

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

27 February 1948

UNITED STATES )

v. )

Ewald HEERDE, et al. )

Case No. 000-50-46-3

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 10 November - 12 December 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

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

Particulars: In that Ewald HEERDE, Otto RINK, Reinhold TEICHMANN, Ottokar TUMA, Georg GUITAHR, Heinrich SCHMITZ, Sepp SCHMATZ and Friedrich HECKER acting in pursuance of a common design to subject the persons hereinafter described to killings, beating, tortures, starvation, abuse and indignities, did, at or near the vicinity of Flossenburg Concentration Camp, near Flossenburg, Germany and at or near the vicinity of the Flossenburg out-camps, particularly Hersbruck, Wolkenburg, Genacker and Leitmeritz, and with transports of prisoners evacuating said camps, all in German or German-controlled territory at various and sundry times, between the 1st of January 1942 and the 8th of May 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of Poles, Frenchmen, Jugoslavs, citizens of the Soviet Union, Norwegians, Danes, Belgians, citizens of the Netherlands, citizens of the Grand Duchy of Luxembourg, British subjects, stateless persons, Czechs, citizens of the United States of America and other non-German nationals who were then and there in the custody of the then German Reich, and members of the armed forces of nations then at war with the then German Reich who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich to killings, beatings, tortures, starvation, abuse and indignities, the exact names and numbers of such persons being unknown, but aggregating many thousands.

III. SUMMARY OF EVIDENCE: The accused, with the exception of accused SCHMITZ, were members of the SS at Flossenburg Concentration Camp and/or its subcamps for considerable periods of time between the dates alleged. Accused SCHMITZ was a civilian doctor in the inmate hospital at Flossenburg from 2 May 1944 until 22 March 1945. All were shown to have participated in the Flossenburg Concentration Camp mass atrocity. Prosecution's Exhibit P-Ex 6 is a certified copy of the charge, particulars, findings, and



sentences in the parent Flossenburg Concentration Camp case (United States v. BECKER, et al., 000-50-46, DJAWC, May 1947, hereinafter referred to as the "Parent Case"; see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Ewald HEERDE

Nationality:	German
Age:	58
Civilian Status:	Foreman
Party Status:	Nazi Party, since 1 September 1940
Military Status:	Waffen SS, Corporal
Flee:	NG
Findings:	G
Sentence:	3 years, commencing 5 May 1945

Evidence for Prosecution: The accused was an SS corporal or sergeant and served as a guard, block leader and member of headquarters staff of Flossenburg Concentration Camp from 15 December 1941 until about 16 April 1945 (R 222, 350, 817, 176; P-Ex 8A p. 3, R 457; P-Ex 17A, R 459; P-Ex 18). From January 1945 until April 1945, the accused was detail leader of the work detail at Altenhammer, a subcamp of Flossenburg Concentration Camp (R 250, 270, 309, 318, 383, 457; P-Ex 17A, R 459; P-Ex 18, R 812).

A former inmate by the name of Dick, testified that he saw the accused performing duties as guard at the Jourhaus at Flossenburg Concentration Camp in 1944, checking the inmates who entered and left the camp (R 233). A detail of 25 to 30 sick inmates was employed in carrying winter overcoats into the camp. When one inmate, a Pole, collapsed and fell down, the accused kicked him six or seven times. The Polish victim remained lying on the ground and had to be carried to the dispensary (R 233, 236). Two days later, the witness heard that the victim was dead (R 237).

Witness Goltz, an inmate of Flossenburg Concentration Camp from March 1943 until April 1945, testified that one day in the autumn of 1944 about 0500 hours the accused shot and killed a young Russian inmate who



had broken into the sauerkraut warehouse. The witness stated that the accused surprised the victim and, without warning, shot him from a distance of three meters (R 44, 48-51). After the victim had been removed to the hospital, the accused went to the hospital to ascertain the effect of his shot at the Russian.

Witness Mille, an inmate at Flossenburg from May 1938 until the evacuation, testified that the accused shot a Russian or Polish inmate whom he caught stealing sauerkraut from the storage room (R 222, 225-228). Witness Kuefner testified that the accused told him that he had shot to death a Russian inmate whom he had caught stealing cabbage (R 269, 277, 278).

Witness Rodenstein, a former inmate of subcamp Altenhammer, testified that the accused was in charge of the subcamp and conducted the roll call every day (R 311, 317-318). If an inmate failed to work to his liking, the accused would order a capo to give him 25 blows. As punishment, he would sometimes order an inmate to work two consecutive twelve hour shifts. During the time the accused was detail leader, four or five inmates died as a result of beatings administered by the accused and the capos (R 310, 311, 313, 314). He further testified that he saw the blue and swollen corpses of these victims in the washroom (R 313, 314); that in one particular incident which took place in February 1945 the accused found an Italian inmate who was not working; that he beat this inmate with his hand and a rubber hose and then ordered a capo to beat him, after which the victim was unable to walk; that his hands, face and body were swollen and blue; and that the inmate died the next day. The witness carried the corpse to a cart (R 316-318). The witness further testified that he was beaten on the face several times and kicked by the accused (R 317, 318, 319).

Witness Kuefner testified that between 1942 and 1945 he frequently saw the accused beat inmates at Flossenburg (R 270); that in 1944, in two particular instances, he saw the accused, on a transport from Hersbruck, beat an inmate with a piece of wood and kick him because he was



too slow in taking a bath (R 269, 270, 274, 275). He also testified that one afternoon at subcamp Altenhammer, he saw the accused strike an inmate on the head with a big ladle because the inmate left the column (R 270, 277).

Witness Gaertner testified that he saw the accused on duty at the Jourhaus in Flossenburg checking incoming columns of inmates in 1944 and 1945. When the accused found potatoes or something else on the inmates, he beat them with a stick, kicked them severely and then made a report on them, causing the victims to be punished again (R 389). Inmates whom he caught picking up potato peelings were beaten to the ground with a stick and kicked. The victims were Poles, Russians and Jews (R 389, 390).

Accused SCHMITZ, in an extrajudicial sworn statement, stated that the accused was a "callous" and "brutal" man; that he repeatedly heard from inmates that the accused beat in a brutal manner; and that he was once a witness to such mistreatment by the accused (R 176; P-Ex 84 pp. 3, 4).

Evidence for Defense: Mnska, an SS first sergeant at Flossenburg, testified that he knew the accused since 1942 and that he had never heard of any mistreatment of inmates by him (R 647).

The accused testified that during his service at Flossenburg Concentration Camp he was assigned to the bath house detail only twice; that he never beat any of the new arrivals at the bath (R 804, 816); that on two or three occasions he was assigned the duty of checking inmates of the potato detail as they passed through the main gate; and that he had instructions to take from them any food they might possess. He denied that he ever beat any inmates for stealing potatoes, but admitted that he kicked or slapped an inmate and pulled his ears (R 806, 814, 816). He also denied that he ever kicked any inmates for picking up scraps of food (R 814). He further testified that he never killed any inmate with the exception of one Russian whom he shot while stealing food from the sauerkraut storage shed (R 815); that he was detailed as a special guard in the sauerkraut storage shed with instructions to apprehend any person who was found breaking in; that a Russian inmate attempted to steal some cabbage and, when challenged by him, tried to escape; and that he fired at this inmate with a machine pistol,



but did not intend to kill him (R 798-800, 808-811, 817-824, 457; P-Ex 17A). The victim was taken to the dispensary and it was necessary for the accused to ascertain whether the inmate was dead in order to complete his report of the incident (R 800, 801). He denied that he said he was proud that he had killed this inmate (R 801). After a report of the incident was transmitted to higher headquarters, the accused was exonerated (R 801). He further testified that he arrived at subcamp Altenhammer in January 1945 where he served as detail leader (R 802, 805, 812). He found much stealing going on among the inmates and immediately put a stop to it, for which many inmates thanked him (R 802, 805, 812).

The accused also testified that witness Kuefner testified against him out of revenge because he had been under suspicion of stealing and because the accused caused him to be transferred out of Altenhammer (R 804, 805). He never beat or killed any inmate at Altenhammer and had forbidden any form of beatings. He did not slap a capo in the face twice for beating a Jewish inmate (R 803, 804, 813). No inmate ever died at Altenhammer (R 804). The inmate strength of this subcamp was approximately 590 to 600, 50 of whom became ill of typhus and were taken back to the main camp. Of these sick inmates, none died, and 23 recovered sufficiently to return to work. The inmates requested the accused to take them back to his detail. At the evacuation of this subcamp, the inmate strength was approximately 573 to 574 men (R 801-803, 814). He further testified that he often visited the plants where airplane construction was going on, but he never beat any of the inmates there (R 812) and that in 1943 he received, as punishment, 10 days' arrest for helping inmates by giving them bread (R 806, 814).

He testified that when he was confronted with witnesses at Dachau a former German capo denounced him, but a Polish inmate stood by him. The Polish witness declared the accused was a good man, that he saw that the inmates got their food properly and that he stopped the capo from beating them (R 805, 806).

In an extrajudicial sworn statement the accused admitted that he often beat inmates with his hands for offenses committed against the camp rules,



but stated that he never used any object or instrument (R 457; P-Ex 17A).

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

Petitions: No Petition for Review or Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. Otto RINK

Nationality:	German
Age:	59
Civilian Status:	Teacher
Party Status:	Nazi Party, since 1938
Military Status:	Waffen SS, Second Lieutenant
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 3 May 1945

Evidence for Prosecution: The accused served at Flossenburg Concentration Camp from 1939 to 20 April 1945, first as a company clerk and then as first sergeant of a guard company. He was commissioned a second lieutenant in April 1944. As an officer, his assignments included positions as troop information officer, education officer and welfare officer (R 271, 603, 768, 442; P-Ex 12A; R 460; P-Ex 21; R 461; P-Ex 22). The accused participated in an inmate evacuation march which left Flossenburg in the direction of Dachau, Germany, on 20 April 1945 (R 444, 445, 453, 768, 769, 442; P-Ex 12A; R 443; P-Ex 13A; R 460; P-Ex 21; R 461; P-Ex 22).

Witness Kuefner, an inmate of Flossenburg from 1942 until the evacuation, testified that the accused was in charge of training the SS and Ukrainian guards according to National Socialist ideas and that he instructed the SS men in the manner in which the administration of punishment was to be carried out (R 271, 272).

Witness Egger, an inmate of Flossenburg from 1938 until the evacuation of the camp, testified that he was a part of the second column under the



about 700 Polish Jewish inmates who could no longer continue the march were shot to death at the rear of the column as they fell out; that an SS sergeant fired into the heads of the victims with a machine pistol (R 444-446); that during the shooting the accused was 150 to 200 meters away at the head of the column (R 445), but he could frequently see the dead bodies lying in the ditch (R 448). He further testified that he did not see the accused with the column after the third day (R 446, 449, 452) and that, while none of the inmates fell out on the first day, on the two succeeding days over 100 were shot to death (R 445, 450).

In an extrajudicial sworn statement, Ebner, an inmate of Flossenburg, stated that he participated in the inmate evacuation march which left Flossenburg on 20 April 1945. The accused was the leader of the second or third column. At a halt in the vicinity of Cham the accused ordered an SS sergeant to shoot two Russian inmates who had fallen behind the column. The sergeant shot the two inmates in the head with a submachine gun. The accused ordered his guards to shoot, without consideration, any inmate remaining behind the column. The accused gave the witness 15 slaps on the ear because he was walking too slowly (R 449; P-Ex 13A).

In an unsworn pretrial statement, the accused stated that at a conference of camp officers of Flossenburg on 20 April 1945, Camp Commander Koegel announced that orders had been received to evacuate the camp to Dachau; that no inmate must fall into enemy hands; that at noon on 21 April he left with the second column; that after about one hour he saw the first dead lying by the roadside; that several more times he saw lagging inmates shot; and that after crossing the Danube river he saw no more dead because he had no further contact with the march (R 442; P-Ex 12A).

Evidence for Defense: Six witnesses, Heinzman, Oberbeck, Monske, Schubert, Michels and accused RECKTER, all former SS men at Flossenburg, testified that they had attended educational lectures given by the accused at Flossenburg and had never heard him refer to the handling of inmates or advocate their mistreatment by the SS (R 560, 562, 640, 644,



651, 671, 874-875). Heinzman testified that it was impossible for any inmates to attend these lectures (R 560). Accused BECKER testified that it was impossible for any inmate to overhear the lectures because they were given after 2000 hours when all inmates were back in the protective custody camp (R 875).

Witness Martin, an inmate of Flossenburg, testified that he never knew that the accused advocated that SS men mistreat inmates; that he never saw nor heard of any mistreatments of inmates by him; that he was a very straight and pedantic man, very narrow-minded and a typical bureaucrat; and that he did not know anything bad about the accused (R 534, 535). Heinzman, Paulus and Oberbeck also testified that they never heard of the accused mistreating inmates (R 560, 603, 640).

The accused testified that he gave lectures to the troops in the SS camp, but he never discussed the treatment of the inmates at any of his lectures (R 768) and that it was impossible for any inmate to be present in the SS camp theater at that time of the night. He was present at the leaders' meeting on 19 April 1945, when the officers present received definite evacuation instructions, but he and another elderly man received no orders (R 772, 773). He attached himself to the second march column as a guest of Lieutenant Pachen, the leader of the march block and secured a ride on a vehicle carrying the belongings of the inmates (R 768, 773). He had no authority to give any orders on the march, never gave any, and remained with the column until the third day (R 769). He saw only one body along the road on the first day, but could not determine the cause of death (R 769, 774). On the second day several terribly mutilated corpses were seen on the road. Five young SS men and a sergeant told him that they were a special detail appointed by the camp commander to eliminate all inmates who fell behind (R 769), which was confirmed by Lieutenant Pachen (R 770, 774). He testified that shots were heard at the rear of the column, but nobody could prevent the shooting; that he did not mistreat any inmates on the march; that on the third day he left the march because he was morally and physically exhausted and could hold out no longer (R 770, 774, 775);



and that he never saw the column again (R 777).

The good character and reputation of the accused in his home community before his entry into the SS was described in five unsworn pretrial statements, in which three stated that the accused was forced to join the National Socialist Party in order to hold his position as head teacher in the local school (R 753; D-Ex 19A; 753; D-Ex 20A; 754; D-Ex 21A; 754; D-Ex 22A; 755; D-Ex 23A).

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

Petitions: No Petition for Review or Petition for Clemency was filed.

Recommendation: That the findings and sentence be approved.

3. Reinhold TEICHMANN

This accused was served but not tried (R 1).

4. Ottokar TUML

This accused was served but not tried (R 1).

5. Georg GUTTAHR

This accused was acquitted (R 928).

6. Heinrich SCHMITZ

Nationality:	German
Age:	51
Civilian Status:	Doctor of Medicine
Party Status:	Nazi Party, 1932 to 1937
Military Status:	None
Plea:	NG and NG by reason of insanity
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused was employed as a civilian physician in the inmate hospital at Flossenburg Concentration Camp from 2 May 1944 until 22 March 1945 (R 29, 66, 67, 176; P-Ex 9A; R 509, 902, 903).

Witness Goltz, who was an inmate of Flossenburg Concentration Camp from March 1943 until April 1945 and who was employed as a secretary in the



inmate hospital, testified that the accused, as civilian assistant to the post physician and as chief of the inmate hospital (R 29), was responsible for the hospital (R 60, 66, 67) until March 1945, four weeks before the camp was liberated (R 29). He further testified that the accused told him that he had received an order from Berlin to apply the principle of euthanasia and put to death 1,000 inmates who were no longer able to work (R 29, 68); that the accused attempted to carry out this order systematically (R 30, 87, 88); that between 75 and 100 inmates met death by phenol injections administered by the accused who personally selected the victims to be injected (R 69, 72, 91, 92); that the witness prepared reports of these deaths under the direction of the accused who then signed and forwarded them to the post physician and camp commander (R 30, 72, 73); that later the accused told the witness that the extermination order from Berlin was countermanded, but the witness saw the accused administer an injection of phenol into the heart of an ill and aged Russian or Polish inmate and an injection of three ampules of evipan to a Hungarian Jewish woman inmate who had a broken leg; and that both of these inmates died instantly (R 31, 34, 75-77, 78).

Witness Goltz further testified that all operations in the inmate hospital were performed by the accused; that he especially liked to perform stomach operations; that over 50 percent of the stomach operations performed by the accused were unnecessary; that laboratory examination of the organs operated upon showed negative findings; and that the inmate physician said that many of the operations were unnecessary (R 35, 36, 78-81) and were performed without the proper instruments for an operation (R 35). Four witnesses, including Goltz, testified that, during the winter/for special examinations, the accused ordered sick inmates, including amputees, to report to the unheated dispensary, dressed only in a shirt and a bed sheet; that those in convalescent blocks had to travel across the street in the snow, dressed only in a shirt and sheet, for examinations; and that after examination



which required several hours, two to four inmates died in the shower bath (R 36-39, 102-104, 107, 112, 116, 117, 153, 212-214).

Witness Goltz further testified that many of the inmates were discharged from the hospital while still seriously ill; that on one occasion an inmate, a French colonel named Bischo, was admitted to the hospital suffering from double pneumonia; and that five days later the accused sent this inmate to work again (R 42).

The witness also testified that from November 1944 until the liberation, Flossenburg Concentration Camp was swept by a typhus epidemic from which over 1,000 inmates died (R 34, 35); that when the accused was told of the number of deaths for one day, he replied, "Well, it's a pretty poor number, it's not enough"; that on another occasion when the death rate for a certain period was very high, he stated, "Well, pretty good, don't you think so"; that the accused told him that he had participated in executions and that the accused several times said to him in a joking way, "There is going to be an execution this afternoon, that means another bottle of schnapps for me." (R 43).

Witness Demmel, who served as a medical assistant in the inmate dispensary at Flossenburg, testified that in 1944 he saw the accused give phenol injections to inmate patients twice in two days at block 13 and that the two inmates who received the injections collapsed (R 125-130).

Witness Schottner, an inmate of Flossenburg from 1943 to 1945, testified that he was a patient in the inmate hospital; that he saw the accused give injections to foreign inmate patients in block 13; that inasmuch as these patients were suffering from typhus, they were not expected to live much longer; that the reputation of the accused in the camp was very bad; and that the inmates referred to him as a veterinary surgeon (R 137-139).

Witness Hofhansel, an inmate clerk in block 21 and the SS dispensary, saw 10 reports of euthanasia cases. The reports contained the names, numbers and nationalities of the inmates who had been subjected to the treatment in 1944 and were signed by the accused (R 120, 121, 123). The accused sent a Polish inmate back to work with a 40 degree centigrade



temperature and this inmate died an hour later (R 122). He further testified that on one occasion the accused operated on an inmate without waiting for a complete anesthesia (R 122, 123).

Witness Legeais, a French army physician who worked in the inmates' hospital under the accused, testified that all questions of administration were settled by the accused; that the accused failed to take any steps to combat the typhus epidemic until January 1945; and that there was sufficient vaccine available, but in January 1945 only the personnel working in the hospital received inoculations. He further testified that out of 3,000 cases of typhus, only 50 inmates survived (R 144, 145, 155-158) and that the accused often refused to issue medicine or order the proper diet for patients (R 146, 159, 230-232, 238-240, 244, 245, 249).

This witness also testified that the accused had a special liking for performing operations and would operate unnecessarily for practice (R 152); that he performed 75 stomach operations, 10 gallstone operations, three kidney operations, one hernia operation, one sterilization of a Gypsy woman and approximately 300 amputations, the majority of which were unnecessary; and that all operations were performed under very bad conditions and many without any anesthesia. Deaths resulting from this practice included 52 from stomach operations, six from gallstone operations and two from kidney operations. This testimony is corroborated by six other witnesses (R 118, 119, 133, 147, 148-151, 160-163, 172-175, 242-244, 365-368; 170; P-Ex 7A).

The same witness testified that he saw the accused administer an intravenous injection of evipan to a female inmate who had sustained a fractured thigh; that the dosage was much stronger than that needed for anesthesia and resulted in the patient's immediate death (R 152); that the accused operated unnecessarily on a young French inmate, 17 years of age, who was suffering from pleurisy; that this patient died a week later (R 181); that during the typhus epidemic in 1944, the accused treated only one patient out of every 10; and that he falsified the blood analysis reports which showed the presence of typhus (R 184).



Witness Garstka, a Polish inmate doctor at Flossenburg from April 1943 until the liberation, testified that the accused was introduced as the person in charge of the inmate hospital (R 95); that all patients who could stand were discharged from the hospital for work; that several bedridden patients later received tubercular injections from the accused and died; that he refused to accept any new tubercular inmates as patients; and that, in his opinion, sending tubercular inmates to work doomed them to death (R 96-99, 113, 114).

He further testified that the accused was the only doctor permitted to operate on inmates (R 101); that in 1944 he operated on a Polish inmate for duodenal ulcers for which the patient received no post operative attention and died four days later (R 101, 115); that the accused performed one stomach operation without any preliminary examination (R 101); that, in another instance, the accused diagnosed a case as tumor of the brain when the X-ray did not indicate a tumor; that on one occasion he pointed out to the accused that an inmate was probably suffering from inflammation of the kidneys, but the accused paid no attention and sent the patient away; and that five days later the inmate died (R 111). He ordered a dissection of the ribs of seven inmates who had pus in the pleural cavities and did not allow their dressings to be changed. All seven patients died after a week (R 102). The accused forbade the inmate doctors to examine patients. His attitude was not sympathetic or solicitous to the sick (R 106).

Witness Binck, an inmate at Flossenburg from 1944 until the liberation, testified that in April or May of 1944 he saw the accused beat and kick inmates at the dispensary; that the witness was one of the victims (R 250-252); that he beat inmates suffering from fever, kicked them and throw them out of the dispensary; and that in three cases the inmates died the next morning (R 253, 261). He further testified that the accused accepted inmates for hospitalization and treatment only if they were willing to be operated upon (R 260).



Witness Gutsch, an inmate of Flossenburg from 1941 until the evacuation, testified that the inmates' fitness for work was determined by the accused; that sometimes 1,000 to 2,000 inmates were gathered into the bath house and examined in a short time (R 344-346); that the accused personally selected inmates for transfer to Bergen-Belsen Concentration Camp; that some of those selected were suffering from tuberculosis and others were incapable of working; and that he had heard that Bergen-Belsen was a place where inmates died shortly after their arrival (R 350, 358, 359).

Evidence for Defense: The accused testified that he arrived in Flossenburg in May 1944 and worked as a civilian physician in the inmate hospital until 22 March 1945 at which time he became ill with typhus (R 902, 903); that, while working as a physician, he was under the jurisdiction and control of various SS physicians; that his possibilities for action in Flossenburg were strictly limited as he could not do anything without the prior permission from his superiors (R 920, 176; P-Exs 8A, 9A); and that he was not permitted to sign any documents in the camp, not even the pharmacy book or the operation register (R 923). He further testified that in June 1944, an order arrived from Berlin to select and report all inmates who were unable to work; that in October 1944 SS Lt. Col. Fischer, the post physician, stated that orders had been received to the effect that all inmates unfit for work were to be given injections under the principle of euthanasia; and that the accused, together with Fischer, SS Captain Dr. Gieger, and an inmate clerk, went to the inmates' barracks and selected inmates for the injections. He admitted that he marked the foreheads of the inmates so selected with the number "130". He testified further that he brought the rubber gloves, the phenol solution and the hypodermic syringes to block 13 where the injections were administered. He denied that he gave any of the injections, but testified that they were administered by two Jewish inmate doctors under the supervision of Dr. Gieger (R 903, 904, 926). He denied further that he ever stated to witness Goltz that he had administered these injections, but he did tell Gieger about these injections in order to warn other inmates. He denied that any written reports were made of the killings since this program



manner. The accused testified further that in his opinion euthanasia was justified in some cases in Flossenburg (R 904, 905, 926).

He also denied the testimony of witnesses Goltz and Legeais concerning the treatment of an aged Russian inmate and testified that he did not inject this inmate with phenol. However, he admitted using camphor oil. Regarding his treatment of the Hungarian Jewess who was suffering from thrombosis of the leg, he testified that he gave her an injection of combetin and that she did not recover. He then gave her an injection of adrenalin into the heart, but she died while being treated. He denied that he ever used evipan. He testified further that if he had wanted to kill this woman, he would not have had her transferred from the bunker to a special room. No witnesses were present at the operation other than Dr. Polak and the assistant, Janicki (R 905-907).

He also denied that he performed operations in an unsanitary manner as testified to by Garstka and Legeais. He testified that all operations at Flossenburg were performed in the same manner as in any clinic. He testified that of 500 operations performed by him only four showed any evidence of pus; that he selected surgical instruments needed for operations, examined them for fitness, had them sterilized and kept them surgically clean; that up until December 1944 the accused had performed 280 operations on inmates in Flossenburg with a mortality rate of 7.8 percent (R 907, 910-912); and that of 40 stomach operations performed by him, only four patients died (R 907). No stomach patients were operated upon until a chemical test and an X-ray were made by Dr. Polak (R 908). The accused testified further that witnesses Goltz and Legeais were not medically qualified to testify whether or not operations performed by the accused were necessary, as they saw patients only after the operations had been performed. He denied that he had operated upon an inmate without making any preliminary examination as testified to by witness Garstka (R 909).

The accused further testified that his treatment of witnesses Bergmann, Ferenc and Neiss was medically and surgically correct. He denied that he beat the inmates with a stick (R 924, 925). He also denied that he ever



beat, kicked or mistreated any inmates with the exception of slapping a few patients to wake them up after a mild anesthetic (R 913).

He testified that he visited the hospital blocks twice daily except Tuesdays and Fridays, which were operating days, and examined each inmate; that in wards which contained triple-tiered beds, it was not possible to conduct a proper physical examination and so these inmates were taken to the ambulatory room; that patients who were seriously ill or had high fever were permitted to remain in bed and no patient had to walk through snow to reach the examination room, inasmuch as the walks between the sick barracks were roofed (R 915, 916).

The accused testified that he was on a business trip to several subcamps from 27 October to 3 November 1944 and, upon returning, was told that typhus had broken out; that a quarantine was immediately established as to inmates who were considered as the possible source of the epidemic; that these inmates received blood tests and were treated for the disease; that in the first epidemic, 800 inmates became ill and 200 died. No preventive inoculations were given during this first epidemic because the accused did not have the necessary serum. During the second epidemic, in 1945, approximately 800 inoculations were given by the accused. The accused testified that he did not falsify reports of blood tests which showed the presence of typhus. During the second epidemic, 563 inmates contracted typhus and 39 died. The headquarters refused to place guards at the quarantine barracks and so isolation could not be enforced. There was insufficient disinfection equipment to properly provide for all the inmates at Flossenburg (R 916-919).

The accused denied that he had improperly treated inmates who suffered from tuberculosis and testified that he used the prescribed method of cure with the result that only five to eight of the patients inoculated died. He also denied that he planned to liquidate all tuberculous inmates. He testified that he went to Berlin and spoke with Dr. Lelling, the medical chief, concerning the treatment of these inmates. He was told that a convalescent camp would be opened at Bergen-Belsen. Two shipments of inmates



suffering from open tuberculosis were sent to this camp on orders from Dr. Lolling (R 921-923).

The accused further testified that he participated in the physical examinations of inmates to be sent to outdetails to work; that every inmate so selected was later examined by an SS doctor before he left camp; that these examinations were conducted in the bath house; and that it was announced to all inmates that those feeling ill should report to the examining doctor as they filed by (R 913-915).

Ludwig von Krester-Fischer, an inmate of Flossenburg from 1944 until the liberation, testified that he suffered from a heart cramp and was treated by the accused who visited him several times a week, treated him very well and made his recovery possible (R 462-465); that he never saw the accused beat any inmate at the dispensary; that he never heard that he had done so; and that the accused did not admit all inmates who needed hospitalization because of lack of space. Only those who had a chance to be saved were admitted (R 465, 466, 483). The accused continually fought for the enlargement of the dispensary (R 466). He further testified that he did not know of any operations performed by the accused in a neglectful manner; that his reputation in camp was that of a surgeon of high qualifications (R 466-468); that his position with the SS personnel was not very good; that the SS doctors did not think much of the accused; and that he never heard that the accused had killed any inmate at Flossenburg (R 467).

Witness Franz von Krester-Fischer, an inmate of Flossenburg from 1944 until April 1945, testified that the accused ordered extra food rations for the witness and these rations were received by him until stopped by the camp commander (R 484, 490, 494); that he never heard the accused's name mentioned in connection with the fatal injections which were being given to inmates at the hospital; and that an SS officer was in charge of the hospital and was the superior of the accused (R 491, 494).

Witness Giesselmann testified that the accused was a civilian physician in the inmate hospital under the direct charge of Dr. Schnabel whose superior was Dr. Fischer (R 506, 510); that at no time was the accused in complete



charge of the inmate hospital (R 520); that in 1944 many transports arrived bringing sick inmates; that there were hardly enough bandages in the hospital and insufficient medicines (R 511, 512); that the inmate physicians praised the accused for his skill as a surgeon; that several inmates who had been operated upon by the accused praised him after they had recovered (R 512); and that Goltz, who testified against the accused, also was an admirer of his and had said he was a very capable surgeon (R 513). He further testified that he never saw or heard that the accused mistreated or beat any inmate or that he caused the death of anyone through carelessness (R 512, 520). His name was never mentioned in connection with the euthanasia killings (R 514, 518).

Witness Wittig testified that the accused treated sick inmates in the bunker during the time he was in solitary confinement, performing his duties thoroughly; that he came immediately when he was called, made thorough examinations, prescribed necessary medicine and treated all inmates the same regardless of their race, nationality or religion; that he never saw the accused mistreat anyone; and that he did not participate in any execution at the bunker between June and September 1944 (R 594-596).

Witness Adam, an SS physician at Flossenburg, testified that the accused was the only physician at the inmate hospital; that he and the accused occupied equal positions under Dr. Fischer, the post physician (R 528, 530); that he never saw or heard that the accused mistreated any of the inmates (R 529); that the accused presented a list to Dr. Fischer of all inmates who were to be operated <sup>on</sup> and that it was his belief that the accused took proper precautions for the sterilization of instruments and the operating room (R 530, 531).

Witness Schubert, an SS master sergeant at Flossenburg, testified that he heard inmates say that they believed in the accused and would trust him to operate on them (R 651). Witness Michels, an SS sergeant at Flossenburg, testified that the accused was a quiet man and did the best he could in the short time available (R 667). Belger, in two pretrial statements, stated that the accused was not permitted to work independently at Flossenburg.



and that before he could undertake any operation, he had to secure permission from the post physician (R 757; D-Ex 26A; R 759; D-Ex 27A). After Dr. Fischer became post physician, the accused was deprived of his former authority to sign official papers. Every request to the pharmacy, each death report and every medical form was signed by Dr. Fischer, personally. The accused was not permitted to participate in executions (R 760; D-Ex 28A).

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

Petitions: No Petition for Review nor Petition for Clemency was filed.

Recommendation: That the findings and sentence be approved.

7. Sepp SCHMATZ

Nationality:	German
Age:	33
Civilian Status:	Locksmith
Party Status:	Nazi Party since 1937
Military Status:	Waffen SS, Master Sergeant
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was an SS Technical Sergeant and acted as roll call leader at Flossenburg Concentration Camp from 1939 until 20 April 1942, after which time he served as detail leader at subcamp Dresden, a subcamp of Flossenburg, until October 1942 (R 193, 214, 223, 251, 348, 392, 405, 411, 426, 436, 438, 608, 719, 826, 455; P-Ex 14A).

Witness Oberwallner, an inmate of Flossenburg, testified that the accused was usually a member of the execution detail and often the leader; that, upon his return from executions, his clothing was covered with blood; and that two other SS men were heard to characterize the accused's behavior at an execution by saying that the accused looked like a butcher (R 194-196).

Witness Schur, an inmate, testified that the accused participated in executions and was seen marching to the shooting range with a detail.



After January 1942 eight to ten groups of Russians, consisting of 20 to 30 inmates each, were brought from Karlbad for execution at Flossenburg. They were taken to the bath house and all their clothing was removed with the exception of their trousers. They were then taken out in pairs to the shooting range and executed (R 413-417). Six hundred and twenty Polish inmates from Auschwitz were systematically executed in groups of 15, 20 and 25. The accused was in charge of the execution detail for these Polish inmates and was armed with a pistol (R 417, 421-424). The witness further testified that on one occasion the accused beat a Polish inmate who, through a mistake in the calling of the names, appeared for execution (R 419).

Witness Stegmaier, an inmate, testified that he was a corpse carrier for the execution detail after January 1942; that the Polish and Russian inmates were executed near the crematory by rifle fire in groups of 10 to 20; that the accused was armed with a pistol and the other members of his detail carried rifles; that in April 1942 the method of execution was changed to deadly injections; and that the accused participated in executions both by shooting and by injection (R 429-435). Witness Kuefner, an inmate at Flossenburg from 1938 until the evacuation, testified that he saw a list of names, including that of the accused, of SS men who received special rations of schnapps and cigarettes for having participated in executions (R 267, 268, 283).

Witness Friedrich, an inmate of Flossenburg Concentration Camp, testified that after January 1942 he served as an orderly for the accused; that the accused participated in executions at Flossenburg and would return two or three times a week with his clothing bloody (R 436, 437, 441); that it was said that the accused administered the coup de grace (R 442); that after 1942 the method of execution was changed to deadly injections; that the accused was seen wearing a white coat whenever executions by injections took place (R 437); and that the accused told all the inmates, who were assembled for this purpose, that he would kill them when the time came (R 439).

This witness further testified that he worked in the same capacity for the accused at subcamp Dresden, where the accused was the camp leader



(R 438); that an escaped Yugoslav inmate was returned to the camp shot in the pelvis and left arm; that the accused ordered that no bandages, food or help of any kind be given him; and that the inmate died three or four days later (R 438, 439). Witnesses Binek and Grau, who were also inmates at subcamp Dresden, corroborated the testimony concerning this incident. The accused beat witness Binek with two broomsticks until they were broken and then beat him on the face with a riding crop or dog whip for approximately 10 minutes (R 255, 257, 392 -399).

Witness Haag, a German inmate of Flossenburg, stated in an unsworn extrajudicial statement that in 1942 a crippled inmate who had neither arms nor legs was taken to the arrest yard and shot in the neck with a pistol by the accused; that the accused was heard to say "This one went to heaven without wings"; and that on a Sunday the accused made a speech to the assembled inmates telling them that they would all be shot with machine guns when the enemy approached (R 402; P-Ex 11A).

Witness Kirsch, an inmate of Flossenburg from 1940 until 1943 (R 212, 213), testified that the accused was feared throughout the camp; that he beat and kicked inmates (R 215, 216); that on one occasion in May or June of 1942 a Polish inmate, who had escaped, was recaptured, was made to bend over a table, was given at least 50 strokes with a stick and then was kicked by the accused; that two days later the accused beat this Polish inmate again for 10 to 15 minutes; that two days thereafter the victim was admitted to the hospital; and that a report was later received that he had died (R 214, 215, 217-219).

Witness Oberwallner testified that the accused was known throughout the camp as a brutal man and a beater; that he beat inmates at the roll call square; that on a Sunday he beat approximately 250 inmates of one block with an oxtail whip as they paraded before him (R 193, 194, 205, 206); and that he told the assembled inmates that if anything went wrong he would personally shoot each one of them (R 196, 197). The testimony of the witness Krawjewski corroborated the testimony concerning this incident (R 405-408).



Witness Gautsch testified that the accused kicked inmates and beat them with his fists or with a rubber club on the roll call square for no reason whatsoever (R 344, 349).

Accused Becker, an inmate at Flossenburg from 1938 until 1945, testified that he saw the accused, on the roll call square, punch inmates in the jaw, beat them in the face with his hand and kick them and that many of them fell to the ground bleeding (R 426-428).

Witness Schur testified that during the time the accused was roll call leader he interrogated newly arrived inmates at the bath house and beat them with his fist and that he saw the accused mistreat inmates at the bath house on 30 to 40 occasions (R 410-412).

In an extrajudicial sworn statement, Morozkowski, a Polish inmate of Flossenburg, stated that in 1942 the accused hit him with a spade, splitting the bones of his right wrist which caused him to require two months' hospitalization; that during this time he saw the accused knock a Russian inmate to the ground and kick him on his neck and body, causing serious physical injuries; that he saw the accused mistreat inmates continually; and that he was generally known as a killer (R 401; P-Ex 10A).

The accused admitted in an extrajudicial sworn statement that he beat inmates with his hand and with a stick; that he could not state the number of times; and that some of the inmates may have bled after being beaten. He also stated that some of the inmates "conducted themselves in such a dreadful and indescribable way that it is understandable that we beat them sometimes a little harder so they had to be helped and supported" (R 455; P-Ex 14A).

Evidence for Defense: The accused testified that he served at Flossenburg Concentration Camp from 1939 until the spring of 1942; that he became ill and was hospitalized at Karlsbad between 22 December 1941 and 2 February 1942; that he returned to Flossenburg for a short period until he departed for subcamp Dresden on 30 April 1942; and that he remained at Dresden until September 1942 when he was sent to front line duty (R 826, 854). The unsworn pretrial statement of Belger, an SS man who served as a staff medical



clerk at Flossenburg, corroborated the testimony of the accused concerning the time spent in the hospital (R 795; D-Ex 30A).

The accused further testified that he never participated in any execution after 1 January 1942, but in 1941 he witnessed four executions in which a total of 18 persons were shot to death; that he did not fire any weapon in these executions; that, after the victims had been shot, it was his duty to turn the bodies over to the physician for examination; and that, in turning these bodies, his boots and gloves became bloody (R 827, 828, 830, 831, 851). He testified that he never mistreated any of the victims and that the mercy shot was administered by an SS officer (R 831, 851). He also testified that the last Russian inmates arrived in October of 1941; that until he left for Dresden no other Russians arrived at Flossenburg; and that he never participated in any executions of Russian inmates (R 840). He never wore a white medical coat in company with Dr. Trommer and never participated in the administration of fatal injections (R 840, 841). He denied that he ever mistreated any inmates on roll call square or that he ever beat any of them with a stick or kicked them in a brutal or sadistic manner (R 831). He admitted that he slapped some inmates for violating camp orders, but he never slapped anyone without a reason (R 831, 832, 455; P-Ex 14A). None of the victims of his slapping required hospitalization nor did any death result therefrom, but he admitted that some of them may have bled after having been slapped by him (R 833).

The accused denied that he beat inmates with an oxtail whip in 1942 as testified to by witness Gantsch and stated that no such incident ever took place (R 839). He also denied the block 4 incident (R 839, 840). He testified that no remarks were made to assembled inmates to the effect that he would shoot them all (R 841); that he was not involved in the incident where the escaped Polish inmate was recaptured (R 842); and that witness Kirsch, who testified concerning this incident, was a homo-sexual inmate and had received slaps from the accused in 1940. On two occasions when the accused was confronted by Kirsch in the line-up at Dachau, Kirsch never mentioned this incident but spoke only of the fact that he had been slap



The accused testified further that the incident of the escaped Yugoslav inmate occurred at subcamp Dresden in September 1942 (R 834); that the Yugoslav had been shot in the left lower arm and in the stomach during his recapture (R 836, 847, 848); that the accused then placed him in the hospital where he received medical attention; and that the inmate was then taken to his quarters and put to bed. The hospital doctor and the camp physician prescribed that no food or drink be given this inmate because of his intestinal injuries (R 836, 837). This inmate received medical attention on the second day when his wounded arm was rebandaged. On the third day he died because of his injuries and because of eating food contrary to the doctor's orders (R 837-839). The accused testified that he punished witness Binok at Dresden because he was involved with a young SS man in a plot to smuggle mail out of camp (R 845).

Witness Giesselmann, an inmate of Flossenburg from 1938 to April 1945, testified that he knew the accused until the early part of 1942 when he was transferred to an outdetail; that he never heard that anyone died as a result of any action by the accused; that the accused was quite rough and beat inmates who had done something wrong (R 506, 509, 517); that the accused had to be present at executions as a matter of course because he was roll call leader; and that he saw the accused carrying a brief case to executions inasmuch as he had to read the sentences. He never was seen carrying a rifle (R 516, 521, 524).

Witness Schuler, an inmate at Flossenburg from 1938 until October 1942, testified that he often saw the accused on the roll call square when he slapped inmates behind the ears and knocked some of them to the ground, but he never saw him kick any inmate. None of these victims ever bled or died as a result of mistreatment by the accused (R 598-600). Witness Stelzner, an inmate of Flossenburg from 1939 until 1943, corroborated the testimony of Schuler and testified further that it was necessary for the accused to punish inmates in order to maintain sanitation, order and discipline in the camp; that he never punished an inmate without a reason (R 608, 609, 614); that he was slapped by the accused for a theft he had committed (R 609); and that he never saw



the accused wearing a white medical coat in company with Dr. Trommer. He never heard of any shipment of Russians from Karlsbad and he never heard that the accused had participated in executions of Russian inmates. He testified further that it was impossible for the accused to beat 250 inmates at random on one occasion (R 614, 615). The accused often gave food to the inmates and showed no preference among them because of their nationalities or religions (R 609, 614, 615).

Witness Muller, an inmate of Flossenburg from 1938 until July 1944, testified that he knew the accused from 1939 until the beginning of March 1942 (R 718, 719); that he saw the accused slap inmates with his open hand on the roll call square; and that the witness himself was slapped in this manner by the accused because he had been fighting with other inmates. He testified further that he never saw or heard of the accused having beaten any inmate with a stick or having kicked any inmate (R 720); that he never saw any inmate bleed as a result of mistreatment by the accused nor did he ever see any inmate knocked down by the accused; that no death ever resulted from slappings by the accused; and that he never slapped any inmate without cause (R 721, 722, 730). The accused gave instructions to all foremen that nobody was permitted to beat or mistreat any of the inmates (R 721). He testified that he never saw the accused dressed in a white medical coat accompanying Dr. Trommer; that he never saw or heard that the accused participated in administering fatal injections (R 722); that he never saw the accused carrying a rifle or a machine pistol, but did see him armed with a pistol; and that the accused was always present at executions in the capacity of a witness (R 723). The witness saw the accused proceeding to executions in 1941 only (R 724). He never saw or heard that the accused beat 250 Russian inmates on one occasion (R 722). The accused gave cigarettes and food to many inmates (R 721). On one occasion after the inmates had been waiting on the roll call square because of a heavy fog, the accused ordered the inmates to return to their quarters which provoked an argument with SS Sergeant Schirner who had ordered the inmates to remain on the roll call square until the fog lifted (R 727). The inmates, whom the



witness know, had a good opinion of the accused. When he was transferred to subcamp Dresden, the majority of the inmates tried to be transferred with him in order to be in his work detail (R 725, 729). This testimony was corroborated in part in the unsworn pretrial statement of Ziehner (R 755; D-Ex 24A).

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

Petitions: No Petition for Review nor Petition for Clemency was filed.

Recommendation: That the findings and sentence be approved.

8. Friedrich BECKER

Nationality:	German
Age:	40
Civilian Status:	Construction expert
Party Status:	Nazi Party since 1937
Military Status:	Waffen SS, Sergeant
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was an SS sergeant at Flossenbury Concentration Camp from 3 February 1941 until the evacuation on 20 April 1945 (R 460; P-Exs 19, 20). During his period of duty at Flossenburg, the accused served as a clerk in the political department, from January until November 1942, as a clerk in the protective custody camp administration, from November 1942 until June 1944, and as chief of the labor allocation and commitment office, from June 1944 until the evacuation (R 45, 188, 213, 859, 265, 345, 497, 532, 656).

Witness Oberwallner testified that at least on 20 different occasions he saw the accused proceeding along toward the court in the rear of the arrest bunker, armed with a small calibre automatic rifle with a silencer attached (R 192, 193, 204); that individual executions were carried out there by rifle shots into the nape of the neck (R 203, 208); that he saw the victims with wounds inflicted by small calibre rifle, but did not see



any of the executions (R 211); that he heard a telephone conversation wherein the accused informed Fritsche that he was going to carry out an execution (R 201, 202); and that he heard that the accused had mistreated several Russian officers in the political department (R 202).

Witness Michalowiczi, an inmate of Flossenburg, testified that in the forenoon, sometime in March 1945, the accused came to the kitchen and saw a Polish Jew inmate eating potatoes; that he beat the Polish Jew on the head with a stick and trampled him to death; and that the victim's body was carried to the cromatory (R 298-305). He further testified that he was beaten several times by the accused because he was not peeling the potatoes well and that the accused beat many other inmates whom he caught talking or saw neglecting their potato peeling (R 299, 302, 303).

Krzywanowski, an inmate at Flossenburg from January until April 1945, testified that he was quartered in block 11 from which inmates were sent out on transports; that the accused came to the block frequently and beat inmates with his hand and kicked them (R 370, 372, 377-379); that, on one occasion when 100 inmates had lined up in front of the block for shipment, an inmate ran back to the barracks to pick up his bread ration and, as he came out, the accused shot him; that with three other inmates, he carried the victim's body to the washroom; and that the next morning the corpse was carried away by the disposal detail (R 370, 371, 374-377, 380-382).

Witness Goltz testified that he knew the accused as chief of the labor commitment office (R 45) and that it was his duty to send worthless inmates to other camps and to send inmates from the main camp to subcamps. These inmates were placed in numbered categories according to their physical condition, Nos. 1 and 2 being those in the best condition and No. 3 being those capable of only light work. The numbers above three were not capable of any work (R 45, 46). In the winter of 1944-1945 the accused received an order from Berlin to send 150 strong men to a subcamp. He went to accused Dr. SCHMITZ and asked him to procure 150 inmates from categories Nos. 1 and 2. SCHMITZ informed the accused that there were not that many inmates in that good condition in Flossenburg and advised the accused to notify



Berlin of that fact. The accused and Dr. SCHMITZ composed a convoy of 150 inmates without regard to category. The commander of the camp discovered that 20 to 30 of these were unfit for heavy work, but accused SCHMITZ insisted that they were not ill and the convoy was dispatched to a subcamp where the heaviest work was demanded of them (R 46, 47, 52-60).

The above testimony was strongly corroborated by witnesses Gautsch and Kuefner, and to some degree by accused SCHMITZ (R 264, 265, 285, 296, 345-348, 357, 358, 361, 590, 592, 176; P-Ex 9A, p. 5).

Witness Kirsch testified that in July 1942 he was interrogated by the accused with a group of 15 other inmates; that the accused forced the witness to bend over a table and receive five or six blows with a stick and a punch in the face; and that all of the 15 inmates received beatings which caused them to bleed from the nose and mouth and from which they received blackened eyes (R 212-214, 216, 217).

Evidence for Defense: The accused testified that during his service at Flossenburg he never carried any rifle equipped with a silencer; that he never participated in any executions (R 870-872); and that he never had any conversation with SS Captain Fritsche to the effect that he was going to the execution place (R 869-871). He testified further that he never beat any inmates during interrogations; that he did not use an oxwhip to extort confessions (R 872, 888); and that he never kicked or beat any inmate with a stick or other instrument (R 872, 877). He admitted slapping inmates on three occasions but never to the extent that any of them bled or required hospitalization (R 877, 888). He testified that witness Kirsch testified against him out of revenge (R 876, 877); that he had not beaten a Polish inmate to death with a stick at the potato peeling detail (R 866, 867); that he had not killed any inmate at Flossenburg; and that he had no connection with, or supervision over, the allocation of labor in subcamp Hersbruck inasmuch as that subcamp had its own labor allocation leader (R 863, 864, 890). He further testified that it was his duty to select



inmates and form the shipments according to orders and instructions of the camp commander; that the doctors determined which categories should go to specified subcamps (R 883, 884, 887); that he could not influence the doctors in their selection of inmates for work; and that he had never attempted to do so. The doctors were responsible for permitting an unfit inmate to be transferred to a subcamp (R 866). He denied that he ever changed the physical category of any inmates to get rid of them or that he had ever said that he knew how to liquidate inmates (R 873, 884). The shipment of inmates was assembled and checked by the post physician, the camp commander and his adjutant (R 861). Inmates were sent to outdetails as a form of punishment only upon the express order of the camp commander or his adjutant (R 886, 887, 896). The accused remembered a shipment of 150 inmates that left Flossenburg in March 1945, but asserted that at that time there were over 10,000 unemployed inmates and it would have been an easy matter to procure 150 men fit for work (R 864, 865). The accused further denied that he ever beat any inmates with a stick during the formation of a labor transport and that any mistreatments occurred in his presence during such formations (R 868). He specifically denied beating a Polish inmate with a stick in March 1945 in the vicinity of block 11 and denied that he ever kicked any of the inmates (R 868). He also denied that he had ever shot an inmate in March 1945 during the formation of a transport. Witness Adam, an SS physician in the inmates' hospital, corroborated the testimony of the accused in part (R 527, 528).

Two brothers, Ludwig and Franz von Krestes-Fischer, testified that they worked in the labor allocation department under the accused (R 462, 470, 485, 486); that they never saw or heard that the accused mistreated inmates or participated in any executions; that they never saw him armed with a rifle or a machine pistol; that they never heard that the accused beat a Polish inmate to death with a stick in front of the kitchen or that he shot any inmate; and that if any such incident



occurred, the witnesses would have heard about it (R 470, 471, 473, 485, 486). Witness Gaertner corroborated this testimony substantially and testified further that, during the time he was in Flossenburg, no executions took place except by public hangings (R 501, 502). He also testified that the accused was a very agreeable contrast to the other SS men at Flossenburg and had always acted correctly toward the inmates (R 497). This testimony was further corroborated by Giesselman who testified that he was acquainted with the accused from 1942 until the evacuation (R 507). Witness Gautech, who was recalled as a defense witness, further corroborated the above testimony (R 589). Witness Paulus, a former SS assistant armorer in Flossenburg, testified that the accused never came to the armory to draw a machine pistol or rifle and that every machine gun at Flossenburg had a silencer attached (R 606). Accused SCHMATZ testified that the accused was in Department II and that all execution details were formed from members of Department III (R 850).

Witness Martin testified that he saw the accused almost daily from 1942 until 1945 (R 532). He testified in behalf of the accused as to incidents related above and, in addition thereto, testified that the accused was an outstanding man compared to the other SS men of Flossenburg; that he was not a beater and not a "trouble shooter"; and that the general opinion among the inmate foremen was that he was a fine man (R 533, 534).

Witness Nouner, an inmate, testified that the accused handled inmates very correctly and that he never heard that the accused served on any execution details (R 546). Witness Kittel testified that the general reputation of the accused among the inmates was good and that no SS man in Flossenburg enjoyed as good a reputation (R 552, 553). Stelzner, an inmate of Flossenburg and an interpreter during interrogations of Russian inmates, testified that the accused was never present at any interrogations of Russians and that he never saw or heard that he had beaten any Russians during interrogations (R 613, 614).

Witness Demmel testified that he never heard that the accused shot



an inmate near block 11 in March 1945 or that he beat an inmate to death with a stick and that he never saw the accused beat or mistreat any inmate at the formation of labor transports (R 543, 544). He also testified that he never heard that the accused participated in executions (R 543). Witness Heinzman, an SS man at Flossenburg, testified that he served with the accused in Department III from 1942 until 1944; that, during this time the accused never served on any execution details (R 559); that he never heard that the accused shot or beat to death a Polish or Russian inmate in March 1945 (R 561). He testified further that he never saw the accused with bloody boots or gloves (R 563). Witness Nichols, an SS sergeant at Flossenburg, testified that he observed the accused daily and that he never saw or heard that he beat, kicked or mistreated any inmates (R 657-660) or that the accused changed the physical categories of inmates in order to have them transferred to a labor shipment (R 657). He further testified that he never heard that the accused shot an inmate near block 11 in March 1945 or that he beat any inmate to death in the same month (R 659). He testified that he never heard that the accused beat 14 to 16 Russian inmates during his interrogations (R 660) and that he never saw the accused with a machine pistol or a rifle (R 658). He further testified that the inmates at Flossenburg had a good opinion of the accused and that he was considered a quiet man with whom one could get along. This testimony was corroborated in part by witnesses Schubert (R 649-654) and Oberbeck (R 637-642).

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

Petitions: No Petition for Review nor Petition for Clemency was filed.

Recommendation: That the findings and the sentence be approved.

V. QUESTIONS OF LAW:

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

2. Application of Parent Case: The Court was required to take

CLASSIFICATION CANCELLED  
BY: [illegible] DATE: [illegible]



cognizance of the decision rendered in the Parent Case, including the findings of the Court therein, that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). All of the convicted accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceedings, in concluding as to them that they not only participated to a substantial degree but that the nature and extent of their participation were such as to warrant the sentences imposed.

3. Double Jeopardy: The accused HECKER and SCHMITZ pleaded in bar to their trial that they were being placed in double jeopardy inasmuch as they had been arraigned previously in the Parent Case which commenced in Dachau, Germany, on 12 June 1946. On 17 December 1946 a nolle prosequi was entered by the prosecution as to these two accused (R 5-15).

While it is doubted that accused war criminals can claim the benefits of the Constitution of the United States, it is not necessary to consider that question herein.

There is considerable authority in Military Law and in American municipal criminal law in support of the view that an accused is not put in jeopardy until the case has proceeded to final judgment, either a conviction or an acquittal.

In the Digest of Opinions of The Judge Advocate General, 1912, page 187, it is stated:

"The Constitution (Art. V of the Amendments) declares that 'no person shall be subjected, for the same offense, to be twice put in jeopardy of life or limb.' The United States courts, in treating the term 'put in jeopardy' as meaning practically tried, held that the 'jeopardy' indicated 'can be interpreted to mean nothing short of the acquittal or conviction of the prisoner and the judgment of the court thereon.' (United States v. Haskell,



4 Wash. C. C., 402, 409. And see United States v. Shoemaker, 2 McLean, 114; United States v. Gilbert, 2 Sumner, 19; United States v. Perez, 9 Wheaton, 579; 1 Op. Atty. Gen., 294.)"

In Winthrop's Military Law and Precedents, second edition, 1920 reprint, pp. 262, 263, it is stated:

"DISCONTINUANCE BEFORE FINDING NOT EQUIVALENT TO ACQUITTAL OR AMOUNTING TO JEOPARDY. It remains to notice the principle, applicable, equally to civil and military cases, that where, instead of a complete trial on the merits, the proceedings are discontinued by some interlocutory action, the accused, though not in fault, is not to be regarded as having been acquitted or put in jeopardy. Thus where an indictment has been duly abated by the entry of a nolle prosequi, or on a motion to quash, demurrer, or other proceedings; or where the trial has been broken off by reason of the death or disability of a juror or the judge, or of the defendant himself; or where by reason of an irreconcilable difference of opinion among the jurors the jury has been discharged -- the defendant has not been legally 'tried' and cannot plead autrefois acquit upon a separate trial for the same offense. So, at military law, neither a mere arraignment, nor an arrest followed by a discharge without trial, nor a service of charges withdrawn or dropped without prosecution, nor a withdrawal of the charges after arraignment or pending the trial, nor a discontinuance of the proceedings, by the order of the convening authority, for any cause before a finding, nor a permanent interruption of the same by reason of war or other exigency, nor a failure of the court to agree upon a finding, followed by a dissolution -- will amount to an acquittal or a 'trial' of the accused."

In the Manual for Courts-Martial, U. S. Army, par. 72, page 57, it is stated:

"A nolle prosequi is not in itself equivalent to an acquittal or to a grant of pardon and is not a ground of objection or of defense in a subsequent trial. It may be entered either before or after arraignment and plea."

However, a holding to the contrary is indicated in "Constitutional Law of the United States", Willoughby, Second Student Edition, p. 472. wherein it is stated:

"It is not necessary, in order that prior jeopardy may be pleaded in bar, that there should have been a former trial and verdict by a jury. This is not the rule uniformly stated, but, as declared by the Supreme Court in Kepner v. United States, 'the weight of authority, as well as decisions of this court, have sanctioned the rule that a person has



been in jeopardy when he is regularly charged with a crime before a tribunal properly organized and competent to try him; certainly so after acquittal."

Thus it appears that the plea of the accused was properly overruled (R 15). If the Court had sustained the plea, it would have applied technical and legalistic methods in ruling on a question which is apparently not well settled in American municipal criminal law. Military Government Courts are required to avoid technical and legalistic viewpoints during their proceedings (Section 5-351, Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947.) There is no allegation nor does it appear from the record that the defense of this case was rendered more difficult by the nolle prosequi of the charges against the accused in the Parent Case and recharging them in a separate case. The defense counsel in his argument on the question in Court did not urge that any injustice resulted to the accused.

In any event the international law of war and not American municipal criminal law is applicable in trial of war crimes cases (In re Yamashita, 66 Supreme Court Reporter 340). The defense has not cited any provisions of international law or any provision in the regulations governing Military Government Courts in the trial of war crimes cases in support of its position. The denial of the plea of double jeopardy worked no hardship on the accused, nor was it inconsistent with a complete and fair hearing under the rules of Military Government Courts.

4. Administrative Determination of Guilt, Shootings, Hangings and Injections:

The evidence discloses that a number of executions took place at Flossenburg Concentration Camp and its subcamps and that accused SCHMITZ, SCHMATZ and BECKER participated in some of them. The executions were carried out by shooting, hanging and injection. In the case of accused SCHMITZ, a color of legality was attempted to be shown by evidence that executions by injection were made upon orders from Berlin to carry out the principle of euthanasia.

While under international law a person who has been found guilty



the execution must be preceded by a proper trial and sentence by a legally constituted court. Moreover, the Geneva Convention specifically prohibits measures of reprisal against prisoners of war (Volume II, Oppenheim, "International Law", Sixth Edition, pages 331, 456, 457; Article 30, Annex to Hague Convention No. IV of 18 October 1907 and Article 2 of the Geneva (Prisoners of War) Convention of 27 July 1929, both set forth in TM 27-251, War Department, U. S. Army, "Treaties Governing Land Warfare", 7 January 1944; Volume 2, Wheaton's "International Law", Seventh Edition, pages 220, 240; and Volume I, page 31, "Law Reports of Trials of War Criminals" by United Nations War Crimes Commission, 1947, hereinafter referred to as "Law Reports".) The United Nations War Crimes Commission in commenting upon the British Almelo Case stated as follows:

"The rule of law on which the decision of the Military Court is based is, therefore, the rule that it is a war crime to kill a captured member of the opposing armed forces or a civilian inhabitant of occupied territory, suspect of espionage or war treason, unless their guilt has been established by a court of law" (Law Reports, Volume I, page 44).

It is irrelevant that the executions may have been legitimate in the eyes of German jurists and that no violation of domestic law resulted (Law Reports, Volume I, page 54). Similarly, it is stated in "International Military Tribunal, Nuremberg", Volume I, page 223:

"On the other hand the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorizing action moves outside its competence under international law."

Regardless of the preceding considerations, the defense failed to meet its burden of going forward with the evidence to establish that the killings were justifiable. While not applicable as such to war crimes trials, the rule as to affirmative defenses in homicide cases in American municipal criminal law has been stated as follows:

"Generally, in criminal cases as in civil cases the burden of proving affirmative defenses rests upon the defendant at all times. Accordingly, after the state has made out its case by evidence, in a prosecution for homicide, the accused must assume the burden of establishing circumstances of justification, excuse, or mitigation. The prosecution being entitled to the benefit of



the presumption of an intent to take life, where a person has been killed by the infliction of a wound or by some other means calculated to produce death, the accused must assume the burden of proving that there was no intent to take life or that the killing was justifiable or excusable, or, at least, of raising a reasonable doubt in his favor. In order for the accused to overcome the inference or presumption of malice arising from proof of the intentional use of a deadly weapon in committing a homicide, he must prove circumstances of extenuation or excuse, unless such facts appear in the evidence produced by the prosecution. It is generally agreed that the accused is not under any obligation to introduce evidence to show mitigation, justification, or excuse if the proof on the part of the prosecution shows it" (26 American Jurisprudence 352).

This mass atrocity involved thousands of concentration camp inmates. Hundreds of the inmates daily were subjected to beatings, tortures, starvation and other abuses and indignities. Killings by various methods were numerous and were common occurrences. It is quite improbable that any of those who were in the camp a few days could have believed that any of the beatings or killings were legitimate. It must have been apparent to them that the entire operation was contrary to universally accepted standards of human conduct. Under such circumstances it is all the more appropriate that the burden be on the defense to go forward with the evidence to establish that the beatings and the killings in general or in particular were justifiable.

Thus it appears (1) that the shootings, hangings and injections following administrative determination of guilt were illegal; (2) that the defense failed to meet its burden of going forward with the evidence to establish that such executions were legal; and (3) that none of the accused believed they were legal.

5. Insanity: Accused SCHMITZ, with the permission of the Court, changed his plea of not guilty to a plea of not guilty by reason of insanity (R 746). The accused based his plea on evidence that he had been suffering from maniacal depressive insanity and had been sterilized by order of the Eugenics Court of Appeals, 11 February 1942 (R 570; D-Ex 4A). The expert witnesses produced by the accused failed to state unqualifiedly that the accused was insane at the time of the commission of the acts charged. One of the experts, Dr Knab, stated that it was his opinion



that the accused is presently insane and is not mentally responsible for his actions (R 585). However, two other experts who testified on behalf of the accused stated that he is not insane at the present time (R 674, 675, 695, 698). An American Army psychiatrist testified that the accused is presently sane and was sane at the time of the acts alleged (R 781, 789, 742; P-Ex 23). The question of fact as to the accused's mental condition was a question to be determined by the Court. In view of the evidence produced, the Court was justified in making its special finding to the effect that the accused was not insane at the time of the commission of the alleged offenses and was not insane at the time of the trial (R 928).

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

LOUIS F. REMSON  
Major FA  
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