

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

13 February 1948

UNITED STATES)
))
 v.))
))
Max FISCHER, et al.)

Case No. 000-50-46-4

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 6-19 November 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

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

Particulars: In that Max FISCHER, Philipp MUELLER, Adolf SEUBERT, Johann FUCHS, Paul TOERMER, Johann WIMMER, Josef KOKOTT, Alfons ROESCH acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses and indignities, did, at or near the vicinity of Flossenburg Concentration Camp, near Flossen-
enburg, Germany and at or near the vicinity of the Flossenburg out-camps, particularly Harsbruck, Wolkenburg, Genacker and Leitmeritz, and with transports of prisoners evacuating said camps, all in German or German-controlled territory at various and sundry times, between the 1st of January 1943 and the 8th of May 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of Poles, Frenchmen, Yugoslavs, citizens of the Soviet Union, Norwegians, Danes, Belgians, citizens of the Netherlands, citizens of the Grand Duchy of Luxembourg, British subjects, stateless persons, Czechs, 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 many thousands.

III. SUMMARY OF EVIDENCE: Accused FISCHER was a Waffen SS technical sergeant and served as a guard, as an assistant block leader, and as detail leader of the stone quarry in Flossenburg Concentration Camp. Accused MUELLER was a criminal inmate of Flossenburg Concentration Camp and served as a capo and foreman in the stone quarry and as a block eldest. Accused SEUBERT was a Waffen SS sergeant and served as a guard, as a stonemason master in hall three and as a supervisor in Flossenburg Concentration Camp. Accused FUCHS was a criminal inmate and

room orderly and as a capo in Flossenburg Concentration Camp. Accused TOERMER was an inmate of Flossenburg Concentration Camp and served as a male nurse and as a capo in Flossenburg Concentration Camp. All of the convicted accused served at Flossenburg Concentration Camp, near Flossen- burg, Germany, for considerable periods of time between the dates alleged and were shown to have participated in the Flossenburg Concentration Camp mass atrocities. Prosecution's Exhibit P-Ex 6 (R 12) is a certified copy of the charges, particulars, findings and sentences in the parent Flossen- burg Concentration Camp case (United States v. Becker, et al., ^{opinion} 000-50-46, / DJAWC, May 1947, hereinafter referred to as the "Parent Case", see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Max FISCHER

Nationality:	German
Age:	54
Civilian Status:	Saddle maker
Party Status:	Unknown
Military Status:	Waffen SS, Technical Sergeant
Plea:	NG
Findings:	G
Sentence:	Life Imprisonment

Evidence for Prosecution: The accused held the rank of technical sergeant in the Waffen SS (R 13, 86). He testified that he served in Flossenburg Concentration Camp as a guard from 20 April 1940 to 20 April 1941, as an assistant block leader from 20 April 1941 to mid-October 1942, and as stone quarry detail leader from then to the time of his arrest and confinement by the SS on 23 December 1943 (R 591, 609). From then until the liberation, the accused was kept in confinement by the SS, having been tried twice by court-martial (R 606) for "misappropriations" (R 359, P-Ex 7A) and "infidelity to the service" (R 438, 608). He testified that he was trans- ferred during confinement to the "SS punishment camp" in Dechau on 3 Oct- ober 1944 (R 606).

In his principal capacity of stone quarry detail leader, the accused was known as a very brutal (R 14, 15) person without humane feelings (R 45). His callousness was described as a major factor in the death of many weak and exhausted inmates in the stone quarry (R 44-46). One witness, who saw the accused daily (R 14), testified that in 1943 in the stone quarry by his persecution he caused two Czechoslovakian Jews to run into the chain of guards where they were shot (R 14, 15, 20, 22). He very frequently beat and kicked inmates (R 14) so severely that they became unconscious or covered with blood (R 26). When an inmate was reported by the capo he was given 10 to 15 strokes by the accused (R 15). A second witness testified that in September 1943 he saw the accused severely beat and kick a Polish inmate and throw him down a 25-foot stairway from his office because he reported at the emergency dispensary in the stone quarry (R 55, 56, 66-69). That night the inmate died of a broken back (R 56, 66, 69, 70). In July 1943 (R 70) he saw the accused beat and kick a young Russian inmate in the head, stomach and chest several times during evening roll call in block 21, and then refused to allow the inmate to be removed to the hospital (R 57, 71, 72). The next morning the inmate was dead and was taken to the crematory (R 57, 73, 74). In October 1943 he saw the accused, in hall number four, designate certain Russian officers to be shot (R 57, 58). He subsequently heard from comrades that 39 Russians were shot to death (R 58).

A third witness testified that he observed the accused daily as he counted and marched his detail to and from the stone quarry (R 38). In 1942 and 1943, the detail was composed principally of Russians and Poles (R 41), and every morning for a period of months the accused treated the inmate members roughly (R 40). Almost daily the accused beat the inmates with a club or staff (R 41, 42); he kicked inmates who were lying on the ground and drove his foot into their stomachs (R 40); he kicked one very weak inmate while he was lying on his back and tramped on his stomach and put his foot against his throat (R 40, 41). This inmate was carried away (R 41).

A fourth witness testified that daily he saw the accused move his detail to and from the stone quarry (R 87). Frequently in the mornings he saw the accused beat inmates with a stick; many times the inmates fell to the ground and had to be carried back to camp on stretchers (R 87). The witness stated that at least 10 times he saw inmates beaten so badly by the accused that they were left in the roll call square, and at least five times at night he saw injured or dead inmates from the accused's detail brought back on stretchers (R 89). All nationalities were beaten by the accused, including Russians, French, Poles, and Italians (R 89).

A fifth witness testified that while the accused was detail leader in the stone quarry, three to four inmates daily, out of despair, ran into the electric fence (R 243, 249, 250). The accused beat the inmates so severely that they committed suicide by running into the wire (R 249, 250). The years 1942 and 1943 were the worst years in the stone quarry (R 251).

A sixth witness testified that one day in the fall of 1942 (R 268, 273), while he and two Russian inmates were passing around shop eight, a shot was heard (R 268, 272). Going closer he observed the accused in the act of replacing his pistol in his holster and that a Russian inmate was lying upon the ground (R 268, 269, 274). He saw that the Russian inmate was dead from a shot in the chest (R 269, 275-278). No one else present had a pistol (R 274).

A seventh witness testified that he often helped remove from the stone quarry inmates who had been beaten to death by the accused or on his orders. He saw the accused beat and kick inmates who shirked or who were too weak to work, or turn them over to the capo for punishment. The witness testified that 70 to 80 per cent of the inmates were beaten so severely they could not get up (R 320, 321).

One of the other accused, in an unsworn pretrial statement, stated that in August 1943 he saw the accused beat a Polish inmate with a thick stick until he collapsed and later died under treatment (R 359; P-Ex 7A). Five defense witnesses admitted that they had seen the accused beat inmates (R 444, 452, 453, 472, 552). One defense witness admitted that he saw many

inmates being carried because they could not walk (R 452). The accused admitted in Court that he had beaten inmates (R 594, 595).

Evidence for Defense: One witness testified that the accused was known as a decent SS man (R 362, 374) and better than his predecessor (R 361, 374, 375). This was corroborated by another witness (R 501). The accused beat only for violations of regulations (R 363), and hospitalization was never required (R 365). This was corroborated (R 475). The witness never was informed that the accused caused the death of any inmate (R 366).

A second witness testified that he ^{never} heard that the accused beat inmates severely or caused their deaths (R 437). A third witness testified that he never heard that the accused had mistreated inmates or had a reputation as a vicious person (R 452). A fourth witness testified that he never heard of an inmate being shot in hall number eight in November 1942 (R 475). This was corroborated (R 365, 505). A fifth witness testified that he never saw the accused hit an inmate (R 501). One of the other accused, whose unsworn pretrial statement (R 359; P-Ex 7A) described a fatal beating of a Polish inmate by the accused, testified that he did not know whether the inmate died from the beating, or from heart trouble (R 553, 559, 560).

The accused testified that he never beat an inmate harder than he would have beaten his own son (R 594). When he disciplined inmates they never fell unconscious (R 597) or needed hospitalization (R 601). No inmates died as a result of mistreatment by him (R 599). He never fired a shot during his period of duty in Flossenburg Concentration Camp (R 600). During his 14 months as stone quarry detail leader, no fatal accident occurred and only four or five inmates were shot by the chain of guards (R 608).

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

Petitions: A Petition for Review was filed 5 January 1948 by Captain William A. Gordon, defense counsel.

Recommendation: That the findings and sentence be approved.

3. Phillip MOELLER

Nationality:	German
Age:	35
Civilian Status:	Unknown
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	2 years, commencing 7 July 1947

Evidence for Prosecution: The accused was a criminal inmate (R 269, 590) in Flossenburg Concentration Camp from 3 May 1938 to 20 July 1944 (R 578). He served as a capo in the stone quarry during the years 1941 to 1943 (R 269, 270, 336, 347, 502, 583) and as a block eldest (R 445, 507, 514) for a few months (R 453, 515).

Three witnesses testified that while the accused was a capo he beat them (R 269, 270, 279, 280, 323, 339, 358). One of the witnesses testified that he saw the accused beat at least four non-Germans until hospitalization was necessary and that two of them did not return to work any more (R 270, 271, 280). He saw the accused beat inmates two or three times daily (R 280). The second witness testified that / ^{he} saw the accused beat at least 15 inmates (R 324), one of whom required three days hospitalization (R 323). Another witness testified that the accused beat inmates almost daily (R 349). In stonecutter's hall number three, the witness saw the accused beat and kick severely a Polish inmate who had ruined a corner of a stone on which he was working (R 348).

Evidence for Defense: Four witnesses, who were former inmates or employees, testified that they never saw the accused beat or mistreat inmates (R 440, 474, 503, 504, 515). Two of the witnesses testified that they never heard that the accused was considered a vicious beater (R 441, 453). One of the witnesses testified that while the accused was a block eldest he was reprimanded because his discipline was lax and that he asked to be re-

lioved as block eldest (R 445, 446, 449, 508). His reputation was good (R 446). A second witness testified that the accused, as block eldest, was on such good terms with the inmates that he was removed (R 515). Another witness testified that the inmates in his block considered the accused to be the best block eldest they ever had (R 507). The accused had said he would rather return to the stone quarry than be block eldest (R 508). The SS was not pleased with him (R 507).

The accused testified that he was not a capo in the stone quarry, but a foreman with special training in stone cutting (R 581, 582). He did ~~not~~ get like being a block eldest (R 583) and ~~did~~ ^{not} maintain strict discipline (R 584). He was reprimanded for lax discipline by the SS (R 583). No inmate required medical attention nor died because of his actions (R 585).

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

Petitions: A Petition for Review was filed on 5 January 1948 by Captain William A. Gordon, defense counsel.

Recommendation: That the findings and sentence be approved.

3. Adolf SEUBERT

Nationality:	German
Age:	45
Civilian Status:	Stonemason
Party Status:	NSDAP since 1937
Military Status:	SS Waffen SS
Place:	NG
Findings:	G
Sentence:	17 years, commencing 5 May 1945

Evidence for Prosecution: The accused was a sergeant in the Waffen SS (R 244, 344). He served in Flossenburg Concentration Camp as a guard in camp during 1941 (R 560). He served as a stonemason master in stonecutters' hall number three at the stone quarry (R 17, 245, 321, 474), as

a detail leader or supervisor in the Messerschmidt central warehouse, and in the central warehouse at the railroad station from 1943 to 1945 (R 344, 344, 566).

One witness testified that in the summer of 1943 he saw the accused in hall number three beat a Russian with a stonemason's ruler as big as a small plank until the ruler had broken twice. The witness never saw the Russian again and a colleague announced in his block that the Russian never regained consciousness and died within two days. The witness further testified that on 30 to 40 occasions he saw the accused beat inmates for minor infractions with whatever was handy (R 331, 332, 334).

A second witness testified that in 1943 in hall number three he saw the accused beat inmates frequently and severely (R 17). The accused walked around carrying a cane, but his favorite method was kicking with his feet (R 17). He knocked some of the inmates to the ground, and one inmate had to be taken to the dispensary (R 17).

A third witness testified that the accused was known in hall number three as a very severe man (R 344). There he saw the accused repeatedly abuse a Czech inmate by standing next to him for hours at a time, criticizing him, by repeatedly beating him with his fists, and by kicking him with / ^{his} heavy Wehrmacht shoes (R 344, 345). In the Messerschmidt central warehouse the witness saw the accused, without reason, beat two Russian inmates until they were bloody (R 345). The accused cursed the Czech inmates and required them to stand on their feet while doing precision work (R 345). In the warehouse at the railroad station the witness saw the accused beat and kick a young Jewish inmate until he fell unconscious (R 347). The inmate was taken to the hospital and was / ^{not} seen again (R 347). The accused always gave the heaviest work to the Jewish inmates (R 346). If the accused discovered that he had given bread to a Jew, he would take the bread away and beat him (R 346).

A fourth witness testified that in February or March 1945 (R 247) at the railroad station detail he saw the accused beat and trample in the stomach and kick a Czech inmate (R 246, 253). Afterwards the Czech always

suffered from a stomach ailment and attributed it to the blows received from the accused (R 246, 254, 255). He was later hospitalized and died in about April 1946 (R 247, 253-255). The witness stated that the accused used various ways and means to torture inmates, including forcing them to stand for hours in the heat, rain or cold, depending on the season (R 247). The accused beat and mistreated inmates in such manner that some of them ran into the electric fence voluntarily (R 246).

A fifth witness testified that during an evacuation march from Flossen-^{burg} Concentration Camp, the accused led a group of 100 inmates in which the witness was marching. He saw the accused pull two Polish inmates out of the column and shoot them. Immediately after this shooting he saw the accused call quite a number of inmates from the column. Most of those called out could not walk. The accused told two SS men to shoot them. During the final three months before the liberation, he saw the accused during roll calls beat inmates who were too weak to stand. The accused smashed the head of one and the nose of another inmate (R 285, 286).

Another witness testified as to beatings by the accused which may or may not have occurred ^{the} during/ period covered by the charge (R 28, 29,33).

The accused admitted in Court that he slapped 12 to 15 inmates (R 565, 566).

Evidence for Defense: One witness testified that the accused was popular, and that he never saw him beat or mistreat inmates (R 503, 505). He never heard that the accused shot or beat any inmates to death (R 504). A second witness testified that he never saw the accused beat anyone (R 454). A third witness testified that during the evacuation he was with the accused until 3 May 1945 and that the accused accompanied no inmates on an evacuation march (R 528, 530). He and the accused, together with a corporal of the SS, left the camp four or five days after the inmates were evacuated and retired to a farm 10 kilometers from the camp (R 527, 529, 530). During the trip they came in contact with no inmates other than to pass a small group by the side of the road (R 528, 531).

The accused testified that after January 1942 he was transferred to

the German Earth and Stone Works and that thereafter he had nothing to do with matters concerning the camp and lived at the stone quarry until the end (R 564). He never beat with a weapon, or otherwise mistreated inmates. He never caused an inmate to be hospitalized (R 566). He never took part in an evacuation march (R 566). On 21 April 1945 he left Flossenburg Concentration Camp in a truck with others (R 566). After staying that weekend with a farmer, he continued the journey in the direction of his home until captured by the Americans on 5 May 1945 (R 566, 567). During that time he came in contact with no inmates other than to pass a group that was camping (R 567, 568).

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

Petitions: A Petition for Review was filed on 5 January 1948 by Captain William A. Gordon, defense counsel. A Petition for Clemency was filed by the accused, 20 November 1947.

Recommendation: That the findings and sentence be approved.

4. Johann FUCHS

Nationality:	Austrian
Age:	41
Civilian Status:	Painter
Party Status:	None
Military Status:	None
Flee:	NG
Findings:	G
Sentence:	Life Imprisonment

Evidence for Prosecution: The accused was a criminal inmate (R 158, 235) in Flossenburg Concentration Camp following September 1943 (R 570). He served as a capo during 1944 (R 570), and as a room orderly from January 1945 until the liberation (R 195, 204, 223, 233).

One witness testified that in 1944 the accused was a capo in the section wing construction detail in the Messerschmidt Works (R 157, 158). There he saw the accused beat inmates daily with weighted rubber hose

(R 156, 174, 176). Inmate workers who were reported to the accused were beaten so severely that they became ill and were hospitalized (R 159).

Sometimes the accused beat inmates with iron objects, bashing in their faces and severely beating their hands and bodies (R 159). He beat Russian, Polish, Czech, and Yugoslav inmates (R 159), (also see R 291). One Russian inmate who couldn't keep up with his work was beaten ^{by} the accused with an iron, kicked and sent to the hospital (R 163). The accused beat a Polish Jew so severely that his face and back were torn by the rubber hose, his kidneys injured, and his ears so swollen he could / ^{not} hear. The inmate went to the dispensary repeatedly, and in December 1944 was sent to Dachau where he died in January 1945 (R 163, 164, 165). The accused beat the witness so severely with a U-shaped piece of iron that he was sent to the dispensary (R 161, 162, 163). He also beat a young Polish inmate (R 161, 187, 188, 189). The accused, after beating an inmate, reduced his food (R 166).

A second witness testified that the accused as a room orderly in block 10 in February and March 1945 beat inmates indiscriminately and without reason, especially the Jewish inmates (R 195). He beat the weak and the sick at roll call time until they had to be carried out (R 196). He administered 15 to 50 blows to the back as punishment, finishing with blows across the head (R 196). The victims were Polish and Russian inmates (R 196). The accused did not make a fair distribution of bread at mealtime, discriminating especially against the Jews (R 196, 197). In March 1945 when new inmates, mostly Jews (R 198), arrived from Auschwitz (R 199) with dysentery, the accused took part in removing the sickest to the cold cement floor in the unheated washroom where they died, many overnight (R 197, 198; corroborated R 205-207, 215, 218, 225).

A third witness testified that nearly every day in block 10 he saw the accused beat inmates on the slightest provocation with rubber truncheons (R 204, 205). He bore a special grudge against the Jews (R 208). The witness testified that he saw the accused beat and kick an elderly Frenchman so severely that he died the next day (R 207, 221).

A fourth witness testified that in block 10 the accused was very brutal during roll call and the evening meal (R 223). He conste

ied a rubber hose and beat inmates indiscriminately (R 223). The accused participated in bartering food to the inmates for cigarettes (R 224). He used his rubber hose to force the non-German inmates who had no place to sleep to crawl under the beds (R 224).

A fifth witness testified that in block 10 he saw the accused place a Polish inmate on a table with ^{his} head down between the table leaves and administer the "25 lashes" with a special leather club. The accused beat the inmate on the head until he was bloody and unconscious (R 234). At mealtime the accused often beat the inmates over the head with a metal ladle (R 234, 235).

A sixth witness testified that in block 10 the accused very frequently beat inmates with his rubber club (R 291, 295). It was a perverse kind of beating (R 291). One inmate who had been recently transferred from Auschwitz and who smelled bad was beaten with a club by the accused until he collapsed (R 299, 300, 301). The victim was dead the next morning (R 290, 301, 302, 305). The accused broke the nose of the witness with a soup ladle (R 291, 303).

One defense witness admitted that he saw the accused slap inmates (R 431). Another defense witness admitted that he saw the accused slap and beat inmates with a rubber hose (R 460, 465). The accused admitted in Court that he had slapped inmates and had beaten them with the rubber hose (R 572, 573).

Evidence for Defense: One witness testified that the accused was a soft good natured man (R 432). He saw the accused slap inmates only for theft and because they were disorderly during food distribution (R 432). A second witness testified that he did not see the accused beat anyone severely (R 436), and that the accused did not have a reputation as a beater (R 437). A third witness testified that he never saw nor heard that the accused beat any inmates (R 448). A fourth witness admitted that he saw the accused beat inmates, but that such discipline saved the inmates from worse punishment (R 463). The accused's beatings never caused the recipients to need hospitalization (R 460). A fifth witness testified that

he never heard the accused mentioned in connection with severe beatings (R 522).

The accused testified that he never solicited the job as capo (R 571). He punished inmates only for violation of regulations (R 572, 573). His beatings never caused the hospitalization of inmates (R 574). He never used a weighted rubber hose (R 574). He personally was not responsible for the overcrowding in the block or for the typhoid and dysentery (R 576).

Sufficiency of Evidence: Austria was a co-belligerent of Germany. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed 5 January 1948 by William A. Gordon, Captain, defense counsel.

Recommendation: That the findings and sentence be approved.

5. Paul TOERMER

Nationality:	German
Age:	34
Civilian Status:	None
Party Status:	None
Military Status:	None
Flee:	NO
Findings:	G
Sentence:	15 years, commencing 3 May 1945

Evidence for Prosecution: The accused was an inmate of Flossenburg Concentration Camp and during 1942 and early 1943 served as a room orderly in Block 4 (R 341). In 1943 and the first part of 1944 he served as a male nurse in the inmate hospital (R 58, 59, 90, 381). From early 1944 until the evacuation of the camp in April 1945 he served as a capo and over-capo in the civilian hall and several sections of project 2004 in the Messerschmidt works (R 90, 109, 129, ^{130,}139, 149, 258, 307, 404, 412, 432, 486, 541) at the stone quarry (R 427). He lived in blocks 4, 6, and 8 while he was a male nurse and capo (R 59, 61, 149, 433).

One witness testified that while the accused was room orderly in

block 4 most of the inmates in that block were German with the exception of a few Czechs, Poles, and Spaniards (R 341). The Polish inmates received the worst treatment (R 341). In the day room the accused did not allow them to sit at the tables under penalty of beating (R 341). Although the Polish and Spanish inmates were the weakest (R 341, 354) they were required to fetch coffee for the others (R 342). The accused beat and threw stools at them and required all of them to stand outside regardless of rain or snow until their comrades returned with the coffee (R 342, 354). In 1943, after permission was granted to receive packages from the outside, the accused attempted by beating and death threats to get some of the packages received by witness (R 342, 350).

A second witness testified that, while the accused was a male nurse, he often saw him severely beat inmates, mostly Poles, Russians, and Italians, while they were seeking medical attention at the hospital in the evenings (R 102, 103).

A third witness testified that, while the accused was a capo in the civilian hall (R 139), he saw him beat inmates many times (R 140). Every time the accused entered the workshop he beat somebody with his hand or with a rubber truncheon (R 139). There were Gypsy, Russian, Belgian, French, Czech, Polish, and Jewish inmates (R 140). He beat a sick inmate so severely he was hospitalized (R 140). A fourth witness (R 129) testified that the accused, while he was an over-capo, knocked him unconscious (R 132, 136) with a blow in the mouth (R 130). Five teeth were knocked out (R 130) and the wound required five stitches (R 132). A fifth witness testified that he saw the accused at labor detail 2004 beat one Russian and two Polish inmates with sticks and with a rubber hose on different occasions (R 91, 97, 98).

A sixth witness testified that in the civilian hall he saw the accused severely beat inmates with ^{his} fist and with the rubber hose, and that some of them collapsed unconscious from the beatings (R 307, 308).

A seventh witness testified that in the civilian hall the accused as capo used every opportunity to beat his fellow inmates (R 149). Daily,

when the inmates went to the washroom, he would stand in the hallway with a stick or a rubber cane in his hand and beat them (R 149, 150, 153, 154). He severely mistreated inmates (R 150). In April 1945 during evacuation of the camp he severely beat an inmate, who was trying to hide, with a rifle butt (R 150, 156). The accused was put in SS uniform by the camp authorities about eight days before the evacuation (R 151). The witness testified that on 22 April 1945 he saw the accused for a moment on a transport (R 151). The witness later talked to comrades who were on the transport with the accused (R 151). They told witness that the accused used his rifle so frequently they dared not stop even for a moment or he would shoot them down (R 151).

An eighth witness who worked in the office at the stone quarry testified that while there he saw the accused daily (R 259), and that in May 1944 the accused beat a Russian inmate (R 258) until he collapsed and then kicked and trampled him (R 258, 261-263). The inmate was brought to the office and the witness watched him die (R 259, 264, 265). The accused brought two or three inmates to the office every few days where he administered the "25 lashes" (R 259).

A ninth witness testified that in October 1944 (R 109) in the stone quarry he saw the accused push two non-German inmates over a 50-meter cliff (R 105-107). They did not get up and in three to five minutes were carried away (R 107). The accused once struck the witness (R 107).

Another witness testified that in January 1945 he saw the accused beat a French comrade, Herrett (R 76), so severely that he died two or three days later (R 60, 75-77, 79-83). The witness also testified that one night in March 1945, while the accused lived in block four, a Russian inmate passed through the room where the accused and a comrade were drinking (R 61). The accused kicked the Russian and beat him with his fists and with a stool (R 61). The witness and other inmates heard the Russian scream and the next morning found his dead body in the washroom (R 61).

Three defense witnesses admitted that they saw the accused slap inmates (R 388, 425, 429, 496). One defense witness testified that some-

times the accused hit or kicked inmates in order to maintain discipline (R 388). Another defense witness admitted seeing the accused beat inmates with an empty rubber hose (R 492). The accused admitted that he slapped inmates and twice struck them with objects other than his hands (R 541, 543, 548, 550).

Evidence for Defense: Four witnesses testified that the accused always behaved properly toward the inmates (R 382, 393, 406, 409, 410, 414, 438).

Three witnesses testified that the accused obtained food and medicine for the inmates (R 424, 438, 439, 516, 517). One of the witnesses stated that the accused saved his life with food (R 424). Another witness testified that the accused improved conditions for tuberculosis patients (R 516).

One witness testified that in May 1944 he was clerk in the orderly room and knew the accused very well at that time; that he would have received a report, if a Russian inmate had died of unnatural causes at the stone quarry; and that he did not recall such an incident (R 514).

Seven witnesses testified that they had never heard of any inmates being pushed to their death from a cliff in the stone quarry in October 1944 (R 386, 406, 421, 427, 454-456, 473, 476, 477). One of the witnesses testified that no inmate was killed in an industrial accident in the stone quarry in 1944 (R 454). Another witness testified that in the stone quarry there was no cliff wall with a sheer drop of 50 meters (R 476).

One witness stated that he did / ^{not} remember meeting a French inmate by the name of Herrett or recording his death (R 384, 385). One witness testified that he never learned that the accused assaulted a Russian inmate so badly in block 4 that he died (R 370). Another witness testified that he never saw the accused intoxicated (R 369). Two witnesses testified that during evacuation of the camp they accompanied the accused as members of the camp police in uniform with a mission to establish a rear guard action (R 486-488, 493, 508, 509). They had no contact with the inmates during evacuation other than passing on the autobahn

(R 489, 509). The accused deserted his mission and went to the Sudetenland where he was captured (R 489).

The accused testified that he became a male nurse at the hospital at the request of inmates (R 539, 540). There he saved many lives (R 540). He became a capo in the Messerschmidt works against his will (R 540, 541). He was a protector of the weak and sick (R 542). The accused admitted striking a Polish inmate in the mouth but stated that the inmate did not become unconscious, the lip was not completely severed and he took the inmate to the dispensary for treatment (R 543). He never hit so hard that inmates fell to the ground, or needed hospitalization, or died (R 548, 550). The accused denied pushing two inmates from a cliff in the stone quarry in October 1944 (R 551). He denied accompanying any inmates on a march during the evacuation of the camp (R 555). He denied mistreating any inmates before they departed the camp during the evacuation (R 555) and stated that he saved the lives of many of them by getting them to the hospital before the evacuation started (R 555). He denied killing a French inmate by beating (R 556).

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

Petitions: A Petition for Review was filed 5 January 1948 by Captain William A. Gordon, defense counsel. A Petition for Clemency was filed by Bernardino Fresia, 7 November 1947.

Recommendation: That the findings and sentence be approved.

6. Johann WIEBGER

This accused was served (P-Ex 2) but not tried (R 1).

7. Josef KOKOTT

This accused was not served (P-Ex 3) nor tried (R 1).

8. Alfons ROESCH

This accused was served (P-Ex 2) but not tried by reason of insanity (R 1).

V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the persons

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

SAMUEL F. ROACH
Major AGD
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