

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

27 February 1948

UNITED STATES)

v.)

Case No. 000-50-5-30

Bernhard FLOBIKORF, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 28-31 October 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

Charge: Violation of the Laws and Usages of War.

Particulars: In that Bernhard FLOBIKORF, Hans FALLENBERGER, Otto GELICKE, Hubert Franz GUTTENBERGER, Paul Josef HANFT, Willi KESTEL, Fritz KOLLER, Nikolaus MOHR, 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-Gaming, Gunskirchen, Gusen, Hinterbruehl, Lambach, Linz, Loiblpass, Melk, Schrechat, 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 subjecting 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 shown to have been members of the SS at Mauthausen Concentration Camp or its subcamps, except accused GUTTENBERGER who was shown to have been a civilian employee in charge of the factory guards at the Messerschmitt factory at St. Georgen, for various periods of time within the dates alleged, and were shown to have actively participated in various ways in the Mauthausen Concentration Camp mass atrocity, including beatings

and tortures. Prosecution's P-Ex 6 (a 13) is a certified copy of the charge, particulars, findings and sentences in the parent Mauthausen Concentration Camp case (United States v. Altfuldich, et al., 000-50-5, opinion DJAWO, February 1947, hereinafter referred to as the "Parent Case"; see section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Bernhard FLECKHOFF

Nationality:	German
Age:	43
Civilian Status:	Business Employee
Party Status:	None
Military Status:	German Air Force Sergeant; Waffen SS Sergeant
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused testified that he was drafted into the German air corps 21 April 1940; that he was ordered to subcamp Gusen II in September 1944; that he was transferred to the SS (a 190, 191, 203); and that he served at Gusen II as a block leader and a guard (a 194, 195).

Wilner testified that in January 1945 in subcamp Gusen II between blocks 9 and 11, he saw the accused chasing inmates. A Polish Jewish inmate dentist, Josef Brat, fell down due to weakness, and the accused beat him on the head with a rubber or wooden stick, then stood on his throat and strangled him. He observed this incident from a distance of about four or five meters (a 30, 42, 44, 45). About one hour later he saw the dead, naked body of the victim near block 9 with his number on his chest (a 30).

Deer testified that in the latter part of January 1945 in subcamp Gusen II outside of block 9 on the spot where the inmates usually bartered cigarettes, the accused arrived and all the inmates began to run. Dentist Josef Brat from Krakow tripped and fell to the ground.

The accused jumped at this inmate and began beating him with a piece of wood, then kicked him and stepped on his throat. A moment later he saw this inmate being pulled by his leg toward the washroom, where he was undressed and a number placed on his chest by a capo (R 119, 120).

Glaser testified that in subcamp Gusen II in March 1945, about 30 inmates were standing in front of the clothing store. When the first inmate in line removed his shoes, the accused discovered a piece of blanket wrapped around his feet. He yelled, "You dog, this is sabotage". The accused then beat this Polish inmate until he collapsed and was almost unconscious. The beating was administered with a cable filled rubber hose or club about two feet long and so thick that the accused could hardly hold it in his hand. The victim was taken to the block where he died and the block clerk put his number on him (R 99-102, 108, 109). In the same month on another occasion when the inmates went to the clothing store the accused beat them with a rubber club (R 107).

Beer further testified that in November 1944 in subcamp Gusen II in front of block 9 at about 1600 hours, the accused beat a Polish Jewish inmate with a rubber cable. The inmate collapsed and the accused stepped on his neck and kicked him. When the inmates were counted, he heard that this inmate was reported dead. The dead body was placed next to the latrine and undressed (R 118, 119).

Sperling testified that the accused beat inmates in order to chase them away from their commodity exchange between blocks 7 and 9 (R 20, 25).

Evidence for Defense: The accused testified that he was not a member of the Nazi Party nor the SS; that he was captured by the Americans on 5 May 1945; and that he had an opportunity to escape as the old SS guards did, but his conscience was clear and he was not afraid of the inmates (R 190, 191).

The accused further testified that at the line-up in Dachau in February 1947, a former inmate charged him with being present at the black market place in subcamp Gusen II one day and arbitrarily beating all the inmates. It appeared that the former inmate had mistaken him for a block leader in subcamp Gusen II by the name of Saenger, who always had a club

of something in his hand (A 191, 192). The accused further testified that he worked in the shoe department of the camp and block leader Saenger visited the warehouse often. It is impossible that witness Glaser also could have confused him with block leader Saenger (A 203). The black market place in subcamp Gusen II was in the vicinity of blocks 9 and 11, and all inmates knew very well they were not supposed to assemble there for the purpose of trading (A 193).

The accused further testified that he was threatened with punishment in subcamp Gusen II for not enforcing the rule that inmates rise when he approached. The camp commander had all those who had been sent to subcamp Gusen II from the German air corps restricted for two or three weeks because of their attitude toward the inmates (A 193, 194). There was a quarantine due to an epidemic of fleck fever, which began about the middle of December and ended on the 20th or end of January in subcamp Gusen II. At that time, as a block leader, he was not permitted to go into the block because entering the blocks under quarantine was strictly forbidden and the roll calls were made by the clerks who later reported to the block leaders (A 194, 195). He tried to secure a transfer from subcamp Gusen II in order to go back to his original combat unit. He, with others, talked especially about the bad treatment of inmates and commented that those who beat the defenseless inmates should show their courage at the front. During an occasion when SS Captain Siedler was administering 25 blows to an inmate with a stick, the accused made a remark that it was a shame for a German officer to beat an inmate who could not resist. On that occasion report leader Bandle said to the accused, "Well you say anything of that sort here again and we'll have a uniform for you too" (A 195, 196).

The accused testified that during the entire time he was at subcamp Gusen II he did not beat a single inmate, either with his hands, a stick or with a cable; that he did not kill any inmates; and that these charges by the prosecution witnesses were partly lies and inventions (A 196).

Freiberger, a former guard and blockleader (R 148), testified that he knew the accused from December 1944 in subcamp Gusen II where he was a block leader and in charge of the supply room. He saw the accused almost every day. There was an epidemic of fleck fever from about the middle of December 1944 to the middle of January 1945 and during this time the block leaders were not permitted to go into the blocks under quarantine, not even to take the roll call. He never heard anything bad about the accused and he remained in the camp until it was liberated by the Americans (d 150, 152).

Letzelter, a former assistant capo of shoemakers in subcamp Gusen II, testified that he knew the accused from February or March 1945 and that the accused worked from 70 to 80 inmates in his clothing supply room. He was in close daily contact with accused and he never saw him beat or mistreat any inmate while in subcamp Gusen II. The accused was well liked by the inmates in his section and his reputation as an SS guard among those working under him was very good (R 126, 127).

Mueller, a former inmate and assistant capo on an outdetail, testified that he knew the accused as a block leader in subcamp Gusen II and that his general reputation among the inmates of the camp was good and that he was popular. The accused gave him and others food from the SS, and the accused always held out food and passed some of it to the inmates (R 130-133).

Holland, a former block leader in subcamp Gusen II, testified that he knew the accused as a block leader from September 1944 until May 1945; and that he lived in the same room with him. The accused was outraged at the treatment the inmates received from the camp administration. He and the accused talked about the treatment of inmates, the accused saying, "There isn't anything very hard about beating people who can't resist", which conversation reached the camp administration and later they were reprimanded and told that they would be sent to a concentration camp if any more similar comments were made (R 178, 179, 185). There was another block leader by the name of Saenger in subcamp Gusen II, whose reputation was not the very best among the inmates. His block was about two or three

blocks away from that of the accused. This block leader occasionally wore glasses and had a peculiar swinging walk, a stooped over sneaking sort of walk, and he resembled the accused. If he had his glasses on, one could easily confuse him with the accused (R 180, 181, 185). Holland further testified that after dark, the accused and he handed bread and food to the inmates through the fence (R 181, 182, 187).

In his extrajudicial sworn statement, Hans Eberle, a former employee of subcamp Gusen II, stated that, insofar as he could remember, the accused could not be blamed for any mistreatment of inmates. The accused treated inmates humanely. He even shared his own food with them and sometimes brought bread into the camp, which was strictly against regulations. Eberle stated that he did not know that the accused supposedly killed an inmate in the spring of 1945 (R 255; D-Ex 4A).

Karzeniowski, a former block clerk in subcamp Gusen II, stated in his unsworn pretrial statement that the accused belonged to the SS noncommissioned officers transferred from the air forces, and he always acted correctly toward the inmates, which distinguished him favorably from the old SS members. He never saw or heard that the accused mistreated inmates (R 254; D-Ex 3A).

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 accused, 15 January 1948.

Recommendation: That the findings and sentence be approved.

2. Hans FREIBERGER

This accused was neither served nor tried (R 1).

3. Otto GERICKE

This accused was neither served nor tried (R 1).

4. Hubert Franz GUTTENBERGER

Nationality:	Austrian
Age:	56
Civilian Status:	Stage Technician
Party Status:	Unknown

Military Status:	German Army 1940-1942
Flew:	NO
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused testified that he entered the German army 12 February 1940, and was discharged 1 September 1942 because of an injury. He went to work in the Messerschmitt factory at St. Georgen on approximately 19 December 1944 as a factory guard after it was determined that he was unfit to carry arms (R 206, 207). He was in charge of the civilian guards and also of the factory guards. His duties were to check the civilian workers in and out of the factory and to check the passes. He was also responsible for all the furniture and equipment in the factory. He had no supervision over the inmates working in the factory (R 210). He slapped inmates perhaps 10 to 12 times, which was beyond his duty, but was necessary to prevent the damage they might have caused (R 216).

Sperling testified that in the spring of 1945 in tunnel 7 in subcamp Gusen II, the accused killed a Polish Jewish inmate by kicking him and striking him on the head with a rubber hose. He saw the beating while carrying rivets into the tunnel and when he returned five or 10 minutes later, the inmate was already dead. The victim was taken back to camp at roll call and then to the crematory. The accused often beat inmates at the entrance of tunnel 7, if they failed to greet him properly by taking off their hats (R 16-18, 20, 21). Sperling further testified that the accused used a rubber cable about 70 centimeters long with which to administer punishments (R 26).

Milner testified that in February 1945 at subcamp Gusen II he went from tunnel 7 to the latrine and saw the accused, capo Pater, and a French inmate who was standing on a stool with his hands bound behind his back. The accused was putting a rope or cable around the Frenchman's neck. On his return about 10 or 15 minutes later, he saw the French inmate hanging on the beam and an hour later he saw the dead body being wrapped in paper. The

witness and three other inmates carried the body out of the tunnel after they had finished work. (R 28, 29, 31, 35).

Mandelbaum testified that in subcamp Gusen II at the tunnel of St. Georgen some time in March 1945 a Polish inmate, who failed to greet the accused by removing his hat, was taken into a tunnel, which was perpendicular to tunnel 7 on the pretext that this inmate did not want to work. The witness saw, from a distance of 20 to 25 meters, the accused and capo Pater beating this Polish inmate and trying to force him to climb upon a table and then onto a chair. As he approached the table, he saw a noose, which was hanging from an iron beam above, placed over the neck of the inmate. At a distance of five to eight meters, he saw the accused pushing the chair from under the feet of the hanging inmate. Just before this happened he heard the victim exclaim, "Jesus why are they doing this to me, I was working diligently", and then the accused said, "You Polish swine". Ten minutes later the accused and capo Pater called all the inmates, including the witness, to this place of execution and there the accused said, "This is going to happen to everybody who does not work and who is sabotaging work" (R 74-76, 80, 81, 86).

Lewit testified that in the beginning of April 1945 in subcamp Gusen II when the inmates went to work, the accused was standing at the entrance of tunnel 7 beating those inmates who did not run in fast enough. He struck a Polish Jewish inmate two or three times on the back of the head, whereupon this inmate collapsed and fell to the ground. The witness and a friend went to the aid of the inmate. After a few minutes the victim said, "I am finished off". They took him into the tunnel where he died after a short time. Later he was carried to camp on a stretcher. The block eldest wrote his number on his chest and the body was thrown in the washroom with other dead bodies (R 88-90, 92, 93, 95).

Glaser testified that, in March 1945 in subcamp Gusen II, four men were carrying iron bars when the foreman directed that the rail be dropped to the ground. A French inmate on the rear dropped it too soon and let that end strike a conveyor belt. The accused saw this and came to the

work detail, snatched up a piece of wood and began beating all the detail. He especially beat the inmate who dropped the end of the rail too soon, causing him to collapse. The accused then stepped upon the victim's body saying, "You rotten dog, you don't want to work", and then trod upon him until he stopped breathing. The witness, assisted by two others, carried the corpse to another tunnel and after work they carried it to the block in the camp. The block clerk put the number on the dead inmate and had him carried into the washroom (R 102-104).

Glaser further testified that the dust was very bad in the tunnels where the drilling details worked. A Polish inmate stopped work for a moment. The accused saw him idle and said to him, "You do not want to work, you want to sabotage work", and ordered him to bend over and said, "Now you are going to get 25 because you were standing idle". After the beating the inmate collapsed and fell to the ground weeping. Then the accused shouted, "You dog, you are weeping, anyhow you are going to be hanged". He ordered the capo to bind the hands of this inmate and with the assistance of the foreman, he was taken with a cord around his neck and forced to mount a stone while the cord was fastened to a hole in the ceiling. The stone was removed and the victim hanged (R 106).

Beer testified that in February 1945 in subcamp Gusen II in St. Georgen, he saw the accused in tunnel 3 having a Polish inmate do calisthenics. He turned back and about 15 minutes later he returned and watched the accused unbutton this inmate's trousers and jacket. The accused ordered him to remove his belt, which he then fixed on the side of a standing freight car. The accused ordered the victim to step upon a box placed next to the car and placed a cord around his neck. Then the accused kicked the box from under him. The next morning the witness saw the inmate's corpse being carried into camp. It was wrapped in cement sacks fastened with wire, and at block 11 the body was undressed and a number placed on its chest (R 120, 121, 124, 125).

Beer further testified that a few days after the first hanging incident in February 1945 he kept an eye on the accused, and this time he observed how the accused put a wire or electric cable around a French inmate's

neck and ordered him to step upon something so he would be higher than the ground. This inmate was then hanged there in front of tunnel 7. After work the body was carried into the camp, undressed, and a number put upon its chest (R 121, 122).

Evidence for Defense: The accused testified that he was reprimanded and removed from his position by the factory authorities for allowing his guards to do favors for inmates in the factory. The second time he was fined 50 marks by Lieutenant Meyer and advised that in case of repetition he would be sent to a concentration camp (R 210, 211). The accused further testified that at the line-up at Dachau in February 1947, former inmate Milner, who was a prosecution witness, told him that if he would admit that he, the accused, was ^{always} standing guard near the tool box when the transport came to work at the factory, and also admit that he had grabbed him by the throat and reported him when he caught him smoking, then he, Milner, would not charge him with any crime. The accused told Milner, "If you would have said I slapped you in the face then I would have said yes, that might be possible but since you claim I made a report, I say that is a lie what you are saying". Milner then replied, "All right, we will get you where we want you to go" (R 214, 220, 221). Milner yelled in the face of the accused's wife during his arrest, "We don't want your husband to be hanged but we want him to be imprisoned for a few years innocently as we had to sit in a concentration camp innocently" (R 213, 221).

The accused further testified that the charges made by the prosecution witnesses against him were all taken out of the sky (R 214); that he never heard that inmates were hanged in the tunnels nor did he ever hear that the inmates had committed suicide by hanging themselves (R 219); that Milner perhaps testified against him because he had been reprimanded, or had failed to get some bread or food from him; and that it was possible that he may have beaten Milner (R 220).

Furboch, an Austrian and former guard at the St. Georgen armaments factory, testified that he was in the same guard unit with the accused during a half year and that the accused was known as being a little bit rough

but he never saw or heard of his having killed or hanged anyone. If such a thing would have happened, it would have with certainty become known among the factory guards. He further testified there had been talk among these guards that the accused was ordered to beat an inmate who was deathly sick, but that the accused refused to carry out this order because he was a factory guard and not a hangman (R 135, 136, 137).

Fallwimmer, an Austrian who was responsible for the "A" shift of inmates at the Messerschmitt works at St. Georgen which consisted of 2,300 inmates, testified that he knew the accused as a factory guard in February 1946; that the accused counted inmates four times every day; that the accused did not participate in any hanging or killing of inmates on his shift; and that this did not happen (R 133-135).

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: No Petitions for Review were filed. A Petition for Clemency was filed by accused's former wife, Hilda Guttenberger, 6 January 1948.

Recommendation: That the findings and sentence be approved.

5. Paul Josef HANFT

This accused was neither served nor tried (R 1).

6. Willi KESTEL

Nationality:	German
Age:	44
Civilian Status:	Insurance Agent
Party Status:	Unknown
Military Status:	German Air Forces 1940-1944; US: Sergeant
Plea:	NO
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused testified that he joined the German Army 1 July 1940. He was assigned to the air forces until the end

of August 1944, when he was sent to subcamp Gusen II. He was never a member of the Nazi Party, and on 30 January 1945 he heard for the first time that as of 1 September 1944, he had been assigned to the SS (R 222). In subcamp Gusen II he was made block leader of block 5 after about a month. He was then placed in charge of the fire fighting personnel in that department over his protest. This job required that he instruct and train the men in fire fighting (R 222, 225).

Loureau testified that in Subcamp Gusen II about the beginning of the fall of 1944 during an air raid, the inmates were forced to go outside the camp to air raid shelters. The accused gave a blow to everybody who passed in front of him and struck inmate Pierre, who was marching next to the witness. The inmate was struck over the head with a rubber hose about 60 centimeters long, after which he collapsed. In approximately two hours the witness saw his comrade, Pierre, sitting on his bed complaining of severe headaches and pains in his body. The victim died during the night. His body was seen by the witness the next morning in front of the door with a number written on the chest (R 48-50, 51, 55). Loureau further testified that it was his personal opinion that his comrade, Pierre, received injuries from the rushing inmates after he collapsed and that he died from internal wounds (R 52, 53).

Marciniak testified that in subcamp Gusen II in March 1945, he saw the accused scattering a group of inmates who were trading bread and cigarettes. The accused searched a Polish Jewish inmate and found bread hidden under his jacket. He then called capo Loosen and took this inmate to the washroom. The accused forced the inmate's head into a barrel of water while the capo held his feet. They held him there for approximately five minutes, then threw him on the floor dead. A number was put upon his chest and the body thrown upon a pile of dead bodies behind the washroom. Marciniak further testified that he observed this incident in the washroom while he himself was washing (R 56-58, 63, 64).

Jaskiel testified that in December 1944 at subcamp Gusen II he was awakened by shouts from a Polish inmate to the effect that a Russian inmate

had stolen his cigarettes. The block eldest came and administered "25" to the Russian during which time the accused came up and kicked this inmate in the stomach several times after which he collapsed. The accused said to the block eldest, "Kill this dog". The senior capo, Otto, appeared and he and the block eldest each took a stool and struck the victim over the head, splitting his head and scattering it upon the floor. The victim's corpse was carried into the washroom (R 110, 111, 113, 114).

Bear testified that, in subcamp Gusen II in April 1945, next to block 3, he saw the accused grab a Polish inmate by the hand and yell to him, ordering him to go into the electrically charged wire fence. The inmate clasped his hands and begged the accused to save him. The accused kept shouting "Los, los" (go, go), and "then he went to the wire, and he hanged him there and he was left there". Bear testified further testified that he saw the victim remain on the wire, and the guard from the tower shot at him. As a result of the electricity, he saw that the inmate became blue black. The electric fence was around subcamp Gusen II and as many as a thousand inmates were present and saw this incident (R 122, 123).

Mandelbaum testified that at subcamp Gusen II, if inmates failed to greet the accused by bowing to him, usually he either beat the offender or ordered the block eldest to do it; and that on one occasion in December 1944 200 to 300 of the inmates were forced to stand outside during a very cold drizzle and snow, barefooted for about an hour after an eight hour day's work with about four hours of travel to and from the work site. One of his friends, by the name of Ehrlich, was so weakened and frozen that he failed to eat, went to bed, and he heard him grumble and cough. The next morning Ehrlich was dead. His body was pulled from its bunk to the floor and a number was put upon the chest (R 76-79, 84, 85). Mandelbaum further testified that he heard the accused order the block eldest, Jap, to require the victim to stand out in the rain (R 84).

Lewit testified that on an occasion in November 1944 in subcamp Gusen II the inmates were standing in formation. The accused, who was the

block leader, arrived, but some of the inmates failed to remove their hats. The accused then said, "I am going to teach you how you should respect or esteem your block leader". The inmates were left outside, barefooted and almost naked, in the rain and snow for more than an hour. An inmate by the name of Kuba, a comrade of the witness, became ill with pneumonia and was sent to the dispensary. Lewit further testified that he went to see Kuba the next day and found him too weak to talk. The second day he went to visit Kuba again, but he did not find him and he never saw him again (R 90, 91, 96, 97). Lewit further testified that on one occasion he saw the accused knock a Russian inmate down with a stool. The victim fell to the ground and bled profusely. He did not see what else happened to him (R 91).

Sporling testified that the accused beat inmates with a rubber hose in order to chase them away from their commodity exchange between blocks 7 and 9 (R 20, 25).

Evidence for Defense: The accused testified that in February 1945 he was relieved of all duties in subcamp Gusen II and was placed in charge of training some combat companies. That duty ended with the capitulation (R 223).

There was never an electrically charged fence around subcamp Gusen II, only a barbed wire fence (R 224, 227). This was corroborated by the testimony of accused FERNIKORN (R 192), MOELLER (R 233) and MOHR (R 243), and witnesses Mueller (R 131), Wille (R 164), and Holland (R 181).

The accused testified further that he was captured by the American troops on 5 May 1945, although from 2 to 5 May 1945, even the least important block leaders and detail leaders of the SS disappeared. He was not harmed by any of the inmates during the liberation (R 224, 225). He was speechless at hearing the grave charges made against him and did not know of any reason why these people should come into Court and testify as they did against him (R 225). The accused further testified that he did not know witness Marcinjak, who testified that he drowned an inmate in a barrel of water; that he never beat this inmate, and he could

not give any reason why he gave this testimony (R 228); that he does not know witness Mandelbaum, who testified that he had forced 200 to 300 inmates to stand out in inclement weather, the exposure causing at least one death (R 228, 229); that he does not know witness Lewit (R 229); that he never beat witness Jaskiel, who testified that he participated in the killing of a young Russian inmate in December 1944; that he cannot explain why Jaskiel should make such statement before the Court; that he never committed such a crime (R 229); that he never was before a Court before; that in civilian and military life he acted fairly and decently; and that he never beat, mistreated or killed any inmate (R 230).

Holland testified that he knew the accused from September 1944 to May 1945 as a block leader in subcamp Gusen II, as an instructor of the fire department, and as a trainer of the so-called probation men. A block leader in subcamp Gusen II had no authority whatsoever to carry out any mass punishment in his block and the accused's reputation was not bad. The accused rather frequently slapped some inmates in the face and also kicked them in the rear, but he never saw him severely mistreat anyone. The accused remained in camp until he was taken prisoner by the American authorities (R 192-194, 196).

Fallwimmer testified that he knew the accused in St. Georgen when he trained a probation company of soldiers, of which the witness was a member. The training was mostly done inside the camp, but they marched outside and sung a song a few times. None of these inmates were mistreated by the accused (R 173-175).

Fleischer, a former capo, now under a death sentence for participation in war crimes at subcamp Gusen II, testified that he knew the accused as his block leader in subcamp Gusen II from October 1944 to April 1945; that the accused assisted him in securing new shoes for his detail; and that he was liked throughout the block. Twice he heard the camp leader shout at the accused because he would always "go along" with the inmates, particularly the Jews (R 144-147).

Freiburger testified that he knew the accused from December 1944

until May 1945 in subcamp Gusen II as a block leader, as a trainer of the fire brigade, and of the promotion company. He heard nothing bad about the accused (R 148-150).

Kansmeier, a former assistant capo of subcamp Gusen II and who is now under a death sentence for his participation in war crimes at subcamp Gusen II, testified that he met accused toward the end of 1944 in subcamp Gusen II and that he never heard of any misconduct on his part (R 141-143).

In his unsworn pretrial statement, Karl Gaertner, a former inmate of subcamp Gusen I, stated that he knew the accused and heard from the inmates of subcamp Gusen II only praiseworthy remarks about his treatment of and conduct toward the inmates. He never saw or heard that the accused beat or mistreated any inmate and he personally knew the accused as a quiet and thoughtful person (R 250; D-Ex 1A).

In his unsworn pretrial statement, Karzeniowski stated that the accused belonged to the SS noncommissioned officers who were transferred from the air forces. He always acted correctly toward the inmates, which distinguished him favorably from the old SS members. He never saw or heard that he was guilty of mistreating inmates (R 254; D-Ex 3A).

In his unsworn pretrial statement, Karl Albrecht a former block eldest in subcamp Gusen II, stated that the accused always acted correctly toward the inmates; and that he never saw or heard of any mistreatments or killings by the accused (R 251; D-Ex 2A).

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 accused, 15 January 1948.

Recommendation: That the findings and sentence be approved.

7. Fritz MOELLER

Nationality:	German
Age:	43
Civilian Status:	Butcher

Party Status:	Unknown
Military Status:	German Air Forces 1939-1944; SS Sergeant
Floa:	NG
Findings:	G
Sentence:	15 years, commencing 8 May 1945

Evidence for Prosecution: The accused testified that he was drafted into the German Army 11 December 1939 and assigned to the air forces. He was sent to subcamp Gusen II on 1 September 1944. On 11 December 1944 he was transferred to the SS. He tried to get transferred back to his former branch but failed (R 231, 232). He was first assigned to a guard unit in subcamp Gusen II on 1 September 1944 and performed guard duty in halls 1 and 2 for about six weeks. Thereafter he became a leader and was placed in charge of the transport detail. For the first four weeks the inmates rode a train to St. Georgen, after which they walked. After serving in this capacity until 27 March 1945, the four air force companies left subcamp Gusen for the front (R 232, 237, 240).

The accused further testified that he, together with two block leaders, had the responsibility to count the inmates, as many as 2,000 of them, when they left the camp, to see that the capo made his strength report, to march the details separately outside the camp to a train, which was surrounded by guards, and then see that they were loaded in box cars for St. Georgen. When they arrived at St. Georgen, he was to see that they were unloaded at the factory, into which he never went (R 234-236).

Sperling testified that the accused was in charge of the transportation of inmates by train from subcamp Gusen II to St. Georgen and return. One morning in the spring of 1945 two Russian inmates escaped. Inmates of the detail were beaten at the entrance of the tunnel and after work the two Russian inmates were brought in and beaten. As a result their faces were blue and swollen. The accused and a capo told the Russian inmates to escape. At first they refused to do so and the accused beat them with a rubber hose and forced them to run. At the same time he signalled the guard, who shot both of them with a machine pistol.

Other inmates brought the two dead Russians into camp. The accused beat weak inmates with a rubber hose and chased them into the train (R 18, 19). Sperling saw the Russian incident from a distance of from five to seven meters (R 22).

Milner testified that the accused was the leader of the transport which carried the inmates to work at St. Georgen daily and forced them to jump off the train before it stopped. In November 1944 he saw the accused beat a Polish inmate with a rubber cable which was loaded with wire and 50 to 60 centimeters long. The victim fell into the mud and then the accused stepped on his throat. The capo of the shift, Paul Schaub, ordered the witness and three other inmates to take this Polish victim into the tunnel. He was still breathing but when they reached the tunnel he was dead (R 32, 33, 43).

In an extrajudicial sworn statement, Kasprzycki stated that he knew the accused in subcamp Gusen II and that he was present on an inmate delousing transport which travelled from subcamp Gusen II to Linz, Austria, via St. Georgen in January 1945. This transport consisted of 10 to 12 cars, one of which was a refrigerator car that contained more than 100 inmates of various nationalities. When they opened the refrigerator car, moans were heard. The witness and other inmates went to the car and got an inmate from the top of the pile. They took him out and rubbed him with snow. This inmate told him there were others on the other side of the car who were still alive and they took two more out and rubbed them with snow. The accused appeared and ordered them to close the doors of the car during which other moans could be heard from inside. The cars remained at the railroad station in Linz until the disinfection was completed. The train then returned to subcamp Gusen II that night. The witness saw dead bodies lying near the refrigerator car the next or third day after they had returned (R 116; P-Ex 8 pp. 2, 3, 6).

Evidence for Defense: The accused testified that no inmate was killed while he was in charge of the transport of inmates to the factory and that he never killed anyone while he was at subcamp Gusen II. The

guards for the transport were armed with Belgian and French rifles and none had machine pistols (R 234-236). During the transportation of inmates to the factory, no beatings or punishments were permitted. The accused did not get into the camp (R 237). The accused further testified that he never heard of a transport leaving subcamp Gusen II for Lins, Austria, for delousing; that he only heard this during his imprisonment; and that none of the men from the 25th Company accompanied such a transport (R 232, 233, 237). The accused further testified that he did not know witness Sperling, and that he did not mistreat or beat him. He denied Sperling's testimony relative to the signalling of a guard to shoot two Russian inmates and testified there was a higher ranking noncommissioned officer in charge of these guards (R 238, 239). He did not beat witness Milner or mistreat him in any way. He did not know capo Paul Seimub. Concerning incidents in the tunnels, the accused denied that he ever got into the tunnels, the camp or the factory (R 239).

Willi testified that he was the first sergeant of the 25th Company, of which the accused was a member, and that he knew the accused in subcamp Gusen II from August 1944 to the end of the war. The accused was the column leader of the transport detail from camp to St. Georgen and back, and had no duties inside the factory. He was an instructor on days when he was not on this transport detail. The accused did not accompany the delousing transport from subcamp Gusen II to Lins in January 1945. The accused was a calm, orderly and reliable man and he knew nothing of his beating or mistreating inmates (R 162-165).

Gonzales, a former chief capo at subcamp Gusen II now under a death sentence for his participation in war crimes at subcamp Gusen II, testified that he knew the accused from October 1944 until March 1945 at subcamp Gusen II as chief of the transport from the camp to the working site. He never saw the accused do any beating (R 157-160).

Sielaff, a former detail leader in subcamp Gusen II, testified that he knew the accused as a sergeant from the 25th Guard Company. The witness was present on the inmate delousing transport from subcamp Gusen II to Lins,

Austria, in January 1945. There were 50 guards on this transport and as far as he heard they were all from the 26th Company. He testified further that he was positive that the accused was not on this transport (R 138, 139).

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.

8. Nikolaus MOHR

Nationality:	Rumanian
Age:	25
Civilian Status:	Teacher
Party Status:	None
Military Status:	Waffen SS Private
Place:	NG
Findings:	G
Sentence:	10 years, commencing 5 May 1945

Evidence for Prosecution: The accused testified that he was drafted into the SS from Castelnaudoux, Romania 11 July 1943. He served at sub-camp Gusen I from 20 July 1943 until liberation (R 241, 247). He served as a dog leader to reinforce the guard chain around the armament plant (R 243, 246).

Marciniak testified that he saw the accused at St. Georgen the last of December 1944 or first of January 1945, searching with his dog for a missing inmate. After about 30 minutes he returned and took the witness and another inmate into the main tunnel where they found a Polish Jewish inmate who probably had been asleep. The accused then let his dog tear the inmate's face and abdomen. He then called the dog back and ordered the witness and the other inmate to take the victim, who was still moving, outside the tunnel and put him on a stretcher. The accused ordered an interpreter to say in French, Polish and German, that everybody who sleeps would meet this fate. The victim died 20 to 25 minutes later and was

returned to the camp and placed on a pile of dead bodies behind the wash-room (R 59-62, 65, 66).

Bogdanak testified that, in subcamp Gusen I. during an air raid in the fall of 1944, a French inmate who had a bad foot lagged behind the other inmates some 20 meters. The accused with his dog was driving the inmate, and he let his dog bite him. The inmate collapsed and fell to the ground. The accused kicked and stamped this victim all over the body. The air raid alarm lasted from 1100 hours until the afternoon. When the witness came out, the French inmate was lying in the same place and some inmates from the work detail took him away. Two days after the incident he heard that the victim had died (R 65-73).

Loureau testified that he often saw the accused's dog bite the legs of inmates going from the detail to the train. Sometimes the dog was on a leash and sometimes it was free. He did not see the accused set his dog on the inmates, but he thought that the rush and general excitement also excited the dog (R 50, 51, 53, 54).

Milner testified that he saw the accused often beating inmates when they were going to work. He held his dog with one hand and beat with the other (R 33, 45).

In an extrajudicial sworn statement, Roger Duchamp stated that in about August 1944 in the evening about 2200 hours, the inmates were collected for a count before returning to the camp. On this particular occasion one inmate was missing. After 10 minutes the missing inmate, a Belgian, appeared from the tunnel. The accused unleashed his dog and set it upon this inmate. The accused then took a stick of wood approximately a meter long and two or three centimeters thick and beat him so severely on the head and back that he collapsed. During the beating the dog was biting the inmate on the legs. The victim was taken to the camp where he died two or three days later. This incident happened at the entrance of one of the tunnels at St. Georgen (R 116; P-Ex 7 pp. 2-4).

Evidence for Defense: The accused testified that he was not in subcamp Gusen I from 10 October 1944 to 19 December 1944. He was at

Oranienburg, Germany, attending a dog trainers' course, during which time he never returned to subcamp Gusen I for any purpose (R 241, 249). He was on furlough in January 1945 (R 249). At subcamp Gusen I German police dogs, Dobermans and boxers were used, and each dog leader had the same dog while he was on duty. His dog was a grey German police dog, perhaps one year old. None of the dogs at Gusen I were vicious (R 242, 243, 245). His duty in subcamp Gusen I was outside the fence near the armament plant and also outside the fence at St. Georgen. He had no occasion to come in contact with inmates (R 243, 246). There was a quarantine in subcamp Gusen II when the accused returned from Oranienburg on 9 December 1944 and it lasted until the end of January 1945 (R 243). He was not in subcamp Gusen I during November when Marciniak testified that he had an inmate torn to pieces by his dog. When the inmate was observed to have been torn to pieces at St. Georgen near the tunnel he was on duty outside the fence (R 244, 246).

During the lineup at the War Crimes Enclosure, Dachau, Germany, in March 1947, a Frenchman was interrogating the accused and, upon learning that the accused was not the man for whom he was looking, asked whether the accused knew a dog leader with a black dog. The accused replied that he did not. The Frenchman said, "You must know him because the man was at your detail", and then further said, "All right, if you don't want to know". Then the Frenchman made a sign on the forehead of the accused and said "You can go now and I'll make a report about you anyway" (R 244). The accused testified that he did not know witnesses Marciniak and Bogdanski; that he never beat or mistreated them in any way; and that he could not explain why these witnesses had testified against him (R 247, 248).

The accused further testified that there were approximately 15 to 20 dog leaders in subcamp Gusen I while he was there. The dog leaders also escorted inmates on the trains from subcamp Gusen II (R 248, 249).

Rothsching, a former Rumanian guard in subcamp Gusen I, testified that he was a dog leader; and that he attended the dog leaders' school with the accused at Oranienburg from 10 October to 10 December 1944

(R 260, 261). There was but one dog used for the purpose of searching for escaped inmates and this dog was a small yellow brown one (R 262-264).

Oppen, a former dog leader in subcamp Gusen I, testified that he knew the accused from September 1944 until the end of the war. Subcamps Gusen I and II were about 300 to 400 meters apart. The accused was away from subcamps Gusen I and II at Uranienburg for about two months taking a course as a dog leader, beginning some time in October or November 1944. The accused was a calm and detached person. None of the dogs ever killed an inmate (R 166-168, 171).

In an unsworn pretrial statement, Parson Josef Hampe stated that the accused never fought against democratic principles; that he was not a member of the Nazi Party; that he was compulsorily drafted into the Waffen SS; and that he is known in Sacalaz, Rumania, his home, as a decent and industrious man (R 256; D-Ex 5A).

According to an unsworn pretrial statement, Josef Kisch, Nikolaus Schuster, Josef Lutz, Katharina Schuster and Katharina Kisch stated that the accused was on leave at Hainfeld, Austria, between 1 January 1945 and 15 January 1945 (R 257; D-Ex 6A). In an unsworn pretrial statement, Mathias Mohr, father of the accused, stated that the accused was on leave with him at Hainfeld, Austria, from 1 January 1945 until 15 January 1945 (R 258; D-Ex 7A).

Sufficiency of Evidence: Rumania was a co-belligerent of Germany. 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 accused, 12 February 1948.

Recommendation: That the findings and sentence be approved.

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, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases," 14 October 1946, and the Parent Case). The convicted accused were shown to have participated in the mass atrocity, and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceedings, in concluding as to them that they not only participated to a substantial degree, but that the nature and extent of their participation were such as to warrant the sentences imposed.

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

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

L. F. BENSON
Major FA
Post Trial Branch

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

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