

atrocities. Prosecution's Exhibit marked P-Ex 5 is a certified copy of the charges, particulars, findings and sentences in the parent Mauthausen Concentration Camp case (United States v. Hans ALTFULDISCH, et al., 000-50-5, opinion DJAWC, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post; R 99).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Andreas BATTERMANN

Nationality:	German
Age:	39
Civilian Status:	Unknown
Party Status:	Nazi Party since 1937
Military Status:	Waffen SS, Sergeant
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 15 May 1945

Evidence for Prosecution: The accused stated in his questionnaire that he served as a guard at subcamp Gusen of the Mauthausen Concentration Camp from January 1940 to November 1942 and that he was corporal of the guard on various outdetails at the same subcamp until 3 May 1945. He stated further that he was a member of the Waffen SS from 7 November 1939 to 8 May 1945 (R 100; P-Ex 6).

A witness, who was a former inmate of the subcamp, stated in an extrajudicial sworn statement that the accused frequently beat inmates of various nationalities as they ran for the entrance of the air raid shelters during air raids in the summer and autumn of 1944 (R 97; P-Ex 2).

Evidence for Defense: One witness, a former capo at subcamp Gusen, testified the accused had a good reputation and that he had neither seen nor heard of any mistreatment of inmates by the accused (R 109). A second witness, who was an SS sergeant working under the accused, corroborated the testimony of the first witness (R 114, 115). The accused testified that he was never a guard at the entrance to the

air raid shelter and that he never beat inmates at subcamp Gusen (R 183, 184).

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

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

Recommendation: That the findings and sentence be approved.

2. Michael JAIT

Nationality:	German
Age:	45
Civilian Status:	Unknown
Party Status:	Nazi Party since 1937
Military Status:	Waffen SS, Sergeant
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 5 December 1945

Evidence for Prosecution: The accused stated in his questionnaire that he was a guard in various subcamps of the Mauthausen Concentration Camp as follows: Gusen from February 1940 to July 1942; Ternberg from July 1942 to December 1942; Gusen from December 1942 to August 1943; and Wiener-Neudorf from August 1943 to April 1944. He stated further that he was detail leader at subcamp Ebensee from May 1944 to May 1945 and that he was a member of the Waffen SS from May 1939 to May 1945 (R 101, I-Ex 7).

One witness, a former Polish inmate, stated in an extrajudicial sworn statement that in October 1943 at subcamp Gusen he saw the accused beat two Polish inmates with the handle of a shovel so severely they died the same evening. These inmates were beaten by the accused after they collapsed on a track laying detail because of extreme weakness. This witness stated further that he helped to carry the bodies of the two dead inmates to the crematory (R 98; I-Ex 3).

A second witness, a former Polish inmate of both subcamps Gusen

and Wiener-Neudorf, testified that he saw the accused jump into the ranks of a marching column and slap an inmate several times. He believed this incident occurred in 1944 at Gusen, although he testified that he did not remember whether he had seen the accused at Gusen or Wiener-Neudorf (R 89, 90).

Evidence for Defense: The accused testified that he and his whole guard company were transferred on 31 August 1943 from subcamp Gusen to subcamp Wiener-Neudorf which was about 250 to 300 kilometers distant and that he was never in Gusen after that date. He denied ever beating any inmates and specifically denied the incident described in Prosecution's Exhibit 3 (R 187, 188). On cross examination he admitted being a guard for a detail laying the foundation for a dam, but asserted that he did not remember that any tracks were laid (R 188, 189).

Two former SS sergeants, members of the guard company to which the accused was assigned, testified that the guard company was transferred from subcamp Gusen to subcamp Wiener-Neudorf between 1 to 16 August 1943 (R 122, 127). On cross examination both witnesses admitted that there was a work detail at Gusen that laid rails for lorries. One of these witnesses testified that both he and the accused had been assigned to this detail at times (R 123, 124, 129).

Sufficiency of Evidence: While there is a conflict in the evidence with regard to accused's presence in subcamp Gusen at the time of the incident described in the extrajudicial sworn testimony of prosecution witness, the Court might well have concluded that the accused severely beat two inmates on a track laying detail in Gusen sometime in the fall of 1943.

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

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

Recommendation: That the findings and sentence be approved.

3. Viktor KREMER

The name of this accused was apparently stricken from the charge sheet, and he was not before the Court (R 1).

4. Felix DOMINGO

The name of this accused was apparently stricken from the charge sheet, and he was not before the Court (R 1).

5. Gert HAUSKNECHT

Nationality:	German
Age:	42
Civilian Status:	Unknown
Party Status:	None
Military Status:	Waffen SS, Corporal
Flea:	NG
Findings:	G
Sentence:	3 years, commencing 15 June 1945

Evidence for Prosecution: The accused stated in his questionnaire that he was a guard at the Gusen subcamp of the Mauthausen Concentration Camp from 25 May 1944 to 9 May 1945. He stated further that he served in the Luftwaffe from 1 July 1941 to 30 August 1944, at which time he was transferred to the Waffen SS with the rank of corporal (R 101; F-Ex B).

One witness, a former Polish inmate of subcamp Gusen, testified that he was beaten with a whip-like piece of wood by the accused at the entrance of the air raid shelter in 1945. During air alerts the inmates were forced to run to the air raid shelter, and were hurried along by beatings from the guards, among them the accused. In the rush of 24,000 inmates endeavoring to enter the one entrance to the shelter, while being beaten by guards, many inmates fell and were trampled to death (R 69-71).

Evidence for Defense: The accused testified that he had never mistreated any inmates while he was a guard at Gusen, nor had he ever seen anyone mistreated (R 163, 164). A former technical sergeant, who

was the acting first sergeant of the guard company to which the accused was assigned, testified that guards were not assigned to the entrance to the inmate air raid shelter and that inmates went to the shelter under supervision of their block eldests and capos, while the SS guards went to their own shelter (R 133-135). A second witness, also a former member of accused's guard company, testified accused had a good reputation and he never saw or heard of him mistreating inmates (R 139).

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 the accused, 15 November 1947.

Recommendation: That the findings and sentence be approved.

6. Rudolf Gustav KLEIN

Nationality:	German
Age:	28
Civilian Status:	Unknown
Party Status:	None
Military Status:	Waffen SS, Technical Sergeant
Flea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused stated in his questionnaire that he was a guard at the Gusen subcamp of the Mauthausen Concentration Camp from February 1940 to March 1942 and assistant block leader there from March to August 1942. He stated further that he was a member of the Waffen SS from February 1939 to 10 May 1945, with the rank of technical sergeant (R 102; P-Ex 9).

The accused testified that, while he was in Gusen, he slapped about 12 inmates; that he kicked about six inmates; that these punishments usually occurred at the roll call square; and that the punishments were for disobedience, theft and other violations of camp rules (R 168, 170, 173-176).

Two witnesses testified that in about February 1942 in Gusen the accused found a father and son, both Spanish inmates, in the same bed. The father was about 59 years old and his son was about 19 years old. The father was severely beaten by the accused on the pretext that he was guilty of homosexuality. These witnesses heard subsequently that this inmate died several weeks later as a result of this beating (R 37, 38, 59, 60). One of these witnesses and three other witnesses testified they were severely beaten and kicked by the accused in Gusen in 1942. Two of them testified that at the time they were beaten by the accused they were still suffering from injuries caused by kicks previously administered by him (R 9, 10, 37, 45, 49, 50). A sixth witness and one of these witnesses testified that the accused was nicknamed the "testicle kicker", because it was his daily habit to kick inmates of all nationalities in the testicles while they were standing in formation on the roll call square. Many of the victims fell down and had to be taken to the dispensary as a result of being kicked (R 32, 33, 50).

One of the witnesses mentioned above testified that he heard that the accused was one of the block leaders who took invalid inmates to the baths, where many were drowned as a result of being forced to stand in a pool of water under a cold shower until they collapsed (R 10 - 12). A seventh witness testified that in January or February 1942 he saw the accused assisted by a block eldest severely beat three Polish inmates in a hall in block 10; that he saw the dead bodies of the victims (apparently the same day); and that after roll call they were taken to the crematory (R 83, 84). He also testified that he saw the accused and others take 140 invalid inmates to the baths in January or February 1942 and that after one and a half hours in cold water the witness saw 40 corpses in the bathroom. Most of these victims were Polish and Spanish (R 84, 85). This witness testified further that in February or March 1942 the accused and others took nine sick Spanish inmates from block number 22 and that the next day he saw the corpses

of these inmates in the bathroom (R 85, 86).

An eighth witness testified that in January 1942 he saw the accused beat two Polish inmates in block number nine with the leg of a chair until they fell down, whereupon the accused stamped on their throats until they suffocated and died (R 78, 79). The witness saw the dead bodies (R 79).

Evidence for Defense: The accused testified that he was only seventeen and one half years old when he was ordered to report to the Waffen SS (R 166). In February 1940 he was transferred with his whole company to Gusen. He tried several times to be transferred to a front line unit. He asked his mother in March 1942 to contact headquarters in Berlin concerning his transfer. In July 1942 he was transferred to front line duty (R 167). He admitted that on one occasion he made an evening control check with another sergeant for the purpose of checking the cleanliness of the inmates, and incidentally to check on homosexuality, but testified that no beatings were given and that only a few inmates were found with dirty feet (R 168). The accused admitted beating and kicking inmates, but denied ever beating any inmate to death (R 173-176).

Sufficiency of Evidence: The Court was warranted from the evidence concerning the extent and nature of his participation, particularly that relating to illegal killings, in its findings of guilty. The sentence is not excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by Anna Klein, accused's mother, 4 August 1947 and 28 August 1947; Klara Lux, 4 August 1947; Johann Molke and Auguste Hubner, 4 August 1947; Wilhelm Stein, 28 August 1947; Elisabeth Eschbach, Maria Weber, Stanislaw Klein and Toni Klein, 28 August 1947; Hans Buhlheller, accused's attorney, 16 September 1947, 16 September 1947, 19 September 1947, 30 September 1947 and 3 October 1947; Ernst Jetter, 24 September 1947; Oskar Tandler, 24 September 1947; Rudolf Brust, undated; and Dr. Rintelen, Vicar General of Paderborn, 30 September 1947.

Recommendation: That the findings and sentence be approved.

7. Albert FITZNER

Nationality:	German
Age:	43
Civilian Status:	Unknown
Party Status:	None
Military Status:	Waffen SS, Sergeant
Flea:	NG
Findings:	G
Sentence:	10 years, commencing 16 January 1946

Evidence for Prosecution: The accused stated in his questionnaire that he was a guard at the Gusen subcamp of the Mauthausen Concentration Camp from 29 July 1944 to 7 April 1945. He stated further that he served in the Luftwaffe from 1 July 1940 to 1 September 1944, when he was transferred to the Waffen SS with the rank of sergeant (R 102; F-Ex 10).

A former Polish inmate testified that during the winter 1944 to 1945 he was working on the St. Georgen outdetail. This detail travelled to work by train. The SS guards at first rode on the train, but later walked by the side of the train which travelled very slowly. This witness saw the accused on one occasion beat two inmates with his rifle and a week later he saw him beating about five inmates, both incidents occurring while the detail was alighting from the train at St. Georgen. The two victims of the first incident were taken away and the witness heard later that they died in the dispensary. Five victims of the second incident were seen three or four weeks later in a group of sick inmates who were taken from block number 13. This witness heard they were taken to the bath for extermination (R 93-97).

Evidence for Defense: The accused testified that he had been a guard in the chain of guards for the St. Georgen outdetail, but he had never guarded the place where the inmates alighted. He was not one of the guards who walked along with the train, because he had a hernia and could not walk very well. He denied ever beating any inmate

(R 179, 180). Two former members of the accused's guard company testified he had a good reputation and that they had never heard of accused beating any inmates (R 145, 150, 151).

Sufficiency of Evidence: The Court was warranted from the evidence concerning the extent and nature of his participation, especially that involving him in severe beatings, in its findings of guilty. The sentence is not excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by the accused, 2 October 1947 and Fr. Gaertner, preacher, 5 December 1947.

Recommendation: That the findings and sentence be approved.

8. Otto Richard KLEINERT

Nationality:	German
Age:	49
Civilian Status:	Unknown
Party Status:	None
Military Status:	Waffen SS, Corporal
Plea:	NG
Findings:	G
Sentence:	2 years, commencing 15 June 1945

Evidence for Prosecution: The accused stated in his questionnaire that he was a guard at the Gusen subcamp of the Mauthausen Concentration Camp from 14 April 1944 to 5 May 1945. He stated further that he served in the Luftwaffe from 20 April 1943 to 1 September 1944 when he was transferred to the Waffen SS, with rank of corporal (R 103; P-Ex 11).

A witness, a former Yugoslav inmate, stated in his extrajudicial sworn statement that he saw the accused beating and kicking a Polish inmate in the summer of 1944 at Gusen I (R 99; P-Ex 4, p. 4).

Evidence for Defense: The accused testified that he had been a guard at Gusen II, but never at Gusen I (R 191). He further testified he was never a guard on work details, but was only a tower guard (R 192). Two former members of the guard company at Gusen II testified that the

accused was on duty as a guard in Gusen II (R 153, 155).

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

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

Recommendation: That the findings and sentence be approved.

9. Adolf MOHR

Nationality:	German
Age:	49
Civilian Status:	Watchmaker
Party Status:	Nazi Party since 1 May 1937
Military Status:	Waffen SS, Sergeant
Plea:	NG
Findings:	G
Sentence:	2 years, commencing 29 May 1945

Evidence for Prosecution: The accused stated in his questionnaire that he was a guard at the Gusen subcamp of the Mauthausen Concentration Camp from March 1940 to January 1943 and that he was guard leader until 15 March 1945 at the same subcamp. For an undisclosed period of time after January 1943 he worked also as a watch repairer. He stated further that he was a member of the Waffen SS, with the rank of sergeant, from November 1939 to 8 May 1945 (R 104, 193, 194; P-Ex 12).

A witness, a former inmate, testified that the accused was leader of the witness' detail and that he saw him once slap an inmate in the face, but usually the accused was decent to the witness and to the four Polish inmates who worked on this detail (R 16). A second witness testified that he saw the accused kick and trip an inmate once when the witness and a group of inmates were leaving the bath. On other occasions in March 1945 the accused was brutal in conducting examinations of inmates returning from work details (R 72).

Evidence for Defense: The accused testified that he was never inside the inmate compound at Gusen (R 194). He further testified that

during the five years he was in Gusen he had never seen nor heard of inmates being mistreated, but then qualified his testimony by admitting he had seen some inmates beaten as they were returning to the camps (R 195, 196).

A former clerk of the guard company testified that the accused was never on duty within the inmate compound and that the accused had a good reputation (R 157, 158). Another witness, also a former member of the same guard company, testified that the accused worked most of the time as a watchmaker in his own room and that he had a good reputation (R 160).

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

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

Recommendation: That the findings and sentence be approved.

10. Jakob KRAEMER

The name of this accused was apparently stricken from the charge sheet, and he was not before the Court (R 1).

V. QUESTIONS OF LAW:

Jurisdiction: 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, European Theater, File AG 000,5 JAG-AGC, subject: "Trial of War Crimes Cases", 14 October 1946, and that 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 proceeding, in concluding as to them that they not only participated to a substantial degree, but the nature and extent of their participation were such as to warrant the sentences imposed.

Examination of the entire record fails to disclose any error or omission 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.

JOSEPH L. HAEFELE
Major GMP
Attorney
Post Trial Branch

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

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