to work in a few days, they were sent to Dachau on an invalid transport. He was told by a French inmate that he had been severely beaten by the accused. This French inmate was sent to Dachau Concentration Camp and was never heard of again (R 16, 17).

Witness Steinbacher, who was an inmate at subcamp Allach from December 1943 to the summer of 1944, testified that he knew the accused who was a detail leader at the BMW factory (R 74, 75). He further testified that he saw the accused beat and kick many inmates in hall No. 3 at the factory. He saw the accused beat inmates who were congregated in the toilet and were smoking (R 75). The accused was a much feared man in camp (R 76).

Witness Wittchen, who was an inmate at subcamp Allach from July 1943 until June 1944 (R 85, 89), testified that he knew the accused there as a detail leader in hall No. 3 of the BMW factory (R 85, 86). At the factory he saw the accused viciously beat inmates with his fists or with a cable or any object available, and kick them with his feet until they were unable to stand (R 86). He also saw the accused beat inmates who were so undernourished and overworked that they could not stand erect, for not lining up properly when they were to return to camp after they had worked 13 hours (R 86). The inmates were composed of 16 different nationalities (R 87). He further testified he was told by other inmates that they had been beaten by the accused. He heard that prisoners received punishment of 25 lashes because reports had been made against them by the accused (R 87).

at the "R" works. Once he saw the accused beat a Latvian inmate with a rubber cable (R 106, 107). That evening the inmate was sent to the dispensary. After the victim had been released from the dispensary and returned to work, he was required to return to the dispensary as his ear which the accused had injured was still causing him trouble (R 107, 108). He saw the accused beat and kick many other inmates (R 108). The accused once reported a French inmate who then received 25 lashes as punishment (R 108). This report was made by the accused as he had caught the French inmate making a knife (R 108, 119). He also saw the accused beat Russian inmates (R 108, 109). He never knew the accused to beat an inmate to death (R 115, 116).

Witness Pluta, who was an inmate at subcamp Allach from March 1943 to April 1945, testified he knew the accused as a detail leader in hall No. 3 at the BMW factory (R 140, 141). While working on the accused's detail, he saw him beat inmates with whatever he had in his hands. The accused also reported inmates on an average of five times a day. The inmates so reported were punished by receiving at least 50 blows (R 145, 146). He further testified that there were Russian prisoners of war working in the BMW factory (R 147).

Witness Zakrooki, who was an inmate at subcamp Allach from March 1943 to April 1945, testified that he knew the accused as a detail leader and worked on his detail (R 160, 162). He saw the accused beat and torture many inmates, "+++he has a thousand lives on his conscience". The accused beat inmates with whatever instrument was handy. On the marches to work he also beat the inmates and took down their numbers and when the rations arrived, he deprived them of their additional food (R 162). He further testified that he was also beaten by the accused several times and as a result of the beatings he was sent to the dispensary (R 175).

Witness Karl Kramer, who was an inmate at subcamp Allach from April 1943 to May 1944, testified that he knew the accused there (R 176, 180) from September 1943 to May 1944 (R 187). He saw the accused in hall No. 3 beat inmates with a stick (R 187, 188). He saw the accused beat a

Russian with a stick who was lying across a table. In the evening the Russian was dead and his body was returned to camp on the food wagon (R 188). The accused reported five Russians and as a result of this report, they were sent to Dachau Concentration Camp. The BMW factory requested that these Russians be returned. However, a report came from Dachau that they had been sent to the crematory (R 188, 189).

Evidence for Defense: The accused testified that he joined the air corps in September 1939 and in that month was transferred to subcamp Allach (R 202, 203). He further testified that there were a great number of civilian employees at the factory who supervised the work. In order to increase the output, the factory gave the inmates bonuses in Reichmarks which allowed the inmates to buy additional food at its sales store (R 205). The factory also supplied the workers with additional food during the day (R 205). He admitted that he slapped inmates with his hands and sometimes kicked them, but he denied that he ever beat an inmate with any instrument or weapon. He administered the slappings to the inmates when they were caught making forbidden articles and for other violations of the regulations (R 206). He was given an order by the commanding officer to slap or kick an inmate for making forbidden articles (R 207, 218). He never killed an inmate nor was one ever sent to the dispensary because of a beating he had administered (R 207). He never beat an inmate for not working in the factory because the civilian foremen were responsible for maintaining the production schedule (R 208). He denied that he owned a dog or that he was a dog leader and he never set a dog on an inmate (R 207, 209). On searching the inmates upon their leaving work, he frequently found valuable tools in the possession of the inmates for which he slapped their faces, but did not report them (R 209, 210). He denied the testimony of witness Zakrocki in that he did not kill anyone nor did he have a thousand people on his conscience (R 210).

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 Captain William

Gordon, defense counsel, 27 October 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

3. Rolf KURZ

Nationality:	German
Age:	28
Civilian Status:	Automobile mechanic
Party Status:	None
Military Status:	SS
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	20 years, commencing 7 May 1945

Evidence for Prosecution: The accused was a member of the SS with duties of guard and block leader at subcamp Allach from October 1943 to March 1945 (R 242, 243).

Witness Westarbarkey, who was an inmate at subcamp Allach from March 1943 to 1945, testified that he knew the accused from the time he arrived there as a guard and block leader (R 13, 17). He further testified that the accused conducted inspections of the blocks and checked the inmates at the gate going to and coming from their work details. He saw the accused beat the inmates at those times (R 18). The accused also conducted the punishment exercises that the inmates had to do after working hours. On one occasion four or five inmates collapsed. Two of them were sent to the hospital block and were finally transferred to Dachau (R 18, 19). There were French and Russian prisoners of war at subcamp Allach (R 14).

Witness Tapke, who was an inmate at subcamp Allach, testified that he knew the accused (R 41). He heard from other inmates that the accused frequently beat inmates (R 45). Witness Lorscheider, who was an inmate at subcamp Allach from 1944 to April 1945, testified that he knew the accused who was a block leader (R 106, 109). He saw the accused when he was in charge of inmates receiving punishment exercises in the evenings

1943 to May 1944, testified that he knew the accused there in 1944 (R 179, 180, 190). He further testified that the accused was a block leader and was assigned the special duty of giving the inmates punishment exercises. These exercises were given until the inmates fell to the ground. The accused beat those unable to rise (R 190) with a stick or piece of iron (R 191).

Evidence for Defense: The accused testified that he joined the air force in July 1939 and that on 1 October 1943 he was transferred to sub-camp Allach, where he stayed until the middle of March 1945. In September 1944 he was transferred into the SS (R 242, 243). He further testified that one of his duties was to check the inmates at the gate when they were marching out or marching in with their work details. He was also required to search the inmates. Very often in searching them, he found them in possession of tools from the factory and knives. He took the articles away from them and boxed their cars (R 243, 244). The punishment exercises that he gave to the inmates were on direct orders of his commanding officer. The exercises lasted 15 to 20 minutes (R 249). The length of time the exercises were to last was entirely his decision (R 250). The exercises consisted of running, jumping, lying down on the ground and getting up again, etc (R 251). Approximately 15 or 20 inmates during the time he gave the exercises collapsed (R 247, 248). He further testified that he never administered corporal punishment to an inmate or beat one so severely that he had to be hospitalized, nor did he ever report an inmate for sabotage (R 245). He denied the testimony of witnesses Fluta and Zakrocki in that he was never a detail leader and did not cause the death of a Polish inmate by hitting him over the head with an iron bar (R 246). He never caused the death of any inmate (R 247). He saw inmates at the camp who collapsed from the punishment they received (R 247). He never used any instrument to beat an inmate with nor did he ever beat an inmate with an oxtail whip in block No. 1 (R 253, 254).

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 Captain William Gordon, defense counsel, 27 October 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

4. Ernst Hermann PAULUS

Nationality:	German
Age:	53
Civilian Status:	Musical instrument manufacturer
Party Status:	None
Military Status:	SS Staff Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	5 years, commencing 4 May 1945

Evidence for Prosecution: The accused joined the Waffen SS in 1940. He was at subcamp Allach from February 1943 to April 1945 (R 267).

Witness Westerbarkey, who was an inmate at subcamp Allach from March 1943 to 1945 (R 13), testified that he knew the accused there from 1943. He was a detail leader (R 10). The witness saw many reports made by the accused against inmates for infractions of camp regulations or sabotage. Sabotage reports were sent to the main camp at Dachau. As a result of these reports, the inmates were punished by strokes with sticks, loss of meals and smoking material or by punishment exercises (R 19, 20). There were French and Russian prisoners of war at subcamp Allach (R 14).

Witness Hutech, who was an inmate at subcamp Allach from June 1943 to April 1945, testified that he knew the accused and worked on his detail (R 57). He further testified that he did not see the accused beat inmates in the box factory detail, but that he did see the accused in hall No. 3 at the BMW factory beat inmates with his hands. These beatings occurred frequently (R 61, 62).

Witness Pluta, who was an inmate at subcamp Allach from March 1943 to April 1945, testified that he knew the accused as a detail leader in hall No. 1 during the latter part of 1943 (R 140, 141). He further

inmates (R 146). There were Russian prisoners of war who worked in the BMW factory (R 147). Witness Zakrocki, who was an inmate at subcamp Allach from March 1943 to April 1945, testified that he knew the accused as a detail leader and had worked on his detail (R 160, 162). He further testified that he saw the accused beat inmates with his hands (R 162).

Witness Karl Kramer, who was an inmate at subcamp Allach from March 1943 to May 1944, testified that he knew the accused during the period he was at subcamp Allach (R 170, 180, 191). He further testified that he saw the accused at the box factory beat inmates with a stick or piece of iron (R 192). He also saw at the box factory inmates who had been forced to work on the roof during the rain in their wooden shoes. Two Italian inmates slipped on the wet roof and fell 50 meters to the ground. One was killed and the other was severely injured. The accused was in charge of this detail and had ordered the inmates to the roof (R 192, 193).

Evidence for Defense: The accused testified that he joined the Waffen SS in 1940. In February 1943 he was sent to subcamp Allach where he stayed until April 1945 (R 267). He denied the testimony of witness Karl Kramer in that no Italian inmates in any of his details slipped and fell off a roof (R 269). He further testified that he slapped inmates for stealing and once during an air raid alarm he boxed the ears of some inmates because they did not go to the shelter fast enough (R 270). He never killed an inmate nor were any of the inmates he slapped hospitalized (R 270). On several occasions he severely reprimanded an SS private, who was under him, for beating inmates and ordered him to stop the beatings (R 271, 272). He never reported an inmate for sabotage (R 273).

Witness Rasch, who was a civilian employee at the BMW factory at Allach following October 1943, testified that he knew the accused (R 229, 232). He never saw the accused commit any offenses against the inmates. The accused took care of the inmates and saw to it that they were fed on time. He never saw the accused strike an inmate (R 233, 234).

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 Captain William Gordon, defense counsel, 27 October 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

5. Georg PFEUFFER

This accused was not served nor tried.

6. Arthur SCHAEFER

Nationality:	German
Age:	44
Civilian Status:	Laborer
Party Status:	NSDAP since 1933
Military Status:	SS Sergeant
Place:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	20 years, commencing 8 May 1945

Evidence for Prosecution: The accused was an SS Sergeant at out-camp Allach from April 1943 to April 1945 with duties of dog leader and detail leader (R 273, 284).

Witness Pluta, who was an inmate at subcamp Allach from March 1943 to April 1945, testified that he knew the accused in 1944 as the detail leader in charge of the gravel pit (R 140, 141). He further testified that when he was on the gravel pit detail he saw the accused beat inmates with a stick or a cable. He also made reports against many inmates and these inmates so reported were beaten after roll call (R 144).

Two other witnesses testified that there were French and Russian prisoners of war working at the BMW factory (R 14, 147).

Witness Karl Kramer, who was an inmate at subcamp Allach from March 1943 to May 1944, testified that he knew the accused there and saw him mistreat inmates on various details (R 179, 185). He saw the accused "sick" his dog on inmates, saw him beat inmates, and knew that the accused

reported inmates daily. He further testified that he received reports that the accused took food away from some inmates and gave it to others. It was known that he made homosexual advances toward inmates. If the inmates did not submit, they were severely beaten and mistreated by the accused (R 185, 186).

Evidence for Defense: The accused testified that he joined the military services in 1939 and that he was at subcamp Allach from April 1943 to April 1945. He was a sergeant with duties of dog leader and detail leader (R 278, 284). He further testified that, when he was in charge of the detail in hall No. 1 at the BMW factory, he struck inmates on their shoulders to wake them up when there was an air raid alarm and the inmates were required to leave the building and go to the air raid shelter (R 280). Once when his detail was marching to work, his dog jumped on inmates that were pushed back into place by the accused KOENIG, but that the dog did not bite any inmates (R 280, 281). He denied that he ever beat an inmate so severely he had to be hospitalized. He never hit an inmate with a board or a stick of wood (R 281, 283). He never reported any Russian inmates for sabotage (R 281, 282).

Sufficiency of Evidence: The evidence clearly establishes the fact that the accused was a member of the SS and participated in the Dachau Concentration Camp mass atrocity. However, the evidence does not indicate that the position held by the accused or his personal acts of cruelty warrant the sentence imposed. The finding of guilty is warranted by the evidence. The sentence is excessive.

Petitions: A Petition for Review was filed by Captain William Gordon, defense counsel, 27 October 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to 5 years confinement, commencing 8 May 1946.

7. Karl Heinrich SCHNEIDER

Nationality: German

Civilian Status:	Laborer
Party Status:	None
Military Status:	SS Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was an SS sergeant at subcamp Allach from July 1943 to April 1945 with duties as a guard and dog leader (R 288, 301).

Witness Westerbarkay, who was an inmate at subcamp Allach from March 1943 to April 1945 (R 13), testified that he knew the accused there following the end of 1943 or the beginning of 1944 (R 20). For a short period of time he was working on accused's detail (R 20). He saw the accused beat inmates with his hands, a wooden board, or with whatever was available. He saw the accused set his dog on the inmates. When the accused was a detail leader at the BMW factory the witness saw many inmates who had been bitten and torn up by dogs returned to camp (R 21). The witness finally reported this fact to the camp leaders, as the inmates were being injured and clothes destroyed. The accused was placed in charge of another detail, but the same events took place on the new detail (R 21). There were always four or five inmates who were brought into camp on a cart. At least 70 or 80 inmates from the various details the accused was in charge of were so beaten that they were transferred to Dachau on invalid transports (R 21, 22). During the construction of subcamp Allach, an Italian inmate was shot twice in the stomach. This inmate told him that he had been shot by the accused. Three or four hours later this inmate was placed in an ambulance and died on the way to Dachau Concentration Camp (R 33, 34).

Witness Tepke, who was an inmate at subcamp Allach, testified that he knew the accused there during 1944 and 1945. The accused was a guard and a detail leader (R 42). He saw the accused in the block beat inmates with his fists and kick them. These inmates were weak and sick and were

unable to work (R 42, 43). The accused also beat inmates during his inspections; and during such inspections the witness saw the accused's dog jump inmates. On one occasion the accused's dog tore the sleeve of a Belgian inmate and blood flowed from the wound (R 43, 44). He further testified that he was told by other inmates that the accused mistreated inmates at the factory and made many reports against them. In October or November 1944, the accused reported two Russian inmates for sabotage. As a result of these reports, the Russians were hanged (R 44).

Witness Hutsch, who was an inmate at subcamp Allach from June 1943 to April 1945, testified that he knew the accused and that he worked on the accused's detail (R 57, 58). He saw the accused beat inmates in their faces at the factory and saw him give them punishment exercises while they were marching from the factory to the camp (R 58, 59). Once the accused set his dog on an inmate who was being given the punishment exercises (R 59). He also saw the accused set his dog on another inmate during an inmate march to Welfratshausen (R 59). He further testified that he had heard that two Russians were hanged for sabotage because the accused had reported them (R 60). The accused was known as the worst beater in the camp (R 61).

Witness Wittchen, who was an inmate at subcamp Allach from July 1943 to June 1944, testified that he knew the accused there as a detail leader in hall No. 3 of the BMW factory and that he beat inmates and set his dog on them marching to and from work (R 85, 87, 89, 99). The dog, when it jumped the inmates, tore their clothes (R 100).

Witness Lorscheider, who was an inmate at subcamp Allach from 1944 to April 1945, testified that he knew the accused who was a detail leader (R 106, 107, 110). He saw the accused at the BMW factory in hall No. 1 beat a non-German inmate (R 110, 111). He also saw the accused, during the marches to and from work, push inmates back into line and saw him "sick" his dog on them. The dog bit the inmates (R 111, 112). He further testified that he knew, as everyone did, that two Russians had been hanged as the result of reports made against them by

the accused (R 116). He saw the accused beat and kick inmates during the noon hour at the factory (R 121). He heard that once an Italian inmate tried to escape and was shot by the accused. This inmate was supposed to have been slightly crazy (R 123).

Witness Baumann, who was an inmate at subcamp Allach from October 1943 to November 1944, testified that he knew the accused (R 124-126). He further testified that he saw the accused when he was in charge of the camp strength detail beat inmates to the ground with a stick, kick them, and set his dog on them. He saw the dog bite the inmates (R 126, 127).

Witness Fluta, who was an inmate at subcamp Allach from March 1943 to April 1945, testified that he knew the accused as a detail leader in 1944 (R 140, 141). When he was on the accused's detail he was beaten by the accused with a loaded rubber club. He also saw the accused beat other inmates (R 144). He saw the accused beat a French inmate with a stick. The inmate collapsed and was taken to the dispensary (R 145). He further testified that there were many Russian prisoners of war working at the BMW factory (R 147).

The accused testified that he participated in three evacuation transports, i.e., to Eisernach, to Bleischaach and to Kaufbeuren (apparently Kaufbeuren). These transports occurred because of the air raids on the BMW factory (R 291, 292). In April 1945 he participated in the evacuation march from subcamp Allach to Oetztal. The march was to take four or five days, but the march finished near Wolfratshausen when the inmates were turned loose near the Allied front lines (R 292-295).

Witness Karl Kramer, who was an inmate at subcamp Allach from March 1943 to May 1944, testified that he knew the accused there following May 1943 (R 179, 180). He saw the accused in charge of various details almost daily (R 181). He saw the accused, when the details left for work, "sick" his dog on the inmates who had bad feet and who could not keep up with the march (R 181, 182). The accused also beat inmates at work and reported inmates daily to the commanding officer (R 182). One

was at the entrance to the camp. The hospital personnel arrived and removed the inmate to the morgue. The inmate died as a result of the beating as he saw a copy of the death report (R 182, 183). In August or September 1944, the witness was told by another inmate that the accused had reported a Russian inmate and, as a result of this report, the Russian was hanged (R 183). He knew that many inmates had been bitten by the accused's dog (R 183). It was necessary to replace as high as 10 inmates a day to the various details in charge of the accused. Many inmates told the witness they had been beaten by the accused (R 184). He further testified that he had personally seen the accused beat over 200 inmates with his hands, a club, or a piece of iron or kick them or "sick" his dog on them (R 185).

Evidence for Defense: The accused testified that he joined the army in 1939. He was wounded twice and was therefore unfit for front line duty. Accordingly, in July 1943 he was transferred to subcamp Allach with duties as a guard and a dog leader with the rank of SS sergeant (R 286, 301). He further testified that once or twice it was necessary for him to turn his dog loose to track down escaped inmates. Other than on these occasions, his dog was never unmuzzled. The dog never attacked inmates (R 287, 288). At subcamp Allach, the SS personnel were not permitted to administer corporal punishment to the inmates, to talk to or make any deals with the inmates (R 290). He further testified that he never beat an inmate other than to give an inmate a slap or a box on the ears. This was done when an inmate was caught making forbidden articles or when he found them in possession of articles from the factory. The commanding officer ordered the inmates searched when they returned to work and it was during these searches that he found the inmates in possession of various articles and slapped them (R 295, 296). None of the inmates he struck needed hospitalization (R 296). On two occasions he gave 12 inmates punishment exercises. These exercises were given on direct orders from his commanding officer. The exercises lasted only five to seven minutes and none of the inmates

The commanding officer had issued orders that inmates who were caught smuggling were to be given a box on the ears. The detail leaders were also instructed to watch the capos to see that they did not beat the inmates too severely (R 303). It was also ordered that when a civilian foreman made a written complaint against an inmate, the detail leader was required to turn the report over to the commanding officer (R 304). He saw many capos and camp eldests take food that belonged to the inmates. They also stole articles from inmate Red Cross packages and traded them for alcohol. He refused to take his out from them and forbade the capos or camp eldests from continuing such a practice. Many inmates complained to him about the capos beating them because they were going to report the capos for stealing the food belonging to the inmates (R 304, 305). He further testified that he did not beat a French inmate to death at the gate (R 306) nor did he ever beat an inmate during the noon meal (R 313). He testified that Prosecution's Exhibit P-EX 12 was not a voluntary statement as it had been signed under duress, and that he had been shaken and struck by the interrogating officer; that he had continually objected to signing the statement, but after he had been assaulted, he signed it, and that, prior to the interrogation at the War Crimes Enclosure, he had twice been beaten by Americans (R 319, 322).

Witness Feldmeier, who was a civilian employee of the BMW factory from November 1943 to June 1944, testified that he was in charge of the construction of buildings and that he knew the accused as a detail leader (R 260, 261). During the time the witness knew the accused there, an inmate of the construction detail had been shot by the guards for trying to go through the chain of guards. At the time of the shooting the accused was with him. He never saw the accused beat or mistreat an inmate nor did he see his dog attack an inmate (R 261-263).

Sufficiency of Evidence: The evidence clearly establishes the fact that the accused as a member of the SS participated in the Dachau Concentration Camp mass atrocity. Furthermore, it establishes that he personally beat and mistreated many inmates on a vast scale. The testimony by

Exhibit P-Ex 12 is uncorroborated.

It was a question for the Court to determine whether the statement was made under such circumstances as to induce the accused to state untruths therein. It does not appear that the Court gave inappropriate probative value thereto. In any event the actions of the Court are amply supported by other evidence.

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

Petitions: A Petition for Review was filed by Captain William Gordon, defense counsel, 27 October 1947. No Petitions for Clemency were filed. A Petition of Denouncement was filed by Robert Gayton and Lucien Fonceel, former inmates at subcamp Allach, 31 October 1947.

Recommendation: That the findings and sentence be approved.

8. Paul Willi Walter STEINKE

This accused was not served nor tried.

9. Karl Johann WACHBERGER

This accused was served but not tried.

V. QUESTIONS OF LAW:

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

Motion to Dismiss: The denial of the motion by the defense to dismiss the second charge and particulars at the close of the prosecution's case was not error (R 201). It is not error for a war crimes tribunal to overrule a motion for findings of not guilty made at the close of the case of the prosecution if it believes that there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Change 1, Title 5 "Legal and Penal Administration" of "Military Government Regulations" published by Office of Military Government for Germany (U. S.), 27 March 1947, and Section 501, page 409, "Manual for Trial of War Crimes and Related Cases", 15 July 1946 as amended). A similar practice is followed in Courts-Martial (paragraph 71, d, "Manual for Courts-Martial U. S. Army" 1928).

Defense Objections: The defense objected to

the admission into evidence of an extrajudicial sworn statement of accused SCHNEIDER on the grounds that the defense was surprised and that the prosecution had rested and therefore the introduction of the exhibit was improper. The Court properly overruled the defense's objection (R 314-316). Such sworn statements by an accused or witness are always admissible regardless of the presence or absence of those who made them (Paragraph c (1) (2), paragraph 3, Section 270, "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended). In any event it does not appear that the accused could have been surprised.

Superior Orders: All of the accused, except accused SCHAEFER, sought to justify their actions in participating in the beating and mistreatment of inmates by showing that some of their acts were in compliance with "superior orders". Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, opinion DJAWC, December 1945; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, February 1946; and French Republic v. Wagner, et al., Court of Appeals (France), July 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior in fact, directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his

sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U. S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovey Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U. S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rules of the Law" by Ernst Fraenkel; United States v. Bury, et al., opinion DJAWC, September 1945, United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWC, December 1946.)

Application of the 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 inmates to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). The convicted accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceedings, in concluding as to them that they not only participated to a substantial degree but the nature and extent of their participations were such as to warrant the sentences imposed, except as to the sentence imposed upon accused SCHAEFER. The evidence does not satisfactorily establish that the

sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U. S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U. S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rules of the Law" by Ernst Fraenkel; United States v. Bury, et al., opinion DJAWC, September 1945, United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWC, December 1946.)

Application of the 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 inmates to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). The convicted accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceedings, in concluding as to them that they not only participated to a substantial degree but the nature and extent of their participations were such as to warrant the sentences imposed, except as to the sentence imposed upon accused SCHAEFER. The evidence does not satisfactorily establish that the position held by or the cruelties indulged in by accused SCHAEFER warrant the sentence 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, but that the sentence as to accused SCHAEFER be reduced to imprisonment for 5 years, commencing 8 May 1945.

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

ELMER MOODY
1st Lt Inf
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