

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

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E.O. 12958, Sec. 2.4  
NNB 775032  
P.B./S.M. NAME, DATE

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E.O. 12958, Sec. 2.4  
NAME, DATE

28 January 1948

UNITED STATES )

v.

Case No. 000-50-5-13

Johann HAIDER, et al. )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 3-12 September 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Heinz BOLLHORST, Johann HAIDER, Rudolf HIRSCH, Matheus ISERA, Josef KISCH, Herbert FULLGRAF, Martin STEINMETZ, Daniel STOECKEL, Stefan USCARENITSCH, Mathias FRINDT, Johann SCHERER, German nationals or persons acting with German nationals, acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses, and indignities, did, at or in the vicinity of the Mauthausen Concentration Camp, at Castle Hartheim, and at or in the vicinity of the Mauthausen Sub-camps, including but not limited to Ebensee, Gros-Raming, Gunskirchen, Gussen, Hinterbrühl, Lambach, Linz, Loiblpass, Molk, Schwachat, St. Georgen, St. Lambrecht, St. Valentin, Steyr, Vienna, Wiener-Neudorf, all in Austria, at various and sundry times between January 1, 1942 and May 5, 1945, wrongfully encourage, aid, abet, and participate in the subjection of Poles, Frenchmen, Greeks, Yugoslavs, Citizens of the Soviet Union, Norwegians, Danes, Belgians, Citizens of the Netherlands, Citizens of the Grand Duchy of Luxembourg, Turks, British Subjects, stateless persons, Czechs, Chinese, Citizens of the United States of America, and other non-German nationals who were then and there in the custody of the then German Reich, and members of the armed forces of nations then at war with the then German Reich who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating thousands.

III. SUMMARY OF EVIDENCE: All of the convicted accused were members of the Waffen SS or Gestapo at Mauthausen Concentration Camp or its subcamps for considerable periods of time between the dates alleged, and were shown to have participated in the Mauthausen Concentration Camp mass atrocity as guards, clerks, detail leaders or block leaders. Prosecution's Exhibit, P-Ex 2 (R 15), is a certified copy of the charges, particulars, findings and sentences in the parent Mauthausen Concentration Camp Case (United States v.

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1. KULLBACK - 500 1000 1950/1-43

Altfuldisch, et al., 000-50-5, opinion NJAWC, February 1947, hereinafter referred to as the "Parent Case"; see Section V, post).

Vienna Ditch: The evidence in the Parent Case indicates that the stone quarry, commonly known as the Vienna Ditch (Wiener Graben) (P-Ex 55, R 1074, P-Ex 56, R 1080, P-Ex 57, R 1081, Parent Case), was located about 300 meters from the Mauthausen Camp main gate. It was about 11 kilometers long and 80 to 100 meters deep. Inmates were forced to carry heavy stones up the 185 steps (P-Ex 56, R 1080, Parent Case) from the floor of the quarry to the rim of the surrounding cliff. Processing machinery and so forth were located on the floor of the excavation. The quarry enterprise was owned by the German Earth and Stone Works, a corporation allegedly controlled by the SS (R 166, 343, 344, 401-404, Parent Case). "Punishment Companies" carried the heavy stones from the quarry floor up the steps and into the camp (R 404-405, Parent Case). Inmates operated all the installations. Many of this personnel were beaten, thrown down the cliff or driven through the guard chain to be shot (R 343-344, Parent Case). Intellectuals were ordered to the quarry anticipating that they would die of overwork (R 249, Parent Case).

Martin testified in the Parent Case that he heard that during the first part of September 1944, 46 to 49 Dutch and British officers were mistreated in Mauthausen and sent to work in the stone quarry with the penal company, dressed in underdrawers, shirts and no shoes; that these victims were driven barefooted into the quarry; that all of the inmates, who had been in Mauthausen for a long time, knew that these inmates had been sentenced to death from their having been treated in the aforementioned fashion; that approximately two thirds were shot at the quarry during the morning and the remainder during the afternoon (R 157, 158, Parent Case). Lampe, a former inmate (R 457), testified that on about 6 or 7 September 1944 he saw the bodies of 48 American, Dutch and British paratroopers in the stone quarry, 21 on the first day and 27 on the second day (R 461, 482, Parent Case). The witness, Von Posern, testified that during the first of September 1944 he saw some 46 to 48 Allied inmates driven in pairs with their hands over their heads down to the gravel pit where they were shot near the Vienna Ditch (R 779, 818, 819, Parent Case). Podina testified he saw inmates chased through

the chain of guards and shot and also placed in water at the Vienna Ditch and frozen to death (R 252, Parent Case). Sanner, a former inmate, Marshalek and Distel testified that they saw inmates being beaten to death, made to use their very last strength to carry heavy stones up the 166 steps, being killed by being thrown down the cliff, and being driven through the guard chain and shot to death (R 343, 344, 518, 524, 525, 535, 536, 585, 587-589, Parent Case). The witness, Scheuch, testified that inmates were hanged in the stone quarry as early as 1942 (R 726, Parent Case). Fichtenkamp testified that the inmates assigned on the regular Vienna Ditch detail were issued coupons for their work, which could be used to procure a limited amount of cigarettes and sweet water, but that the stone carrying and punishment company inmates of the Vienna Ditch did not need any coupons as they only lived three days (R 3163, Parent Case); that most of the inmates killed at the Vienna Ditch were killed by beatings and shootings on the steps (R 3164, 3165, Parent Case).

Death Book: Doppelreiter testified that he was in Mauthausen Concentration Camp as clerk from October 1943 until February 1945; that he was custodian of the death book for two months (R 35); and that, if an inmate was killed by a guard, this guard's name was recorded in the death book next to the deceased inmate's name with the cause of death (R 35-37). Dr. Leiss testified that he had been employed by the Dachau Detachment, 7708 War Crimes Group, Dachau, Germany, as an investigator since January 1946 and based upon his interrogations of many witnesses from the Mauthausen Concentration Camp he was able to identify a book kept by the political department at Mauthausen, wherein were recorded the names of all inmates who died from unnatural causes, the dates and causes of deaths and the name of the guard who did the shooting (R 40, 41).

#### IV. EVIDENCE AND RECOMMENDATIONS:

1. Heinz BOLLHORST

This accused was served but not tried (R 4).

2. Johann HAIDER

Nationality:

Age:

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Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Master Sergeant
Flea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused joined the Waffen SS on 28 August 1939 (R 279) and was transferred in October 1942 to the Mauthausen Concentration Camp as first clerk in the orderly room of the protective custody section, which position he continued to occupy as an SS master sergeant until 4 May 1945 (R 99, 281).

Von Posern, a former inmate of Mauthausen, testified that he saw the accused serve on an execution detail during 1942 or 1943 at Mauthausen Concentration Camp when 20 to 30 inmates were shot on orders of the first prison compound officer. He gave the coup de grace to approximately four inmates whom the witness later ascertained from a report to have been Czechs or Yugoslavs (R 22, 29-33). It is possible that these inmates were already dead at the time the accused gave the coup de grace (R 34). Wegner, a former political inmate of Mauthausen, testified that during the years 1942 and 1943 he saw the accused administer the coup de grace 10 to 20 times to Russian, French and Yugoslav inmates. He saw him beat inmates with his hands and with an oxtail whip, sometimes necessitating dispensary treatment (R 99, 100).

Wegner testified that fellow inmates on numerous occasions told him that the accused beat them during 1943 until they were unconscious (R 100-102). During the spring of 1943 he saw the accused beat two Yugoslav inmates for stealing potatoes with an oxtail whip to such an extent that they went to the dispensary to have their injuries dressed (R 107, 108). Sibitz, an inmate of Mauthausen from 1944 to 1945 and camp eldest of the sick camp, testified that he saw the accused hit a Yugoslav, who had pneumonia, 75 times on his buttocks with an oxtail whip in September 1944 for stealing bread. As a result, this inmate was bloody and almost unconscious. Then this inmate was taken into the tower on orders from the

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he was strangled. This inmate's name was written off the records at the sick camp, and the witness never saw him again (R 112-118, 121).

Kapinitz, formerly an inmate of Mauthausen, testified that during the fall of 1943 he saw the accused as leader of an execution detail at Mauthausen Concentration Camp which executed 20 to 25 inmates, two of whom were Yugoslavs. He was about 125 meters away from the execution place and did not hear the accused give any orders (R 152-154, 156, 157).

Evidence for Defense: The accused testified that he was drafted into the SS on 28 August 1939 with the rank of SS sergeant, this being the rank he held when discharged from the SS emergency troops in 1938 (R 279); and that he was ordered to the protective custody section of the Mauthausen Concentration Camp in October 1942 where he remained as first clerk in the orderly room until 4 May 1945 (R 281). Delinquency reports on inmates originated from the various camp leaders, detail leaders and factory managers and were sent to the protective custody leader, thence to the commandant who requested the protective custody leader to write the Berlin office recommending that a certain punishment be administered. He filled in these recommendation forms but did not recommend, determine or administer any punishments (R 284). He never had any activities connecting him with executions. He never acted as deputy commander of the protective custody camp, except sometimes on Sundays or nights. He had little authority and sought instructions from the protective custody leader or his assistant if any question arose (R 285). He denied that he ever beat or struck an inmate, ever ordered anyone else to do so, or ever reported an inmate for punishment (R 286, 287).

Mayer, a former political inmate of Mauthausen, testified that he saw the accused several times a day from 1943 to 1945 in the performance of his duties and that he never saw the accused mistreat and never heard of the accused mistreating any inmate or taking any part in executions (R 192-194).

Stockinger, a political inmate of Mauthausen from 1939 to 1943 (R 187), testified that he knew the accused from the spring of 1942 until September 1945 in the Mauthausen Concentration Camp and testified substantially the same (R 188, 189). Strausberger, who was a political inmate of Mauthausen Concentration

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Camp from 27 September 1939 to 5 May 1945, and Malleschits, a former SS sergeant, who worked in the same office with the accused from the summer of 1943 to March 1945, testified that they never saw or heard of the accused mistreating any inmate (R 206-208, 232-234). Giessrigl, an SS sergeant and former block leader at Mauthausen, testified that he worked in the same department with the accused and was in almost daily contact with him from October 1943 until the liberation and that he never saw or heard of any mistreatments of inmates by the accused (R 235-237).

Strauss, who was formerly head of the administration in Mauthausen, testified that he worked in the administrative branch of the Mauthausen Concentration Camp from February 1943 until 15 April 1945; that the accused could not have acted as deputy for the commander of the protective custody camp in Mauthausen during the absence of the commander as he was only first clerk in this protective custody camp (R 242, 244).

Flaucher, who worked in the stone quarry at Mauthausen from June 1942 until 1943, as a male nurse from May 1943 until September 1943 and as block eldest in the sick bay from September 1943 until 5 May 1945, testified that during these periods he neither heard of nor saw any instances of the accused mistreating or punishing an inmate. Inmates in the sick bay were not punished by the SS (R 250-252). BOLLHORST, a former member of the SS and roll call leader at Mauthausen Concentration Camp, testified that he knew the accused from 1943 until the liberation and occupied an office next door to his. He never saw or heard of any mistreatments of inmates by the accused (R 274-276). Kirsch, a former member of the Waffen SS who served at Mauthausen Concentration Camp from April 1943 to June 1943 and from March 1944 to 5 May 1945, testified that he knew the accused during these periods, but never saw or heard of the accused participating in mistreatments or executions (R 363-366).

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 by defense counsel, Captain Frank E. Morse, 18 September 1947. (The document stated therein that a memo-

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randum setting forth more specific grounds would be filed. However, none has been filed.) No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

3. Rudolf HIRSCH

Nationality:	German
Age:	41
Civilian Status:	Gestapo Employee
Party Status:	Unknown
Military Status:	Unknown
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 5 May 1945

Evidence for Prosecution: Schmeiling, an inmate of Mauthausen from March 1943 until the liberation (R 69, 70), testified that in February or March 1945 he saw 40 to 60 women, who he was told were Czechs, brought into the Mauthausen Concentration Camp and taken directly to the crematory. Later he saw the bodies of these women after they had been gassed. The accused was working at the crematory and he saw him present before and after this gassing wearing a white coat over his civilian clothes (R 72-75). Ornstein, who was an inmate of Mauthausen from August 1944 until 5 May 1945 (R 125), testified that in Mauthausen Concentration Camp during April 1945 he saw the accused participate as guard when Polish, Hungarian, Jewish, Czechoslovakian, French and Yugoslavian inmates were gassed. During this period at least 200 inmates were killed by gas daily. On two occasions the witness saw the accused wearing a white coat (R 127). Kanduth, an inmate of Mauthausen from March 1939 until May 1945 (R 163), testified that he saw the accused chase inmates into the gas chamber and stay until the end of the gassing (R 164, 165). Kanduth further testified that in March 1945 he saw the accused taking papers and uniforms away from 400 inmates as they were being led inside the crematory to be gassed (R 168).

Evidence for Defense: The accused testified that he belonged to the Gestapo from the 10th of March 1940 until May 1945. He was in Mauthausen

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Concentration Camp as a civilian belonging to the Gestapo from 10 February 1945 until 22 February 1945 and from 10 March 1945 until 15 May 1945 (R 317). He further testified that he was not a member of the Gestapo but was just an employee (R 319); and that the only duties he had while at Mauthausen Concentration Camp were to guard four important Hungarian inmates (R 319, 320), who were imprisoned in a bunker on the floor above the gas chamber and crematory, but that he had nothing to do with the operation of these two installations (R 321). He was not permitted to go anywhere inside the crematory yard, except from the gate to the stairs leading to the bunker over the crematory (R 322). During April 1945 he desired to take a shower bath, but as there was no hot water in the bunker, the administrator of the gas chamber and crematory invited him to, "come down, you can take a bath down in my place". They went into the collar where he complained about the cold and the administrator threw a white coat about him from the rear and turned on the cold shower. He requested warm water, whereupon the administrator said, "This is a gas chamber and not a bathroom"; thereupon he threw the white coat off and returned to the bunker. This was the only time he ever wore a white coat, and he never saw or heard of executions in Mauthausen Concentration Camp but did hear of mistreatments, although he never saw any (R 323-326).

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 defense counsel, Captain Frank E. Morse, 18 September 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

4. Mathous ISKRA

This accused was acquitted (R 371).

5. Josef KISCH

Nationality: German

Age: 35

Civilian Status: Unknown

Party Status: Unknown

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Military Status:	Waffen SS Corporal
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he was transferred from Hamburg to subcamp Gusen in September 1943 with the rank of SS Corporal. He retained this rating during the entire time he was connected with the Mauthausen Concentration Camp and its subcamps. From December 1943 until February 1944 he was block leader in the Mauthausen Concentration Camp at which time he was transferred to subcamp Gros-Raming (R 329-330). The accused admitted that he slapped the faces of four or five inmates who stole bread on 6 or 7 September 1944 (R 331). On or about 10 September 1944 he was assigned to a bomb disposal detail in Linz, after which he was transferred to subcamp St. Valentin. He remained there for six or seven weeks and returned to Mauthausen Concentration Camp between 15th and 20th of March 1945 (R 332).

Von Posern testified that on 1 or 2 September 1944 he saw 47 Dutch, English and American parachutist inmates standing between the guard house and the laundry in the Mauthausen Concentration Camp dressed in their underpants. They were still standing there the next morning (R 19). He saw these inmates murdered during a two day period, approximately 3 to 4 September 1944. On the second day he saw from a distance of 70 meters the accused, armed with a pistol and a club, continuously beat these inmates, while they carried stones from the stone quarry to the athletic field dressed in their underpants (R 19-22). The accused drove these inmates in pairs with their hands raised over their heads to a slope at the stone quarry where a guard shot them from the top of the slope (R 22-26). Senner, a political inmate of Mauthausen from 1941 to May 1945 (R 46), testified substantially the same (R 48-50, 53-55, 57, 58). Lipinski, a political inmate from June 1944 to May 1945 (R 82), testified that in September 1944 at Mauthausen Concentration Camp the accused participated in beating and chasing 47 inmates of allied nationalities, while they were carrying the stones, into the wires where they were shot by the guards.

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Dietl, an inmate from September 1944 until May 1945 (R 59), testified that in February 1945 at the Mauthausen Concentration Camp he saw the accused beat inmates of various nationalities, who had arrived in a transport from Sachsenhausen, with an iron bar for 10 minutes. He was positive some of these inmates were beaten to death by this accused (R 60, 64-67).

Schmehling testified that in February 1945 a group of several thousands of inmates arrived in Mauthausen Concentration Camp from Sachsenhausen; that 500 of these were selected, undressed and repeatedly led into the bath house for bathing purposes; that he saw the accused on the following morning participate in beating these inmates to death with an iron rod or pipe, or wooden rod; that he saw all of these inmates lying dead; and that their bodies were carried to the crematory (R 70, 71, 79-81). Ornstein testified that he gave the accused an iron bar with which he later saw the accused beat inmates in a transport from Sachsenhausen and he saw the dead bodies afterward (R 128). Kanduth testified that he saw the accused beating inmates who had arrived from Sachsenhausen, with an iron bar, and that the bodies of these inmates were terribly mutilated when they were carried to the crematory (R 166).

Schmehling testified that in Mauthausen Concentration Camp between the 21st and 24th of April 1945, he saw the accused beat an American pilot in the face with his pistol until the pilot broke down (R 71, 72).

Lipinski testified that he saw the accused during February 1945 in Mauthausen Concentration Camp beat with a stick a Russian officer who was chained to a wall until he fell to the ground; that the accused then stood on this inmate with one foot on the victim's throat and one foot on his stomach and rocked back and forth while smoking a cigarette; that he pushed his stick down the victim's throat and turned it, killing this inmate. Lipinski further testified that he assisted in carrying this Russian's body to the crematory (R 83, 84). Barczynski, who was formerly in Camp Mauthausen (R 90), testified substantially the same (R 91, 92).

Evidence for Defense: The accused testified that he took no part in the killing of any inmate in Mauthausen Concentration Camp, but did slap four or five inmates with his hands for stealing bread during September

February 1945 with a club or any other instrument (R 331-334); that in September 1944 he was in charge of a detail at the stone quarry when four or five inmates ran through the wire trying to escape and were shot by the guards (R 333); that he was not in Mauthausen Concentration Camp from about 10 September 1944 to 15-20 March 1945 (R 332).

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 defense counsel, Captain Frank W. Morse, 18 September 1947. Petitions for Clemency were filed by accused's sister, Anna Wenzl, 27 December 1947 and 24 January 1948.

Recommendation: That the findings and sentence be approved.

6. Herbert FULLGRAF

Nationality:	German
Age:	39
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS Sergeant
Place:	NG
Findings:	o
Sentence:	Life imprisonment

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he was in Neugamme Concentration Camp from Christmas 1940 until the middle of 1942; that he was in Oranienburg Concentration Camp from the middle of 1942 until August 1943; that in August 1943 he was transferred to Mauthausen Concentration Camp, where he remained until April 1945 as block leader and detail leader with the rank of Waffen SS Sergeant (R 142, 143; P-Ex 8A p. 1).

Barczynski testified that in March 1945 approximately 600 German, French and Yugoslav women inmates arrived in Mauthausen Concentration Camp where they were locked in a bath house which was very hot and much too small to accommodate them. He reported this condition to the accused, who was on duty in the guard house, but he refused to open the door permitting these inmates to get fresh air. The guard who relieved the accused in the guard house opened the door to the bath house and found three or three

of these women inmates dead (R 93, 94). Barczynski testified further that he was told by the bathmaster, who was not a physician, that these deaths were caused by suffocation (R 96).

Bauer, who was at Mauthausen from 1939 until 1945 (R 131), testified that he saw the accused beat French or Polish inmates at Mauthausen Concentration Camp in June or July 1944 for talking to the women at the brothel. These inmates were sent to the punishment company where he saw one of them shot to death as the victim ran through the chain of guards following severe beatings (R 131-134). The accused also participated in beating 35 to 40 Belgian, Dutch and American parachutists in the summer of 1944 (R 133, 134, 136).

The accused stated in his extrajudicial sworn statement that he was detail leader of a detail of Dutch paratroop inmates at the Vienna Ditch in the Mauthausen Concentration Camp on 16 September 1944 when 27 of them were shot to death by the guards when the inmates jumped through the wire. All 27 were shot within one hour but he did not participate in the shooting himself (R 142, 143; P-Ex 8A, pp. 2-4). He stated further that he served as escort guard on a detail with a "blue car"; and that 35 to 40 inmates were loaded into the car, gassed, and taken to Castle Hartheim where there was a crematory. He admitted participation nine times and that after the first trip he knew what happened to the inmates. About 300 inmates were sent to Castle Hartheim in this manner (R 142, 143; P-Ex 8A, pp. 8, 9).

Evidence for Defense: The accused testified that he was detail leader at the Vienna Ditch at the time the shooting occurred near the Vienna Ditch involving the parachutists in September 1944, but he had nothing to do with driving the inmates toward the wire or with shooting them (R 337, 343); and that he never beat, kicked or reported for punishment any inmate, but that he did slap inmates for stealing (R 337-339); that on two occasions he requested to be transferred from Mauthausen Concentration Camp and was refused (R 340). The accused in his extrajudicial sworn statement denied any part in the incident described by Barczynski concerning the women inmates in the bath house (R 142, 143; P-Ex 8A, pp. 13, 14).

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Geissriegl, a former block leader at Camp Mauthausen (R 235), testified that he knew the accused in Mauthausen Concentration Camp from October 1943 until the liberation and never heard of or saw him mistreating any inmate (R 238). Baerenz, a former inmate and block eldest, testified that the accused was his block leader in Mauthausen Concentration Camp from 1944 until the liberation; that he saw him two to three times per week; that the accused occasionally slapped an inmate because of theft, instead of making a report (R 271); and that he never heard of the accused chasing inmates into a chain of guards at any time (R 273).

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 defense counsel, Captain Frank E. Morse, 18 September 1947. A Petition for Clemency was filed by accused's wife, Erna Fullgraf, 8 October 1947.

Recommendation: That the findings and sentence be approved.

7. Martin STEINMETZ

Nationality:	German
Age:	38
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Private
Plea:	NG
Findings:	G
Sentence:	7 years, commencing 6 May 1945

Evidence for Prosecution: The accused stated in two extrajudicial sworn statements that he was in Mauthausen Concentration Camp from 12 January 1944 until 10 April 1945 with the rank of private; that in September 1944 while he was a guard between posts Nos. 11 and 12 at the Vienna Ditch, he participated in shooting at six or seven Dutch paratroop inmates, who were shot to death at that time after they had jumped through the fence (R 162; P-Ex 14A pp. 245; CANCELLED 163; P-Ex 154).

Accused USCHAREWITSCH stated in an extrajudicial sworn statement that the accused was a guard at the Vienna Ditch in the Mauthausen Concentration Camp and participated in shooting to death six or seven Dutch inmates, who had been chased through the wire, on 6 September 1944 (R 148; P-Ex 12A, pp. 4, 6, 8 ; R 160; P-Ex 13A). The accused's surname, along with two other guards' names, appears in the death book opposite the names of several inmates who it is stated therein died on 6 and 7 September 1944 (R 45; P-Ex 4).

Evidence for Defense: No evidence was presented by the defense.

Sufficiency of Evidence: The accused stated in his extrajudicial sworn statement relative to the incident taking place in the Vienna Ditch during the first part of September 1944, when asked the questions: "Who were the block-leaders who had chased the prisoners through?" Answer: "Unfortunately, I did not know these block-leaders". Question: "Who selected you and committed you on guard?" Answer: "We were committed there every day". Question: "From when to when were you on this guard?" Answer: "For one day" (R 162; P-Ex 14A, pp. 4, 5). He further stated that he came to the Mauthausen Concentration Camp on 12 January 1944 (R 162; P-Ex 14A, pp. 2-5). It is not satisfactorily established that the accused knew of any plan and participated therein to kill the ostensibly escaping inmates. The findings of guilty are warranted by the evidence. The sentence is excessive.

Petitions: A Petition for Review was filed by defense counsel, Captain Frank E. Morse, 18 September 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for 3 years.

8. Daniel STOECKEL

Nationality: German

Age: 39

Civilian Status:

Party Status:

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Unknown

Military Status:	Waffen SS Guard
Plea:	NG
Findings:	G
Sentence:	7 years, commencing 6 May 1945

Evidence for Prosecution: Accused USCHAREWITSCH stated in an extrajudicial sworn statement that the accused, while guard on tower No. 12, participated in shooting six or seven Dutch paratroop inmates to death in the Vienna Ditch in the Mauthausen Concentration Camp on the 6th of September 1944 after they had been chased through the wire fence (R 160; P-Ex 13A; R 148; P-Ex 12A, pp. 6, 8).

The accused's surname, along with two other guards' names, appears in the aforementioned death book opposite the names of several inmates who it is stated therein died on 6 and 7 September 1944 (R 145; P-Ex 4).

Evidence for Defense: No evidence was presented by the defense.

Sufficiency of Evidence: The sole evidence presented against this accused was in the form of an extrajudicial sworn statement of the co-accused USCHAREWITSCH to the effect that he participated in shooting five or six allied paratroop inmates to death in the Vienna Ditch during the first part of September 1944, and the entry of the accused's surname, along with two other guards' names, in the aforementioned death book. Although USCHAREWITSCH testified, he was not questioned as to the participation of this accused by either the defense or the prosecution. The evidence does not establish how long this accused served at Mauthausen or how long he was a guard at the Vienna Ditch. It is not satisfactorily established that the accused knew of or participated in any plan to kill the ostensibly escaping inmates. The findings of guilty are warranted by the evidence. The sentence is excessive.

Petitions: A Petition for Review was filed by defense counsel, Captain Frank T. Morse, 18 September 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for 2 years.

9. Stefan USCHARWITSCH

Nationality:	Yugoslavian
Age:	22
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS Private First Class
Place:	NS
Findings:	G
Sentence:	7 years, commencing 7 May 1945

Evidence for Prosecution: The accused testified that he was inducted into the Waffen SS on 2 October 1942 (R 351) and was transferred to Mauthausen Concentration Camp because he was unable to serve on the front, on 1 September 1944 as a private first class and a member of the 2nd Guard Company (R 351, 352). On 6 September 1944 he was on duty as guard on post No. 11 at the stone quarry at Mauthausen Concentration Camp, armed with a machine pistol, when a number of inmates crossed the barbed wire. He shouted halt three or four times, but the inmates did not halt. He then opened fire along with four or five other guards in the chain of guards, killing six or seven inmates. He did not see anyone drive these inmates through the wire (R 352-355). The accused in three extrajudicial sworn statements stated that he, on 7 September 1944, while guard in tower No. 11 at the Vienna Ditch in the Mauthausen Concentration Camp, shot three Dutch paratroop inmates, out of seven, who were chased through the wire by the block leaders (R 148; P-Ex 12A, pp. 3-5) (R 160; P-Ex 13A) (R 162; P-Ex 14A, p. 6).

The accused's surname, along with two other guards' names, appears in the aforementioned death book opposite the names of several inmates who it is stated therein died on 6 and 7 September 1944 (R 145; P-Ex 4).

Evidence for Defense: The accused testified that he received orders every day to the effect that any inmate who crossed the barbed wire was to be shot by guards, if the inmate did not obey the guard's command to halt



(R 352). Before the shooting occurred he did not see anyone chase any inmate into the wire or into the chain of guards. He heard other guards shout "halt", but the inmates did not stop, and he himself shouted three or four times before he shot (R 353). The SS men were in the quarry, and he had not been told that any inmates were to be chased through the wire (R 357). There was no hole in the wire where these inmates broke through (R 358). Liegard, the former first sergeant of the 2nd Guard Company at the Mauthausen Concentration Camp, testified that all guards were instructed to call halt to an inmate three times, if he approached the inner fence. Then, if the inmate passed the chain of guards, the guards were to shoot him (R 246, 248). The accused also stated in an extrajudicial sworn statement that he called to the inmates to halt before he shot and that he had no mission to liquidate the inmates (R 148; P-Ex 12A, pp. 3, 4).

Sufficiency of Evidence: Notwithstanding the accused's statements, it appears that he learned of the chasing after the shooting. It is not satisfactorily established that the accused knew of or participated in any plan to kill the ostensibly escaping inmates. The findings of guilty are warranted by the evidence. The sentence is excessive.

Petitions: A Petition for Review was filed by defense counsel, Captain Frank E. Morse, 18 September 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for 2 years.

10. Mathias FLINDT

This accused was neither served nor tried.

11. Johann SCHEUER

This accused was neither served nor tried.

V. QUESTIONS OF LAW:

Universality of Jurisdiction Over War Crimes: The defense objected to the jurisdiction of the Court on the ground that the offense was committed in the Russian Zone of Occupation (R 3). It also appears that accused USCHENITSCH is a Yugoslav national and a validly constituted court of an

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

Any violation of the law of nations encroaches upon and injures the interests of all sovereign states. Whether the power to punish for such crimes will be exercised in a particular case is a matter resting within the discretion of a state. However, it is axiomatic that a state, adhering to the law of war which forms a part of the law of nations, is interested in the preservation and the enforcement thereof. This is true, irrespective of when or where the crime was committed, the belligerency status of the punishing power, or the nationality of the victims. ("Universality of Jurisdiction Over War Crimes", by Cowled, California Law Review, Volume XXXIII, June 1945, No. 2, pages 177-218; "Law Reports of Trials of War Criminals", by United Nations War Crimes Commission, 1947, hereinafter referred to as "Law Reports" Volume I, pages 41, 42, 43, 103; United States v. Klein, et al., Hadamar Murder Factory Case, opinion DJAWC, February 1946; United States v. Weiss, et al., Dachau Concentration Camp Case, opinion DJAWC, March 1946; United States v. Becker, et al., Flossenburg Concentration Camp Case, opinion DJAWC, May 1947; United States v. Brust, opinion DJAWC, September 1947; and United States v. Otto, opinion DJAWC, July 1947.) A British court sitting in Singapore tried Tomono Shimizu of the Japanese army and

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sentenced him to death by hanging for illegally killing American prisoners of war at Saigon, French Indo-China (Law Reports, Volume II, page 128).

It may be the defense intended to attack the jurisdiction of the Court on the ground that the accused could not be tried in the United States Zone of Occupation unless certain administrative steps were taken as provided by Section 4, Article III, Control Council Law No. 10, which provides:

" 4. Persons known to be wanted for trial in another Zone or outside Germany will not be tried prior to decision under Article IV unless the fact of their apprehension has been reported in accordance with Section I (b) of this Article, three months have elapsed thereafter, and no request for delivery of the type contemplated by Article IV has been received by the Zone Commander concerned."

The defense failed to establish a lack of adherence to the provisions in question. In any event, the provisions are merely administrative and not jurisdictional. Failure to strictly comply therewith would not have affected the jurisdiction of the Court. Section 2 of the same article of that law provides:

" 2. The tribunal by which persons charged with offenses hereunder shall be tried and the rules and procedures thereof shall be determined or designated by each Zone Commander for his respective Zone. Nothing herein is intended to, or shall impair or limit the jurisdiction or power of any court or tribunal now or hereafter established in any Zone by the Commander thereof, or of the International Military Tribunal established by the London Agreement of 8 August 1945."

It is clear that the Court had jurisdiction of the persons of the accused and of the subject matter and properly overruled the objection (R 4).

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

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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, except that the sentences imposed upon STEINMETZ, STOECKEL and USCHARWITSCH should be reduced as indicated in Section IV, supra.

Examination of the entire record fails to disclose any error or omission in the conduct of the trial which resulted in injustice to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved, but that the sentences as to STEINMETZ be reduced to imprisonment for 3 years and the sentence as to both STOECKEL and USCHARWITSCH be reduced to imprisonment for 2 years.

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

WILLIAM A. GATES  
Major CAC  
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

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