

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

1 March 1948

UNITED STATES)

v.)

Karl FLEISCHER)

Case No. 000-50-5-45

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 6-7 October 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Karl FLEISCHER, German national 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, Gusen, Hinterbruehl, Lambach, Linz, Leibpass, Melk, Schwechat, 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: The accused was an inmate of Mauthausen Concentration Camp and later at subcamps Gusen I and Gusen II. While at Mauthausen Concentration Camp the accused served as an inmate member of the penal company and may have been an assistant capo. At Gusen II the accused served as capo in the transport detail and later as block eldest. He served as block eldest of block 16 of Gusen II from at least 27 March 1945 until the liberation on 5 May 1945. In these various capacities at Mauthausen

Concentration Camp and these subcamps the accused participated in the subjection of the inmates to mistreatments, beatings and killings. He participated in numerous overt acts of killing. Prosecution's Exhibit P-Ex 6 is a certified copy of the charges, particulars, findings and sentences in the Parent Mauthausen Concentration Camp case (United States v. Altfuldiseh, et al., 000-50-5, opinion DJAWC, February 1947, hereinafter referred to as the "Parent Case"; see Section V, post; R 9).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Karl FLEISCHER

Nationality:	Austrian
Age:	33
Civilian Status:	Factor
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused was an inmate and an assistant care of the penal company in Mauthausen Concentration Camp in March of 1942 (R 10, 23, 24, 25, 28, 30, 55, 79; P-Ex 7). In the fall of 1944 the accused went to subcamp Gusen II (R 79, 81; P-Ex 7, p. 2). In the beginning of 1945 or 27 March 1945 the accused became block eldest of block 28, the extermination block of subcamp Gusen II (R 54, 59, 60, 65, 70, 86). He was known at Gusen II as "White Charles" (R 35, 40, 55). He was known as an inmate who appeared in places where he was not supposed to be and did things that no one asked him to do (R 49, 50). He was an inmate but he held a privileged position (R 79; P-Ex 7, p. 2) and he allegedly had a special number in the SS (R 28).

Bleimuller, an inmate at Mauthausen Concentration Camp from 1 December 1941 to 8 May 1945 and a member of the penal detail (R 9), testified that, approximately three or four days after the beginning of spring in March 1942, at about 1500 hours, the accused who was an inmate member of the penal

named Loowy (an American citizen), and two Polish inmates with a broken-off shovel handle (R 11, 12, 13, 20). The accused said, "Come over you bums, we don't want to get hell from the work detail leaders all the time." A guard yelled, "Bring him over and I will shoot him down." The accused beat these inmates so badly that they could not walk or stand. He then chased them down the slope of a hill for a distance of about 20 meters to the chain of guards (R 11, 19). As he was beating them, the four inmates crawled on their hands and feet to a point two meters away from the chain of guards (R 19). From this distance the guard, probably Thomiah Klabek (R 11, 12), shot at the heads of the four inmates (R 12, 20). The shooting was viewed by Bleimuller (R 20). The brains of the four inmates were splattered (R 19). Two men from the political department of the camp viewed the scene and photographed it. Then the incident was reported as "Shot while escaping." Other inmates had to carry the four victims to the crematorium (R 19).

There were about 170 to 180 inmates, sometimes 200, in the penal company. It was replenished every week or so with new arrivals and violators of camp regulations (R 13, 14). There were about 12 to 20 cases of death daily according to Bleimuller (R 11).

The accused had the reputation of being one of the biggest "organizers" of the whole camp (R 16).

The accused beat the witness Bleimuller (R 18).

Gloetzel, a former German inmate and member of the camp work detail at the time (R 22, 23, 29), while riding around Mauthausen Concentration Camp in the summer of 1942, saw the accused beating and mistreating Dutch inmates, who were wearing distinctive Jewish identification insignia, with a stick or anything he could find (R 23, 24, 30, 31, 32). These inmates were members of a separate work detail of the penal company working on the construction of the Russian camp (R 24, 30). He struck them on the head or wherever the blows might happen to fall (R 23). The inmates had to be carried to their barracks from work or transported on some kind of cart after these beatings. Some were dead and some inmates died afterwards; but Gloetzel did not see the inmates die (R 23, 31).

Gloetzel saw the accused abuse inmates approximately three or four times after this incident, beating very many of them and beating many to death (R 28, 29). The number beaten to death were unknown to the witness and he did not state the nationality of the victims (R 29).

Beatings of the Dutch Jews on the penal detail by the accused were often seen by Gloetzel; the victims were not always the same (R 31). While he did not see them die, "They were always full of blood, blood was running profusely and they were very lifeless" (R 31). The bodies of the men were removed from roll call square to the crematory (R 31, 32).

Sperling, a former Polish inmate of Gusen II, and member of a work detail at St. Georgen tunnels (R 35, 41), testified that during December 1944 or January 1945 the accused, who was then a capo in the transport detail and was known as the "White Charles" (R 35, 40), and other capos whistled and beat inmates on their heads with rubber cables about three and one-half centimeters in diameter in the St. Georgen tunnel when some 2000 inmates who were lined up inside the tunnel preparatory to returning to camp began to mill and push (R 35, 36, 37, 42, 45). At this time the witness was struck by the accused (R 36, 40). The accused struck an ill French inmate, who was next to the witness, one blow (R 36, 37, 38, 42, 43). The Frenchman collapsed on the ground, pleaded for his life and was killed by the accused who stepped on his throat (R 38, 42, 43). The Frenchman became blue and his tongue came out of his mouth (R 42). The accused ordered Sperling and three other inmates to carry the dead body of the Frenchman out of the tunnel (R 36, 41). The body of the Frenchman was placed on the ground near the block in the camp (R 41). The witness first noticed the body being cold when the line up for roll call came at St. Georgen (R 41).

Sperling testified that one evening in April 1945, as he was going to work for the night shift, he passed block 16, the dispensary, where the accused was the block eldest and he saw the accused chase some sick inmates out of the dispensary with a rubber stick. These inmates were naked and looked like skeletons. They implored the witness and others to take them to work. Next morning when Sperling returned from work he saw from the rail-

road cars that the dispensary was empty and the bodies of the sick inmates, seen the day before, were lying around the ground (R 36, 37, 38, 44, 45; P-Ex 6). Almost all inmates sent to block 18 in Gusen II in April 1945 were killed (R 38).

Mandelbaum, a former inmate, testified that, near the end of January 1945 (R 47, 48, 49), at approximately 0800 hours (R 49, 50), the Polish inmate named Broenner or Brenner (R 48, 50), who was ill from dysentery relieved himself in his trousers. The room orderly discovered this fact and beat the Pole about 30 or 40 blows while he was on a stool. When the accused arrived and learned what had happened, he pushed the orderly aside and ordered the Pole to put his throat on the edge of the stool. The accused then struck the Pole six, seven or eight times on the neck with the flat part of another stool. The Pole fell. He was dead. The block clerk wrote the number of the inmate on his chest, the usual procedure with dead inmates (R 48). The witness saw this incident occur (R 47, 48, 49, 50).

Another former inmate of Gusen II, Marciniak, testified that one day near the end of March 1945, when he went to the dispensary, he saw naked inmates standing, lined up on the floor of block 16. He saw the accused, block elder of block 16 (R 52, 53, 54, 55), leave the building and strike one of the inmates. The inmate fell down and the accused stepped on his throat. The accused repeated this procedure with three other inmates while the other inmates wept (R 52, 53, 56). The following day, Marciniak saw 100 to 120 bodies, all of them strangled with the foot (R 55, 56), outside of block 16. The witness, who was then working in the kitchen of Gusen II, knew from the strength report given to the kitchen for food issue that all of those standing before block 16 on the previous evening had been finished off during the night (R 56). All nationalities were reported among the victims, including French, Polish and Belgians (R 53). Block 16 was the extermination block of Gusen II, to which the weakest inmates were sent for finishing off (R 53, 54).

On a day in January 1945 (R 58, 59, 61), the bodies of French, Belgian, Czech, Hungarian, Russian, Polish inmates, most of them dead (R 58, 60),

when the work train from St. Georgen came into Gusen II. All of the inmates lying there were naked; they were beaten and their heads were smashed (R 58). Kasprzycki, a former inmate (R 57) who got off the train at that time, stated that he saw, from a distance of four or five meters (R 60, 61), the accused walk down the line of bodies and step on the throats of three inmates who showed signs of life by lifting their heads or hands (R 58, 60, 61). The witness stated that on two other occasions he saw accused step on throats of inmates before block 16 (R 61, 62).

Glowacki, a former inmate of Gusen II testified that near the end of January 1945, after 2000 hours in the evening, he went to visit a friend named Kempa, a Pole in block 16 (R 63, 64, 65, 66). He handed Kempa some bread through the window of the block after the accused had chased Glowacki and had hit him twice (R 64, 66, 67, 75, 76). The accused saw Glowacki give the bread to Kempa. The accused caught Kempa from behind and beat him with a stool, striking the last stroke on Kempa's head, killing him (R 64, 67, 68, 71, 73, 74). Kempa's body was carried out of the block by the orderlies two minutes later and put on the ground (R 64, 74).

Near the end of April 1945 (R 64, 71), around 2100 or 2200 hours in the evening, Glowacki saw the accused, then block oldest (R 64, 70, 71), and another kill 10 inmates of block 16 by stepping on the throats of the inmates with their feet (R 64, 65, 72). Glowacki was present twice when Schulz, Camp Commander of Gusen II, ordered Ver Loren to kill inmates of block 16 (R 72, 73, 75).

Duchamp, a French national and former inmate of Gusen II, in his extrajudicial sworn testimony, stated that on 22 April 1945 killings began in block 16 of Gusen II where the weak and ill inmates had been sent for extermination. The accused and two room-elders selected ill inmates from the run's and ordered them to the aisle. There Duchamp saw, from a distance of three or four meters, the accused and others beat these ill inmates with clubs approximately two to two and one-half centimeters thick and one meter long. The inmates received from three to five blows apiece over the head. Then they would faint. Some died immediately. Those who were alive were killed by the accused and his associates who stood on the run's and

which had been placed across the throats of the fallen inmates. The inmates strangled to death. The nationalities of the victims included French, Polish, Hungarian Jews, Russians and Italians. Similar incidents were repeated almost every night until Duchamp was liberated. He estimated that in the five days he was there approximately 250 to 300 inmates were killed in such a manner. Most of these incidents took place about 2100 or 2130 hours in the evening. Of the victims, the accused accounted for at least 50 percent. He beat the inmates frequently and more often than the others. In one instance, he threw a bucket of hot water over one inmate, probably a Russian, to get him out of bed faster. The victim was then chosen for execution. All of the bodies of the victims were carried outside and piled up like cord wood (R 79; P-Ex 7).

Middlemayer, a defense witness and former clerk of block 16 when the accused was its block eldest, testified that, in the morning, dead corpses were lined up in front of block 16 at subcamp Gusen II (R 89).

Evidence for Defense: Folger, an inmate and former capo of Gusen II (R 80, 81, 82), testified that, in March 1945, the accused was an ordinary inmate at Gusen II with no function (R 82). Although Folger visited Gusen II eight or 10 times, he never heard of the accused killing any inmates (R 82, 83). He heard of inmates being killed in block 16 (R 82). He heard that the protective custody leader Seidler or camp eldest Schulz was responsible for the killings in block 16 (R 82). When reprimanded by Folger for the killings, one Von Losen, obercapo of Gusen II Concentration Camp (R 81), stated that two Russians and his Poles killed the inmates of block 16 in the presence of Von Losen who simply stood nearby (R 83). Folger testified that it was generally known among the inmates that the mass killings were conducted by Von Losen and his two Russians. Folger also stated that it was known throughout the camp that the accused was always the best of friends with his comrades in the penal company (R 84). The accused had no authority while at Gusen II (R 84).

Middlemayer, again, and former dispensary clerk of block 16 at Gusen II Concentration Camp (R 86, 88), testified that the accused became block

oldest of block 16 at Gusen II Concentration Camp on 27 March 1945 and that the block had no inmates until 3 April 1945 (R 86). He testified that he never saw the accused kill anyone although inmates were killed between 3 April and 5 May 1945 to a number of approximately 500 to 600 (R 86, 87). These 500 to 600 victims were killed by Von Losen and his detail of three Poles and four Russians. The victims were selected from the inmates by the medical NCOs of the dispensary and by a doctor named Nicholai (R 87). Von Losen had received written orders for these killings from the protective custody camp leader, whom the witness thinks is Schulz (R 87, 88), which Von Losen showed to the doctor (R 88).

The accused was appointed block oldest by Schulz (R 87). The accused tried two or three times to get the protective custody camp leader to release him from the duty (R 87). The witness Madlermayer could say nothing derogatory about the accused (R 88). The accused did not go out of the block with his detail (R 89). The persons killed were picked up along with the other corpses from block 16 (R 89).

On cross-examination, prosecution witness Blaimuller admitted that the accused did what he was ordered to do by the SS (R 15, 16).

The accused was unwilling to testify (R 89).

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. The following Petitions for Clemency were filed by: the accused, undated; Anton Talnin, 15 November 1947; Arnold Damaschke, 22 November 1947; Moises Fernandez, 12 January 1948; Hubert Gattenberger, 15 January 1948; Laureano Navas, 15 January 1948; and Francesco von Posern, 15 January 1948.

Recommendation: That the findings and sentence be approved.

QUESTIONS OF LAW:

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

Application of Parent Cases: The Court was required to take cogniz-

ance 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 was 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 him that he not only participated to a substantial degree, but that the nature and extent of his participation were such as to warrant the sentence imposed.

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

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentence be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto and shall be used with approval.

RICHARD C. HAGAN
Major JAGD
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