

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

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1914

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UNITED STATES)

v.)

Franz AUER, et al.)

Case No. 000-50-136

REVIEW AND RECOMMENDATIONS
OF THE ACTING DEPUTY JUDGE ADVOCATE
FOR WAR CRIMES

*

1 February 1946

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I N D E X

<u>Section</u>	<u>Page</u>
I. TRIAL	1
II. CHARGE AND PARTICULARS	1
III. FINDINGS AND SENTENCES	2
IV. GENERAL STATEMENT OF EVIDENCE	2
A. For Prosecution	2
1. Housing	5
2. Clothing	5
3. Food	5
4. Working Conditions	6
5. Killings and Mistreatment	7
6. Medical Treatment	12
7. Dental Experiments	14
8. Invalid Transports	14
9. Evacuation Transports	15
10. Death Rates	16
B. For Defense	17
1. Housing	17
2. Food	17
3. Working Conditions	17
4. Killings and Mistreatment	18
5. Medical Treatment	18
6. Dental Experiments	18
7. Evacuation Transports	18
V. QUESTIONS OF LAW	19
A. Jurisdiction	19
1. Common Design as a Separate Substantive Offense	19
2. Universality of Jurisdiction Over War Crimes	20

<u>Section</u>	<u>Page</u>
B. Legal Sufficiency of Charge and Particulars	21
C. Severance	22
D. Best Evidence Rule	22
E. Motion for Findings of Not Guilty	23
F. Conduct of Trial	23
VI. EVIDENCE AND RECOMMENDATIONS	24
1. FRANZ AUER	24
2. KARL BACHMANN	26
3. WILHELM BAYHA ✓	26
4. HEINRICH ENGELHARDT ✓	26
5. ERIKA FLOCKEN	29
6. KARL GICKELEITER ✓	35
7. HERMANN GIESLER ✓	36
8. DANIEL GOTTSCHLING	42
9. WILHELM GRIESINGER ✓	44
10. WILHELM JERGAS ✓	46
11. ANTON OSTERMANN	48
12. JAKOB SCHMIDBERGER	48
13. HERBERT SPAETH ✓	49
14. OTTO SPERLING ✓	51
VII. CONCLUSIONS	53

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U N I T E D S T A T E S)

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Case No. 000-50-136

Franz AUER, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL: The accused were tried at Dachau, Germany, during the period 1 April 1947 to 13 May 1947, before a General Military Government Court, comprised of eight members, appointed by paragraph 11, Special Orders No. 1, Headquarters, European Command, 15 March 1947. Lieutenant Colonel Dickey, a member of the Court, was excused because of illness and hospitalization on 12 May 1947 and did not participate in the findings or sentences of the Court (R 1476, 1581, 1594).

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Franz AUER, Karl BACHMANN, Wilhelm BAYRA, Heinrich ENGELHARDT, Reika FLOCKEN, Karl GICKELEITER, Hermann GIESLER, Daniel GOTTSCHLING, Wilhelm GRIESINGER, Wilhelm JERGAS, Anton OSTERMANN, Jakob SCHMIDBERGER, Herbert SPAETH, Otto SPERLING and divers others persons, German nationals or persons acting with German nationals, during various periods between the 1st of September, 1939, and the 8th of May, 1945, at or near the vicinity of Muehldorf, Germany, wrongfully and unlawfully acting in pursuance of a common design, did encourage, aid, abet, and participate in the operation of Concentration Camp Muehldorf and its sub-camps and out-details, which operation included the wrongful and unlawful subjection of Poles, Frenchmen, Greeks, Yugoslavs, citizens of the Soviet Union, Belgians, citizens of the Netherlands, stateless persons, Czechs 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 many thousands.

(The surname of accused GOTTSCHLING is actually spelled GUTTSCHLING, P. Ex 2c, R 105).

All of the accused pleaded not guilty to both the charge and particulars (R 9, 10).

III. FINDINGS AND SENTENCES: The Court announced the following findings and sentences as to the accused (R 1581-1583, 1594-1596). (The numbers preceding the names are those used in the trial for the respective accused. These numbers will be used hereinafter to facilitate reference to the various accused.)

<u>ACCUSED</u>	<u>PLEAS</u>	<u>FINDINGS</u>	<u>SENTENCES</u>
1. AUER, Franz	NG	G	Death by hanging
2. BACHMANN, Karl	NG	NG	
✓ 3. BAYHA, Wilhelm	NG	G	10 years, commencing 13 May 1947
✓ 4. ENGELHARDT, Heinrich	NG	G	Life imprisonment
5. FLOCKEN, Erika	NG	G	Death by hanging
✓ 6. GICKELEITER, Karl	NG	G	20 years, commencing 13 May 1947
✓ 7. GIESLER, Hermann	NG	G	Life imprisonment
✓ 8. GOTTSCHLING, Daniel	NG	G	15 years, commencing 13 May 1947
✓ 9. GRIESINGER, Wilhelm	NG	G	20 years, commencing 13 May 1947 (See certificate attached to commitment which corrected typographical error of sentence in the record at page 1596)
✓ 10. JERGAS, Wilhelm	NG	G	Death by hanging
11. OSTERMANN, Anton	NG	NG	
12. SCHMIDBERGER, Jakob	NG	G	20 years, commencing 13 May 1947
✓ 13. SPAETH, Herbert	NG	G	Death by hanging
✓ 14. SPERLING, Otto	NG	G	Death by hanging

accused Karl BACHMANN was acquitted at the close of the prosecution's case (R 385).

IV. GENERAL STATEMENT OF EVIDENCE:

A. For Prosecution:

Prior to June 1944, Reichsführer Adolf Hitler discussed with accused No. 7 the construction at Muehldorf, Germany, of an underground factory, supposedly for some use in connection with the assembly or

manufacture of airplanes (R 1392, 1393; P-Ex 12, pp. 2, 3, R 43; P-Ex 14, p. 1, R 44). Following the conference a governmental agency, known as the Organization Todt, was assigned the responsibility for the construction project (P-Ex 14, p. 1, R 44). According to "International Military Tribunal, Nuremberg", Volume I, pages 330, 332, Organization Todt was originally headed by Fritz Todt. After his death Albert Speer, in addition to other duties assigned to him by Hitler, headed the organization. It utilized forced labor and principally functioned in occupied areas on such projects as the Atlantic Wall and the construction of military highways. Organization Todt discharged its responsibilities in connection with this construction project through a branch office designated as Task Force 6, Munich, sometimes known as Task Group 6, which branch is hereinafter referred to as "OT"; the headquarters of Organization Todt, Berlin, and other agencies thereof will be referred to specifically. OT was assigned the function of supplying the Muehldorf construction with required material and aiding in the planning thereof. Near the outset of the project accused No. 7 became the director of OT (R 1394-1397; P-Ex 14, pp. 1, 2, R 44). OT at all times remained a planning, supervisory, and enforcement agency for the construction project (R 1395-1397; P-Ex 14, p. 2, R 44). OT subcontracted the construction with various firms. Among these was Polensky and Zellner, a corporation, hereinafter referred to as "PZ", one of the larger construction contractors in Germany (R 121, 122; P-Ex 3, pp. 3, 4, R 52; P-Ex 13, R 48; P-Ex 39, R 118).

OT agreed in its contracts with the subcontractors to furnish materials, payment for which would be deducted from the over-all contract price (P-Ex 12, p. 4, R 43; P-Ex 13, R 48). It was contemplated that the work crews on this project would include inmates of Muehldorf Concentration Camp, which OT was to secure through the SS in its operation of the Dachau Concentration Camp system and its various subcamps, a principal one being Muehldorf (P-Ex 12, pp. 4, 5, R 43; P-Ex 3, pp. 5, 8, R 52). OT was contractually responsible for housing, food, medical supplies, and

medical treatment for all workers, including inmates, engaged in any aspect of the project (R 77, 91; P-Ex 27, pp. 2, 3, R 106; P-Ex 14, pp. 2-4, R 44).

The Muehldorf Concentration Camp derived its name from the nearby city of Muehldorf. It was also known as M I Lager and as Mettenheim. The construction site was in the immediate vicinity of the camp. In the Muehldorf area, there were four additional camps forming a part of the Dachau Concentration Camp system which the evidence as a whole demonstrates were administered almost exclusively through Muehldorf Concentration Camp⁷. These were (1) Waldlager V and VI, also referred to as the Forest Camp; (2) Mittergars Lager, also known as Cone Lager; (3) Thalheim Lager, sometimes spelled Thalham; and (4) Gendorf Lager. These camps are hereinafter referred to as "Waldlager", "Mittergars", "Thalheim", and "Gendorf", respectively. These camps were located in the Muehldorf Landkreis and in the Alt Otting Landkreis.

Muehldorf was located near Mettenheim, being between the city of Muehldorf and Ampfing, having an inmate population of 2500 to 3000. Waldlager had between 1500 and 2000 inmates. Mittergars was located outside the town of Mittergars and had between 200 and 300 inmates. Thalheim was a very small camp having only about 100 civilian inmates and a few prisoner of war inmates, located near the town of Thalheim. Gendorf was located near Burgkirchen. It also was very small and does not figure prominently in this case (P-Ex 2, pp. 3, 5, R 50).

This group of five camps is hereinafter referred to as the "Muehldorf Ring". Approximately 8300 inmates were confined in the Muehldorf Ring during the period July 1944 to April 1945 (P-Ex 20, R 62). The inmates were comprised of Hungarian, Polish, Greek, Czech, Yugoslav, Lithuanian, Italian, Dutch, French and Russian nationals. Some of the Russian, Polish and Italian inmates were prisoners of war (R 557, 612; P-Ex 56, p. 10, R 797). There were about 750 female inmates in Muehldorf and Waldlager (P-Ex 8, pp. 3, 4; LB 8 of P-Ex 8; R 33).

All the camps were administered by the SS, who furnished camp security

1. Housing. Inmates lived in overcrowded, filthy and unhealthful billets. From September 1944 to January 1945, in Waldlager, inmates slept on the floor, had no heat, and ventilation was supplied through small holes in the roof. Each hut had only one small opening in the door. Lice abounded. Straw was provided but never changed, and became mildewed and wet. Until December 1944 inmates had no blankets. In January 1945 the inmates of Waldlager were moved into huts which were heated by small wood stoves. Fuel was scarce. The inmates provided some by stealing and begging (P-Ex 56, pp. 4-6, R 797; P-Ex 3, pp. 13, 16, R 52; P-Exs 46, 47, R 198). The same general conditions prevailed in Muehldorf, the main camp, and in Mittergars and Thalheim (R 169, 194, 247, 522, 523, 757; P-Ex 65, p. 2, R 861; P-Ex 68, p. 2, R 878).

2. Clothing. The standard clothing issue for the inmates consisted of thin jacket, striped trousers, cap, shirt, pair of shorts, pair of socks or foot rags, and wooden shoes (R 248, 449). Overcoats were not issued until the end of November 1944 (P-Ex 56, p. 6, R 797). The wooden shoes offered inadequate protection against the cold weather and many inmates lost toes through amputations resulting from frostbite (P-Ex 56, p. 8, R 797; P-Ex 66, p. 6, R 862). The improperly fitting wooden shoes often caused blisters, which sometimes became infected and abscessed (R 174, 175, 248). In the winter of 1944-1945, many inmates went to work details bare-footed because of a lack of shoes (R 247, 248).

3. Food. OT assumed primary responsibility for the procurement and distribution of food for OT personnel and the concentration camp inmates (P-Ex 14, p. 2, R 44). Camp administration personnel requisitioned rations from OT based on strength reports furnished by the camp clerks (P-Ex 22, p. 2, R 67). Food provided for the inmates was issued to the SS personnel by order of the camp commander (P-Ex 26, p. 1, R 105). The inmate ration was extremely inadequate considering their type of work. A witness, a former lieutenant of the Polish army, stated that a normal day's food was as follows:

breakfast, 200 grams of bread and coffee; lunch, three fourths liter of soup, which was virtually water; supper, one half liter of soup, usually made of cabbage or weeds, and three or four potatoes, uncleaned, of which usually only one was edible (P-Ex 65, p. 2, R 861). Former inmate physicians testified that the inmates received no more than 1000 calories daily and variously implied that they should have received from 3000 to 5000 calories daily for the type of work they were forced to do (P-Ex 56, p. 7, R 797; P-Ex 66, p. 4, R 862). Sick inmates received a smaller ration than the others (P-Ex 56, p. 7, R 797). Some estimates on the number of calories received daily by the inmates were as low as 400 and 500 (P-Ex 66, p. 4, R 862; P-Ex 68, p. 3, R 878). In Waldlager, in August 1944, there was no drinking water. Water for kitchen purposes was brought in large casks. Inmates caught the drippings in cups (R 173, 174). There was much stealing and begging food. One witness, a local farmer, testified that he gave potatoes to the inmates until their guards threatened him with punishment for doing so. When an inmate was caught with extra food on his person it was taken from him (R 537). Many of the inmates eked out what little food they had by rummaging in the garbage cans. Hunger was universal. Inmates of all categories were forced to theft and to the use of all possible means to get additional food (R 546). In the beginning of 1945 the condition of all the inmates was disastrous. Inmates often broke down. The legs of most of them were swollen. In many instances inmates lost weight and looked like skeletons. In other instances, their bodies became swollen. Fifteen year old boys looked like 50 year old men or pregnant women. Their bellies and sex organs were swollen and distended (R 545, 546; P-Ex 44, R 181).

4. Working Conditions. At the main construction site, inmates ranging in age from 14 to 60 were required to carry 50 kilogram sacks of cement from a railroad siding to the mixing machines. During a routine day each man carried 100 to 120 sacks of cement up a 30 to 40 percent incline for distances varying from 40 to 300 steps. At the commencement of the construction project, inmates worked 12 hours a day with one hour

off at noon, 15 minutes for breakfast, and 15 minutes for "tea" in the afternoon. Inmates were continually beaten in order to hurry them in their work. Many collapsed while working. Young children were frequently beaten by the OT roving guards (the function of these so-called OT roving guards was to assure that the utmost labor was obtained from each inmate irrespective of all considerations) for being unable to carry the cement loads and for sitting down, exhausted (R 249, 250).

There were no washing facilities. The cement dust hung over everything. There were no safety precautions at the main construction site. Accidents occurred frequently. Ladders often collapsed. One inmate testified that he fell from a scaffolding, a distance of eight meters. Many of the inmates died from construction work accidents (R 249, 251).

A female inmate testified that she and 13 other women were forced to work at the main construction site for a period of six weeks. There were 14 year old girls on this detail. Their work consisted of pressing cement into place (R 337-340). As a punishment a 17 year old Hungarian Jewess was ordered to carry cement to the mixers until she died. However, the evidence does not show whether or not the order was executed (R 562, 563). It was in the financial interest of the contractors to complete the job in the shortest possible time (P-Ex 27, p. 3, R 106).

A defense witness testified that overworked and undernourished inmates worked at the main construction site (R 1190, 1191).

5. Killings and Mistreatment. Killings and mistreatments of the inmates in the Muchldorf Ring took many forms, the chief cause of death being overwork combined with a starvation diet. Many bodies showed evidence that the inmates had been shot to death. A lesser cause, although a frequent one, was beatings with spade handles, clubs, sticks, leather whips, rubber hoses and "billies". A common form of punishment was imprisonment in an underground cell, commonly called the "bunker" (P-Ex 29, p. 3, R 107; P-Ex 56, pp. 5, 6, R 797; P-Ex 63, pp. 2, 3, R 837; P-Ex 64, p. 2, R 860).

The cement carrying detail was the most arduous one at the main

construction site. This detail carried sacks of cement, each weighing 50 kilograms, for distances varying from 40 to 300 steps, up a 30 to 40 percent incline. There was cement dust in the air at all times, and 20 to 30 inmates died monthly from lung conditions directly attributable to it (R 249, 250; P-Ex 29, pp. 2, 3, R 107; P-Ex 56, pp. 8, 9, R 797). The usual working day was approximately 12 hours. This did not include the time consumed in walking to and from work, a distance of approximately four kilometers each way (R 780-782; P-Ex 29, p. 3, R 107). Among other inmates, Russian prisoners of war worked in the cement carrying details (P-Ex 27, p. 4, R 106). Inmates 14 to 16 years old were also used to carry cement (R 190, 191, 250, 758; P-Ex 29, p. 4, R 107).

Some women were forced to carry cement at the main construction site under the same conditions as the male inmates. This occurred when there was a shortage of men and once, in March 1945, as punishment (R 563, 647; P-Ex 64, p. 2, R 860; P-Ex 65, p. 3, R 861). Beatings at the main construction site, and particularly in the cement carrying detail, were frequent. The inmates were beaten with sticks, shovels, and miscellaneous objects (R 250; P-Ex 29, p. 3, R 107). The PZ men, who worked in a cement carrying detail on the south side of the construction site, beat the inmates carrying cement in order to hurry the work. The SS guards occasionally beat inmates in cement carrying details (P-Ex 29, p. 5, R 107). The OT men beat the inmates at the construction site and the SS men beat them in the camps. Both groups often used rubber hoses approximately one meter long. One type of rubber hose used contained heavy wire through the center and another type had an iron or steel core (P-Ex 63, pp. 2, 3, R 837).

According to a former inmate physician, he worked in a cement carrying detail for three weeks. He was beaten daily by SS men, OT roving guards and capos. Almost all of the inmates working on the cement carrying details were beaten. Later, this same witness was employed as a physician at the main construction site and treated many inmates who had been seriously injured by such beatings. The injuries included fractured skulls and broken arms. Approximately 1800 inmates died as a result of such mis-

treatment, overwork and starvation. Very often sick inmates with high fever were ordered to work. The witness had orders to treat inmates only for accidents which occurred on the job and not for sickness (P-Ex 64, pp. 2, 3, R 860).

Another witness testified that, while working at the main construction site, he and other inmates were beaten by OT roving guards in order to get the work done faster because the work commitment leader was due to make an inspection (R 542). He also observed foremen employed by PZ beating inmates (R 544). Inmates were beaten very frequently. In November and December 1944, 6 to 12 inmates died daily from overwork and starvation. Almost everybody who carried cement eventually died (P-Ex 56, p. 9, R 797).

About Christmas 1944, 400 healthy French and Italian inmates came to Muehldorf. At a meeting of all the capos, the camp commander told them that these inmates were to carry cement until they died. Accordingly, most of these inmates were put to work at the main construction site carrying cement. About two months after they arrived, three of the Italians in this group attempted an escape but were recaptured. As punishment, all of the remaining Italians and Frenchmen were forced to work on both day and night shifts of the cement carrying details. Within three months after their arrival, almost all of them were dead (R 612-615).

When two Belgian brothers came to the Muehldorf Ring in August 1944, they were put to work at the main construction site carrying cement. Approximately three months later, the elder brother was brought back to camp in a severely beaten condition. The other brother died about two months later. The death records show that these brothers died on 30 November 1944 and 24 January 1945, respectively. These two inmates, who had been in the diamond trade in Antwerp, Belgium, were listed as laborers in the death records (R 470, 471, 478, 489).

In Mittergars, inmates performed manual labor from 12 to 13 hours daily, seven days a week. They constructed roads and barracks in the Muehldorf Ring. The inmates were so weak that only about half of them could walk from one camp building to another. Their bodies were covered

with sores. They suffered from diarrhea, tuberculosis, pneumonia, pleurisy, ulcers and other diseases as a result of overwork and malnutrition (P-Ex 68, p. 3, R 878).

At Thalheim, the SS and OT roving guards severely mistreated Polish inmates who worked on details carrying rocks up an incline. Inmates were frequently beaten by the OT roving guards when they believed the inmates were working too slowly (R 499, 500, 509, 652, 746). On one detail at Thalheim, a Hungarian Jew was beaten to death by two OT roving guards with rifle butts, for failing to remove logs from a ditch (R 510). About the middle of March 1945, an inmate who attempted to steal or beg food was, upon return to his detail, shot and killed by a guard. The shots entered the chest and shoulder. His body was exhibited to the inmates as an object lesson for those who might attempt to escape (R 251-253).

A former inmate physician testified that inmates brought to the hospital where he was working had head wounds, injuries to their backs and, in one or two cases, broken bones, indicating beatings and mistreatments. Some died before removal from the stretchers (R 177). Many dead inmates brought to the hospital had gunshot wounds. One inmate was shot for stealing a leaf of tobacco and another, a Russian, was shot for stealing a few potatoes (R 178, 182).

There was a camp prison, commonly called the "bunker", at Waldlager. It was a damp hole in the ground covered with wood and earth. It was one and one-half meters wide, two to three meters deep, and about four meters long. Sometimes as many as 20 inmates were placed in this camp prison at one time. Some inmates were incarcerated therein for four days with nothing to eat or drink during that time. There were no lights or toilet facilities therein. Inmates confined there for one day or more became sick. On one occasion when four inmates were confined therein, three of them died. Being placed in the camp prison for punishment was often accompanied by a severe beating with a rubber hose filled with wire and lead (P-Ex 56, pp. 5, 6, R 797).

Roll calls were usually of one hour duration, but sometimes as long as four. They were held ordinarily at 0430 hours and in all kinds of weather, even during the bitter cold. There were also evening roll calls. During these formations SS men frequently beat and otherwise mistreated the inmates. Sometimes the inmates received 25 blows. Usually about 40 to 50 inmates were beaten at each roll call formation. The beatings were allegedly given at these formations for uncleanliness, for attempting to get on an easier detail, etc. Eight to ten inmates died each month from beatings given at roll call formations in Waldlager (P-Ex 56, pp. 7, 8, R 797).

Inmates suffered intensely from frostbite. Because of such ailments inmate doctors amputated toes, feet and legs of over 100 inmates. About 20 percent of the amputees died from blood poisoning (P-Ex 56, p. 8, R 797). On one occasion in Waldlager, about 120 to 130 inmates had typhus. Of the entire inmate population of Waldlager, 80 percent became sick and about 600 inmates or 55 percent of the total died between September 1944 and May 1945. The seriously ill inmates were often sent to Muehldorf and about 90 percent of them died. Many sick inmates were sent from Muehldorf to Auschwitz Concentration Camp to be gassed (P-Ex 56, p. 9, R 797).

A witness testified that on many occasions he carried beaten inmates back to camp. At least five of these inmates died. One was a Pole who was beaten to death by an OT roving guard with a club one meter long. When he collapsed the OT men kicked him. This occurred shortly before Easter of 1945 (P-Ex 65, P. 4, R 861).

In June 1945, a United States Army pathologist examined three large mass graves near Waldlager, where he found the nude, largely decomposed bodies of 2249 inmates. One group of seven was examined. Their heads were completely smashed. Out of six bodies later examined, four had bullet wounds. All the bodies he examined showed evidence of severe beatings (P-Ex 4, pp. 1-5, R 28). Six to twelve inmates died daily at Waldlager and were buried in this mass grave (P-Ex 66, p. 7, R 862). A'

Polish inmate driver in Waldlager helped carry dead bodies to the mass graves. He received 11 to 13 bodies daily from Muehldorf, of which eight or nine had died of hunger. The others had been beaten or shot to death (R 764-768). Another mass grave, containing 38 bodies, was found at Mittergars. Identification of the bodies revealed that they were those of Hungarian, French and Lithuanian inmates. The bodies of 14 inmates were discovered in the woods near the camp. All showed evidence of having been shot in the head. Fowling burns indicated that the firing was done at close range (P-Ex 68, pp. 3-5, R 878).

6. Medical Treatment. OT was responsible for furnishing medical supplies to camps in the Muehldorf Ring (R 74-77, 91). Only small amounts of medical supplies were made available for the inmates. One witness stated in his Statement that no medical supplies were furnished for the inmates at the main construction site during December 1944, January and the first half of February 1945 (P-Ex 64, p. 4, R 860). The small amounts of medical supplies furnished for the inmates frequently never reached them. Although the SS had their own medical supply channels, they requisitioned medical supplies ostensibly for the inmates, but converted them to their own use (R 97). There was evidence indicating that in Waldlager, for the greater part of its existence, the hospital had only one scissors, one knife, and one forceps. For periods of eight to ten days, there was no gauze. Consequently, paper from the cement sacks was used in lieu thereof (P-Ex 56, p. 3, R 797). Conditions in the hospital were very unsanitary (R 285). There were never enough blankets. Those available were never cleaned, but passed on from one patient to another. Frequently, there was only one blanket for two or three patients. Inmates in the hospital received even less food than others (R 286).

One witness, a former inmate physician, testified that a selection of hospital workers was made by accused No. 5. Although there were many inmates who were qualified as physicians, she selected two non-medical men to be in charge of the hospital. One was a barber and the other a former government official. Both attempted to administer medical treatment to

the inmates. Although he had practiced medicine from 1926 and was a former county physician, the witness was assigned as a male nurse (R 166, 170, 171).

The invalid blocks at Muehldorf had a terrible odor. The patients seemed more like skeletons than living men. They were lying on plain boards without any clothing, except for ragged shirts. Because the patients had to go a considerable distance to relieve themselves and because many of them were unable to walk, they frequently relieved themselves in the room (R 404). In a convalescent block two inmates were assigned to each single bed (R 549; P-Ex 47, R 198). Dysentery was rife at Muehldorf. Within a few days after arrival at the camp, all inmates had dysentery. There were no medicines to treat it (R 562). In the invalid block at Muehldorf, the inmates received very little food. On one occasion a 17 year old inmate, unable to leave his bed, went without food for three days (R 570, 571). In the same block, dead inmates lay amongst the living (R 571).

At Waldlager, in November 1944, a requisition was made for typhus serum, but none was received. Many inmates came to Waldlager from Dachau Concentration Camp in November 1944. Some of them had typhus. At that time a little typhus serum was obtained and injections were given to those inmates who remained in Waldlager. The SS personnel there received typhus injections. Members of the details to the main construction site never received typhus serum injections (R 189).

There was a typhus epidemic in Muehldorf about the end of February 1945. The sick patients were placed in the hospital with no attempt to isolate them from the other patients (R 548). In March 1945, there were deaths every day from the disease in the hospital at Muehldorf (R 460). Although there was typhus serum in the OT medical supply depot, none was ever administered to inmates (R 78, 79, 548).

In October 1944, the OT supply depot in Schwindegg contained supplies of medicines, surgical instruments, etc., enough to supply many camps for one year (R 212, 213). Two days before the American forces liberated Muehldorf, the hospital was furnished with enough medical supplies, instrum-

ents, operating tables, and other medical equipment of the most modern kind, to outfit a sizeable hospital (P-Ex 56, p. 4, R 797). Large quantities of typhus serum, gauze, and other medicines were found in the OT medical supply depot when the American forces reached Schwindegg (R 89). An American pathologist examined this warehouse in June 1945 and found large amounts of medical supplies, including surgical instruments and typhus serum. There was enough serum to initially inoculate 600,000 people against typhus (P-Ex 4, p. 11, R 28).

In October 1944 an inmate of Muehldorf was operated upon in the hospital for an ulcer on her arm without an anaesthetic being administered. She acquired an infection and remained in the hospital for four months (R 351-354).

7. Dental Experiments. In the third week of March 1945 a Muehldorf headquarters announcement required all inmates with any dental disease to report to the dispensary after working hours. A roster was made of those reporting and several days later they were given injections. There was some evidence indicating that the doses varied with different inmates, but the effects were the same; that the inmates suffered fever, dizziness and a general illness; and that some deaths occurred (R 550, 551, 556).

8. Invalid Transports. Invalid transports were media of exterminating inmates who were too sick to work. In Waldlager, sick inmates were ordered out of bed naked. As they were selected for an invalid transport by a doctor, their numbers were marked down by a clerk. In the ward for diarrhea cases the doctor told the clerk, "Mark down all of them." The selected inmates were transferred to Muehldorf the next day. Those able to walk went by foot, those too sick to walk were moved by ox cart, and a few days later they were sent to Auschwitz Concentration Camp (R 183-185).

It was stipulated by counsel for prosecution and defense that inmates were exterminated at Auschwitz Concentration Camp (R 168). It was common knowledge at Muehldorf that the invalid transports were to be sent to the gas chambers at Auschwitz Concentration Camp and statements made by guards who accompanied the transports were to the effect that the inmates thereon

"would never be seen again" (R 254; P-Ex 8, p. 2, R 33).

There were at least two transports to Auschwitz consisting of approximately 250 and 580 inmates, respectively, selected by the foregoing method, which left Muehldorf on about 25 September and 25 October 1944 (P-Ex 8, pp. 1-3, R 33). However, accused No. 13 stated in his Statement that the October transport to Auschwitz consisted of about 1600 inmates (P-Ex 22, p. 4, R 67). A third transport of from 1200 to 1300 sick inmates was sent from Muehldorf to Kaufering, which was in the Dachau Concentration Camp system. The inmates were placed in box cars which were locked until arrival at Kaufering (R 761, 762). No water or food was provided for the trip, except about 150 grams of bread for each person. After the trip, which required several days, 100 to 150 dead were found in the box cars. About 600 more died from malnutrition or disease within the next few days. Evidence of cannibalism was found. All of the surviving inmates were ill in varying degrees (R 750; P-Ex 9, pp. 2, 3, R 37).

9. Evacuation Transports. On 25 April 1945, an evacuation transport of about 3000 inmates left the Muehldorf Ring. Each inmate received food for one day, but no drinking water was provided (P-Ex 2, p. 5, R 50; P-Ex 17, pp. 2, 3, R 56). When the transport reached Poing four days later, the inmates were told, because of a rumor of peace, that they were free. After many of the inmates left the railroad cars, the peace rumor proved false. SS guards and air corps men began shooting these inmates resulting in many deaths. Two inmates in one of the railroad cars were beaten upon their heads with rifle butts (R 729, 730; P-Ex 2, pp. 5, 6, R 50). The same evening a section of the transport was liberated in Tutzing, Germany (P-Ex 17, p. 2, R 56).

A German doctor examined 37 bodies of inmates who died shortly after the transport arrived in Tutzing. He stated that all of them died either from malnutrition or from diseases aggravated by malnutrition; and that, in the entire transport, he did not see more than two or three persons who appeared to be healthy (P-Ex 18, pp. 1, 2, R 57).

A United States Army chaplain testified that when he saw the transport

at Tutzing the inmates thereof were emaciated, wounded, groaning and complaining of starvation. He also saw numbers of dead bodies (R 794).

Another witness saw the inmates in Tutzing when the transport was liberated. He stated that all of them were suffering from severe malnutrition. They were virtually skin and bones. Their bodies were unbelievably dirty and they were covered with lice. About 45 inmates were suffering from serious gunshot wounds and others were less seriously wounded. No bandages or medical treatment had been furnished. He further stated that the freight cars in which the inmates were locked contained about 60 inmates each; that there were dead inmates among the living; that each car contained a very small amount of straw, but no heating facilities, blankets or toilet facilities were on the train. He stated "In all my life I have never seen such a terrible sight" (P-Ex 17, pp. 2, 3, R 56).

After another section of the transport was liberated at Seeshaupt, Germany, 27 inmates died in a hospital. Of 63 bodies found on arrival at Seeshaupt, Germany, some had been shot (P-Ex 10, p. 2, R 38). A witness, a German physician, examined this section of the transport in Seeshaupt, Germany. In one car he found a heap of approximately 50 to 60 dead bodies (R 595). An examination of the surviving inmates of this transport was made by the witness over a period of two weeks. They were a shocking and most unusual sight for a doctor. Ninety percent of them were extremely emaciated, many had dangerous and contagious diseases, and many suffered from tuberculosis of the lungs and bones. Also, many had typhus, dysentery, and diarrhea. It was the opinion of the witness that malnutrition and extremely hard work were the main causes of the condition of the inmates (R 589-593, 595).

10. Death Rates. The Muehldorf records show the death of 1280 inmates between 18 September 1944 and 1 May 1945 at Muehldorf (R 887, 900-904). The Waldlager records listed deaths of 849 inmates (R 904; P-Ex 45, R 197). A chart in the SS orderly room at Muehldorf indicated an average daily inmate population of 4000 and an average daily death rate of 18 to 20 (R 721, 722).

Of a total of 8300 inmates in the Muehldorf Ring during the period between July 1944 to April 1945, 2200, or 26 percent, died from shootings, beatings, diseases and malnutrition; 840, or 10 percent, were exterminated at Auschwitz Concentration Camp; 750, or 9 percent, died on the Kaufering transport; 144 or 2 percent, were killed or died on the evacuation transport; 810, or 10 percent, escaped, were left in camp or were killed outside of the camp; and 3556, or 43 percent, survived. The known number of deaths from all causes during this period was 3934, or 47 percent of the total number of inmates (P-Ex 19, R 60; P-Ex 20, R 62).

B. For Defense:

The construction at Muehldorf was requested by the Defense Ministry of the Reich as a factory for the building of pursuit planes (R 1093, 1105). OT was in charge of the entire construction site (R 1109). The OT personnel working on the main construction site were under its control (R 1301; D-Ex 34, R 1300).

1. Housing. Waldlager consisted of about 120-130 barracks, including kitchens, baths, latrines, washrooms, and an infirmary. Electric lights and water pumps were installed after Christmas 1944, although water for drinking and washing was available from the beginning (R 1117). A temporary disinfecting plant was built in February 1945 (R 1242).

2. Food. A defense witness admitted on cross-examination that at one or more weekly meetings of the OT department heads a report was made that the inmates working on the construction project were not receiving sufficient food considering the type of work they performed (R 1191).

3. Working Conditions. The cost of labor at the main construction site was calculated according to an efficiency factor based upon the expected work production of the various types of laborers, i.e., Germans, ordinary foreigners, Italians, prisoners of war, concentration camp inmates, and Hungarian and Lithuanian Jews (R 1018; D-Ex 6, R 1012). An expert testified that it would not have been profitable for a construction firm to have driven the workers because, in view of the construction contract terms, the profit to the contractor would not have been increased

Many safety precautions were taken at the main construction site, such as railings, air raid shelters, and slit trenches (R 1078, 1083, 1149, 1174; D-Ex 10, R 1149; D-Ex 11, R 1150; D-Ex 18, R 1154; D-Ex 22, R 1174).

4. Killings and Mistreatment. A total of 1000 to 1200 Italian volunteer workers came to Germany. Of these, 200 to 300 came to the Muehldorf Ring (R 1087). Those in the Muehldorf Ring had their own kitchens. Food drawn from OT supply depots and procured from Italian sources was prepared by their own cooks. They received peas, beans, spaghetti, flour, tomato sauce, Italian cheese, wine, and cigarettes (R 1075, 1076). All returned to Italy, except two or three who died natural deaths (R 1088).

5. Medical Treatment. The SS was responsible for the medical treatment of the inmates of the Muehldorf Ring (R 1200). However, the care provided, in the opinion of the chief physician of OT, was so inadequate that the situation had to be remedied so the inmates could continue to work. After OT made two complaints of neglect by the SS to Organization Todt, Berlin, the chief of the medical department of Organization Todt ordered that medical supplies from the OT depot at Schwindegg be sent to the SS officials in the Muehldorf Ring. A large supply of bandages and medicines was shipped from the depot in the fall of 1944. A later inspection by Berlin officials disclosed that the SS had diverted these supplies from the inmates to an SS unit. This action was protested to the SS by the chief of sanitation of Organization Todt, Berlin (R 1201, 1202; D-Ex 24A, R 1204, D-Ex 25A, R 1205).

6. Dental Experiments. An expert witness testified that throughout Germany experiments were conducted on approximately 20,000 persons for the treatment of paradentosis and pyorrhea; and that no deaths resulted from such experiments (R 1275, 1276, 1281).

7. Evacuation Transports. A defense witness testified that a five day supply of cold food and a one day supply of bread was taken by the inmates of the Muehldorf Ring on the evacuation transport at the end of

April 1945. Additional food was to be picked up en route. The cold food was described as cheese, butter or sausage (R 1252, 1253, 1268).

V. QUESTIONS OF LAW:

A. Jurisdiction:

1. Common Design as a Separate Substantive Offense. It appears that the defense by its Petition for Review, pages 4, 5 and 8, attacks the propriety of the Court's action and cites an order of Tribunal III, Nurnberg, Germany, July 1947, concerning a defense motion attacking Count I of the indictment in Case No. 3, The United States of America v. Josef Altstoetter, et al., which stated in pertinent part as follows:

"Count I of the indictment in this case charges that the defendants, acting pursuant to a common design, unlawfully, wilfully and knowingly did conspire and agree together to commit war crimes and crimes against humanity as defined in Control Council Law No. 10, Article 2. It is charged that the alleged crime was committed between January 1933 and April, 1945.

"It is the ruling of this Tribunal, that neither the Charter of the International Military Tribunal nor Control Council Law No. 10 has defined conspiracy to commit a war crime or crime against humanity as a separate substantive crime; therefore, this Tribunal has no jurisdiction to try any defendant upon a charge of conspiracy considered as a separate substantive offense."

Without conceding that the jurisdiction of Military Government Courts is limited to the trial of those war crimes cases contemplated by Control Council Law No. 10, it is clear that this order has no application to the instant case because the charge and particulars thereunder do not allege a common design to commit a war crime as a "separate substantive crime." They allege that the accused "acting in pursuance of a common design did encourage, aid, abet, and participate in the operation of Concentration Camp Muehldorf * * * which operation included the wrongful and unlawful subjection of * * * [certain persons] * * * to killings, beatings, tortures * * *", etc. Thus, the particulars in this case charge as an offense, the execution of a common design to commit described unlawful acts. They do not allege a common design as a "separate substantive crime."

The extent of the ruling relied upon by the defense is amplified by

the next to the last paragraph of the order which provides:

"Count I of the indictment, in addition to the separate charge of conspiracy, also alleges unlawful participation in the formulation and execution of plans to commit war crimes and crimes against humanity which actually involved the commission of such crimes. We, therefore, cannot properly strike the whole of Count I from the indictment, but insofar as Count I charges the commission of the alleged crime of conspiracy as a separate substantive offense distinct from any war crime or crime against humanity, the tribunal will disregard that charge."

The only question involved in the Tribunal III, Nurnberg, Germany, ruling is one of jurisdiction and it is clear that nothing therein casts doubt upon the jurisdiction of the Court in the instant case.

2. Universality of Jurisdiction Over War Crimes. It is clear that the Court had jurisdiction of the persons of the accused and of the subject matter.

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

Any violation of the law of nations encroaches upon and injures the interests of all sovereign states. Whether the power to punish for such crimes will be exercised in a particular case is a matter resting within the discretion of a state. However, it is axiomatic that a state, adhering to the law of war which forms a part of the law of nations, is interested in the preservation and the enforcement thereof. This is true,

irrespective of when or where the crime was committed, the belligerency status of the punishing power, or the nationality of the victims

"Universality of Jurisdiction Over War Crimes," by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pages 177-218; "Law Reports of Trials of War Criminals," by United Nations War Crimes Commission, 1947, hereinafter referred to as "Law Reports," Volume I, pages 41, 42, 43, 103; United States v. Klein, et al., Hadamar Murder Factory Case, opinion DJAWC, February 1946; United States v. Weiss, et al., Dachau Concentration Camp Case, opinion DJAWC, March 1946; United States v. Becker, et al., Flossenbug Concentration Camp Case, opinion DJAWC, May 1947; United States v. Brust, opinion DJAWC, September 1947; and United States v. Otto, opinion DJAWC, July 1947.) A British court sitting in Singapore tried Tomono Shimio of the Japanese army and sentenced him to death by hanging for illegally killing American prisoners of war at Saigon, French Indo-China (Law Reports, Volume II, page 128).

B. Legal Sufficiency of Charge and Particulars: By indirection the defense by its Petition for Review, pages 2 and 3, casts doubt upon the definiteness of the charge and particulars.

The Supreme Court of the United States in the case of *In re Yamashita*, 66 Supreme Court Reporter 340, stated:

"Obviously charges of violations of the law of war triable before a military tribunal need not be stated with the precision of a common law indictment. Cf. *Collins v. McDonald*. . . 258 U.S. 420, 42 S.Ct. 328, 66 L. Ed. 692."

There is no material difference between the allegations of the charge and particulars in this case and those in the Mauthausen Concentration Camp Case (*United States v. Altfuldisch, et al.*, opinion DJAWC, February 1947), and the Dachau and Flossenbug Concentration Camp cases, *supra*. Attacks upon the charges and particulars in the Mauthausen and Flossenbug cases were overruled. There can be no doubt that the charge and particulars conform to the requirements of definiteness prescribed by the procedure for Military Government Courts and sufficiently apprised the accused as to

the particulars of the crime alleged (Section 5-323, Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947, hereinafter referred to as "Title 5").

C. Severance: The defense moved for a severance of the accused as defendants, indicating by argument that there were three categories of accused, viz., SS personnel, OT personnel, and PE personnel, and that their interests were highly antagonistic (R 10; Petition for Review, page 2). The Court did not err in overruling the motion (R 12). Severance is not a right or privilege of the accused. The applicable rule is that such a motion is addressed to the sound discretion of the Court. Under the procedure applicable to the trial of war crimes, the test is whether an injustice would result to accused and not whether purported substantial rights of accused would be violated if the motion were overruled, because accused have no right in this connection (Mauthausen and Flossenburg Concentration Camp cases, both supra).

D. Best Evidence Rule: The defense made many objections to evidence on the ground that to admit the same or permit it to remain in evidence would be in violation of the best evidence rule (R 27, 28, 31-33, 37, 39, 42, 56, 57, 118, 505, 597, 799, 800, 822, 826, 837, 860-863, 868, 880, 882-884). In each instance rulings were made by the Court against the defense (R 28, 31-33, 37, 39, 43, 56, 57, 119, 505, 597, 799, 800, 822, 826, 837, 860-862, 864, 868, 880, 882-884). The defense contended during the trial and now contends that the Court erred in these rulings (Petition for Review, page 2). The rulings of the Court were proper. Section 5-354.4, Title 5, provides that generally the "***best evidence will be required, and all evidence which will aid in determining the truth will be admitted (underscoring supplied). In subparagraph c (2), Section 270, "Manual for Trial of War Crimes and Related Cases," 15 July 1946, as amended, hereinafter referred to as "Trial Manual", it is pointed out that the Court shall in general require the production of the best evidence reasonably available but that this principle should

not be confused with the "best evidence rule," the latter being definitely not applicable. It is also provided therein that the sworn statements of accused and witnesses are always admissible regardless of the presence or absence of those who made the statements unless the Court is of the opinion that the statements have no probative value or to apply a similar test that the statements would not be helpful in arriving at a true finding. It is provided in subparagraphs a and b of Section 270, Trial Manual, that any evidence is admissible which in the opinion of the Court has probative value.

E. Motion for Findings of Not Guilty: At the close of the prosecution's case the defense moved that findings of not guilty be made as to all the accused for the reason that the prosecution had failed to establish a prima facie case (R 924). The Court properly denied the motion as to all the accused except accused No. 2. The motion was granted as to Karl BACHMANN (R 925).

It is not error for a war crimes tribunal to overrule a motion for findings of not guilty made at the close of the case for the prosecution, if it believes that there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Title 5). A similar practice is followed in courts-martial (Paragraph 71d, "Manual for Courts-Martial, U.S. Army", 1928).

F. Conduct of Trial: The accused were represented by competent American and German counsel. One member of the Court was a legally trained officer. Sufficient interpreters were provided at all times. Full right of cross-examination was extended throughout the trial. All of the accused were given an opportunity to testify in their own behalf but none chose to do so except accused No. 7. Both the findings and the sentence as to each accused were approved by a two-thirds vote of the members present. An effort has been made in this section to discuss all questions of substantial importance raised by the defense. The trial was conducted with fairness to all accused.

VI. EVIDENCE AND RECOMMENDATIONS:

This Section sets forth a summary of the pertinent evidence both for and against each accused, in numerical sequence according to the numbers adopted for the accused during the trial. After each summary of evidence is a list of the Petitions for Review and Petitions for Clemency, if any, which have been received up to and including 1 February 1948, described as to date, the accused on whose behalf they are filed, and the name of the person filing the same, together with such discussions, if any, as the petitions are believed to warrant. Unless otherwise indicated, an item referred to as a "Statement" is in the form of extrajudicial sworn testimony.

1. FRANZ AUER

Nationality:	Austrian
Age:	36
Connection with Muehldorf:	
(a) Period:	1944 - April 1945
(b) Status:	SS (May 1938) Technical Sergeant; Nazi Party
(c) Position:	Labor Allocation Leader

Evidence for Prosecution: The accused carried the nicknames of "the devil" (R 710). His duty as labor allocation leader required him to assign the inmates to the various details. Seven witnesses testified that he drove sick inmates to work, refusing to believe that they were sick. To accomplish this, he threatened with his pistol or beat and kicked sick inmates. As a result, many inmates were taken to the dispensary and some died within a short time (R 192, 255-257, 284, 365, 366, 475, 673; P-Ex 56, p. 11, R 797). One of the foregoing witnesses, a part time driver for the accused, testified that he ordered the guards to shoot without warning any inmates who were found even a short distance away from the working place (R 366, 367). In his Statement, an eighth witness stated that the accused struck a young Hungarian inmate with a pickaxe for the reason that he worked too slowly; and that the victim died (it does not appear whether the witness saw the dead body) (P-Ex

67, R 864). Two other witnesses and one of the foregoing witnesses testified that as punishment he ordered women and 14 year old children to the main construction site to carry cement (R 390, 391, 562, 563, 672, 673, 680). Another witness testified that he saw the accused kick an inmate in the stomach, causing him to require medical treatment (R 709). One of the former witnesses, an inmate doctor who worked as a male nurse in the dispensary which was utilized as a hospital, testified that a young inmate, after a beating which the victim's friends said the accused had administered, was brought to the dispensary with an open wound on his back and his skull "broken". This victim died (R 166, 172, 192). This witness also testified that on one occasion the accused came into the convalescent block and picked out patients to go to work on the main construction site; that in doing so he disregarded the diagnoses of the witness; that many of those selected returned on stretchers that night in an unconscious condition; and that some of them died before the following morning (R 192). Similar incidents and consequences were testified to by another of the foregoing witnesses, who was an inmate doctor in the hospital (P-Ex 56, pp. 3, 11, R 797). Two other witnesses testified that the accused ordered inmates, on one occasion a man and woman, to pull plows for the purpose of degrading them before onlookers (R 400, 401, 673). In a speech to the OT men, the accused said: "Don't feel sorry for the Jewish prisoners. They have to work. Nobody is sick. They have to die sooner or later. The Jews will not get out of this camp alive" (P-Ex 62, p. 5, R 826). A fourteenth witness testified that in the winter of 1944-1945, the accused beat him with his fist, leaving a permanent scar. After this inmate requested a replacement for a pair of shoes in order to go on a work detail, he was told, by the accused, "Whoever has no shoes will go barefooted" (R 542, 543, 547).

Evidence for Defense: The accused did not testify. A former SS guard testified that he never guard that the accused beat anyone (R 1269). A former inmate, a German who knew the accused before he went to the Muehldorf Ring, testified that the accused gave him and several others

light work due to their poor physical condition; and that he also gave food to inmates. The witness did not see the accused beat inmates or hear of his beating inmates. However, he saw many ill from typhus and malnutrition (R 928-932).

Sufficiency of Evidence: Austria was a co-belligerent of Germany. It is not proved beyond a reasonable doubt that the accused killed inmates with his own hands. However, there is an abundance of evidence that he, as labor allocation leader, unmercifully drove inmates, including those who were extremely sick, to work at very exhausting labor under circumstances where it was obvious that many deaths would result. It is also established that many deaths did thus result from such action. The Court was warranted from the evidence concerning the extent and nature of his participation in its findings of guilty. The sentence is not excessive.

Sentence: Death by hanging.

Petitions: Petitions for Review were filed by defense counsel, Robert E. Welch, 28 July 1947 and 26 August 1947. Petitions for Clemency were filed by the mayor of Wimpassing, 7 May 1947; Socialist Party of Austria, Local Organization, Wimpassing, 28 May 1947; Burgomeister of Ternitz, 30 May 1947; Employees Factory Council of the Semperit plant, Wimpassing, 3 June 1947; Police Department of the Community of Ternitz, 7 June 1947; the accused's aunt, Luise Fuerer, 7 June 1947; the accused's father, Franz Auer, 13 June 1947; and the accused's wife, Anna Auer, 13 June 1947.

Recommendation: Approval of findings and sentence.

2. KARL BACHMANN

This accused was acquitted (R 925).

3. WILHELM BAYHA

Nationality: German

Age: 52

Connection with Muehldorf:

(a) Period: 6 January 1945 - 30 March 1945

(b) Status: SS (1945) Staff Sergeant
(c) Position: Construction Detail Leader

Evidence for Prosecution: The accused was in charge of a detail of 40-60 inmates who were constructing a railroad station at Ampfing (R 948, 949). Two witnesses, one of whom worked on the accused's construction detail, testified that the accused beat inmates daily, sometimes severely with a large stick or a branch, and also kicked them. He worked inmates during air raids, refusing them shelter (R 317-319, 1463, 1464). One of these witnesses testified that in February 1945 the accused required inmates to work on his detail without gloves and overcoats, despite the cold weather (R 317, 318). A third witness testified that during an air raid in March 1945 the accused placed his detail in an exposed area; and that he fired his weapon at this witness when the inmates and their guards ran off seeking cover (R 272, 273).

Evidence for Defense: The accused did not testify in his own behalf. A witness who worked near the detail of the accused testified that she did not see the accused beat inmates or fire at them with his weapon; and that he treated the inmates well. He permitted townspeople to give them food, allowed rest periods, and did not work them in bad weather (R 950-952). On Sundays the inmates on his detail were permitted to wash their clothing. All, including sick inmates, preferred this detail to remaining in camp (R 953, 957, 960).

Sufficiency of Evidence: The Court was warranted from the evidence concerning the extent and nature of his participation in its findings of guilty. The sentence is not excessive.

Sentence: 10 years' imprisonment, commencing 13 May 1947.

Petitions: Petitions for Review were filed by defense counsel, Robert E. Welch, 28 July 1947 and 26 August 1947. Petitions for Clemency were filed by Karl Sontheimer, 19 May 1947; Peter Schmid, 19 May 1947; Pastor Haller, 19 May 1947; Dr. med. Rueff, 20 May 1947; Anton Hegels, 20 May 1947; Leonhard Schick, 20 May 1947; Josef Glogger,

21 May 1947; Anton Badenburger, 21 May 1947; Christine Wiedermann, 21 May 1947; Johann Proebste, 21 May 1947; Melchior Holzschuh, 22 May 1947; the Burgomeister of Burlafingen, 22 May 1947; 6 June 1947; a priest, Konrad Eichhoefer, 22 May 1947; Wendelin Ley, 1 June 1947; Anna Matt, 1 June 1947; Maria Galler, 6 June 1947; Emma Maurer, 6 June 1947; Mathaeus Stolz, 6 June 1947; Maria Knoepfle, 6 June 1947; Norbert Grannt, 6 June 1947; Centa Wieser, 7 June 1947; Fermande Chiron, 7 June 1947; Kurt Knopf, 8 June 1947; Gottlieb Kiessling, 9 June 1947; the accused's wife, Katharina Bayha, 10 June 1947, 4 July 1947; and Paula Lang and Anna Fuchshuber, 27 June 1947.

Recommendation: Approval of findings and sentence.

4. HEINRICH ENGELHARDT

Nationality: German
Age: 35
Connection with Muehldorf:
(a) Period: 1944 - April 1945
(b) Status: SS Technical Sergeant
(c) Position: Acting Adjutant

Evidence for Prosecution: The accused performed the functions of adjutant for the Muehldorf Ring (R 367, 393, 654, 837, 1464; P-Ex 22, pt. 2, R 67). He held roll calls of women inmates of several hours duration (R 368). One witness testified that on one occasion he slapped her hard on the side of the head. The witness also testified that she saw him beat inmates frequently and that he beat and kicked them almost daily (R 358, 359). A second witness testified that she saw the accused slap an old rheumatic woman; that she saw him beat a second woman; and that he beat all women he caught smuggling bread into the camp (R 393, 395, 396). A third witness, a former Czech inmate, testified that the accused slapped her twice. This witness saw the accused severely beat other inmates with a leather whip. She also saw the accused, from a distance of five to six meters, severely beat a weak inmate and saw the victim carried away to the dispensary. The witness

was told by a nurse friend about three or four days later that the victim had died (R 674, 675, 682-685). Two of the foregoing witnesses testified that the accused frequently inspected the quarters of the women inmates and took all items of clothing in excess of the authorized issue of one dress, one coat, and one pair of stockings. Consequently, the women had no change of clothing and their clothing could not be washed when it was dirty. Conditions favorable to lice and typhus resulted. The accused also searched inmates returning from work details and deprived them of any bread and medicines which they had gathered (R 395, 396, 654, 655, 676). A fourth witness testified that the accused and others took coffee from Red Cross packages intended for French prisoners of war, using it themselves (R 711, 712).

Evidence for Defense: Accused did not testify. Two Statements contained assertions that the Muehldorf Ring did not have an adjutant and that a technical sergeant purporting to act as such would have no authority (D-Ex 3, p. 2, R 962; D-Ex 38A, R 1352).

Sufficiency of Evidence: The Court was warranted by the evidence concerning the extent and nature of his participation, particularly concerning his continuous course of violence, in its findings of guilty. The sentence is not excessive.

Sentence: Life imprisonment.

Petitions: Petitions for Review were filed by defense counsel, Robert E. Welch, 28 July 1947 and 26 August 1947. Petitions for Clemency were filed by Oswald Ruegner, 29 May 1947, Jakob Kuehlwein, 29 May 1947; Dr. Hans C. Mueller, 29 May 1947; Christian Franz Schweikhardt, 2 June 1947; Karl Schweighofer, 24 June 1947; Franz Bunsack, 26 June 1947; Ernest Humbert, 26 June 1947; Karl Gerhauser, 27 June 1947; Alida Hohendorf, 27 June 1947; Karl Gruner, 27 June 1947; Werner Kemmann, 4 July 1947; the Deputy Registrar of Erbach, 22 July 1947; and the accused, 21 November 1947.

Recommendation: Approval of findings and sentence.

5. ERIKA FLOCKEN

Nationality: German

Age:

Connection with Muehldorf:

- (a) Period: June 1944 - April 1945
- (b) Status: OT Civilian Employee
- (c) Position: OT Chief Physician of the Muehldorf Ring

Evidence for Prosecution: The accused was the chief doctor in the OT hospital in Schwindegg, including the dispensaries and first aid stations at the main construction site (R 664, 665; P-Ex 3, p. 18, R 52; P-Ex 22, p. 5, R 67). One witness stated in his Statement that the accused was the chief doctor for the Muehldorf Ring (P-Ex 56, p. 4, R 797). A second witness, the accused's chauffeur, testified that he drove her to the various camps and dispensaries of the Muehldorf Ring almost daily (R 665, 666, 669). In his Statement, a third witness stated that the accused frequently inspected the dispensary at the main construction site. She saw and was told of the inadequacy of the medical supplies but did not remedy the deficiency (P-Ex 64, pp. 3, 4, R 860). In his Statement, a fourth witness stated that he requested the accused to furnish gauze for medical treatment of the inmates; that she laughed, asking where any could be obtained, and that she did not furnish the supplies (P-Ex 56, pp. 3, 4, R 797).

A fifth witness, a former camp doctor, testified that in October 1944 on a visit to the OT medical supply warehouse in Schwindegg he saw huge supplies of medicines, surgical instruments, etc., enough to supply 10 camps for one year (R 212, 213). One of the preceding and another witness, inmates with medical training, stated in their Statements that they were told by the accused not to treat any inmates at the main construction site, except for construction work accident injuries (P-Ex 64, p. 4, R 860; P-Ex 66, p. 8, R 862). One of these witnesses stated that on one occasion an Italian inmate who had very high fever was treated at the main construction site dispensary and placed in a bed in a camp hospital. The accused ordered the inmate doctor who had authorized this treatment to carry cement as a punishment for having disobeyed her orders. The accused also refused to permit fresh bandages

to be used for inmates who had sores on their feet as a result of ill-fitting wooden shoes. In many of these instances, blood poisoning set in and 10 to 20 percent of the infected inmates died as a result of the accused failing and refusing to supply proper medical care. When typhus broke out in the camp, the accused refused to visit or treat the infected inmates. Between 90 and 100 of the typhus infected inmates died from lack of medical treatment. Most of them could have been saved had they been quarantined and given appropriate medical care (P-Ex 66, pp. 8-10, R 862).

A seventh witness, a former inmate doctor, testified that in August 1944 he told the accused that the Waldlager hospital had 60 patients. The accused replied that no more than two percent of the entire number of inmates could be patients at one time. The accused threatened to send the camp dispensary personnel to heavy work details if they did not have fewer patients (R 186). The accused was informed of the existence of lice in Waldlager. She did nothing about it (R 193). In 1944, the accused was informed by this witness that there were no medicines, charcoal, or bandages in the Waldlager dispensary; and that only pulverized bones from the kitchen were given as medicine for diarrhea. The accused never replied to these reports (R 187, 188).

This witness further testified that in Waldlager in October 1944 the accused was present at the selection of inmates for an invalid transport. The inmates were lined up in the roll call square. The accused walked down the line of inmates saying: "This fellow is weak; take down his number. This one. This one." A pharmacist named "Eugen Weisshaus", a close friend of this witness, was selected because of an edema and went on this transport, first to Muehldorf and then to Auschwitz Concentration Camp. He was never heard from again (R 184-186). The name "Jane Weisshaus", druggist, appears in the records of inmates transported to Auschwitz (P-Ex 8; LB4 of P-Ex 8, p. 38; R 33). An eighth witness testified that the accused selected inmates of Waldlager for an invalid transport in either October or November 1944. These invalid inmates

were first sent to Muehldorf. They were probably sent from Muehldorf to Auschwitz (R 280, 281, 285).

In his Statement, a ninth witness stated that the accused, in October 1944, in November 1944 and in January 1945, selected inmates for invalid transports. On at least one occasion the accused required sick inmates of Waldlager to parade before her nude but for shoes. Consequently, as it was exceptionally cold during the selection, several inmates contracted pneumonia from the exposure and some died a few days later. On at least one occasion the accused ordered approximately 50 percent of the entire sick inmate population of Waldlager to Muehldorf for the purpose of forming an invalid transport to Auschwitz (P-Ex 56, pp. 11, 12, R 797). A tenth witness, a Romanian inmate who worked on a cement carrying detail, was examined by the accused at the hospital and directed by her to go to the convalescent block. From there he was sent on a transport to Kaufering in the Dachau Concentration Camp system. While more than 1000 inmates departed for Kaufering, only 200 were alive on arrival. When the transport arrived, only three persons in the car of this witness were alive. None of the inmates received any food or water during the journey which required two days and nights (R 746-750).

An eleventh witness testified that she and her sister, both Polish inmates, were ill in the Muehldorf hospital in October 1944. The accused came to the hospital frequently, looked at each inmate, and wrote in a notebook the names of those to leave. The day after the accused looked at the sister of this witness, she was removed. Because this witness never heard from her sister, she believed her to be dead (R 801-803). In a list of inmates, which included those who died and those shipped to Auschwitz Concentration Camp, appears the name Sara Sapir, described as born May 6, 1918, at Wilna, prisoner No. 92872, which is the name and description of the sister of the witness (R 825; P-Ex 8, LB-4 of P-Ex 8, p. 30; R 33).

A twelfth witness testified that the accused picked out six pregnant inmates at a roll call in Muehldorf and that the following day they were

sent away (R 341, 342). A thirteenth witness, a former inmate, testified that in October 1944 she had a small ulcer under her arm; that she was told by a Muehldorf inmate doctor that due to lack of adequate equipment he could not operate on her there; that the accused was asked to receive her in the OT hospital at Schwindegg for the necessary surgery; and that the accused replied: "That is out of the question. No Jewish prisoner is going to be sent to Schwindegg. Let her die here without instruments". The operation was accordingly performed in Muehldorf. As a result this witness suffered an infection. After remaining in the hospital for four months, this witness was selected by the accused for an invalid transport. However, she hid herself and thereby avoided the transport (R 351-356).

A fourteenth witness, a former inmate, testified that in 1944 while he was sick in the hospital the accused came into the hospital. Several hours later almost all the inmates in the sick block, including this witness, were given substitute paper clothes and ordered on an invalid transport. This witness was a chauffeur for the camp commander. The latter removed the witness from the transport. All the other inmates on the transport were sent to Auschwitz and none were seen again. About two weeks later, the witness was driving an automobile containing the accused and the camp commander. The camp commander, in a conversation with the accused, mentioned that he had removed his chauffeur from the transport because he was a good driver. The accused said to this witness, "You can thank the Camp Commandant that he saved your life" (R 372-375).

A fifteenth witness, who was in Auschwitz before he came to the Muehldorf Ring, testified that it was a matter of common knowledge among the older inmates of the Muehldorf Ring that invalid transports sent to the Auschwitz Concentration Camp from other camps were sent to the gas chambers immediately upon arrival. In a conversation between this witness and a guard who had taken one of the transports to Auschwitz, the guard said, "You won't see them again" (R 254).

A sixteenth witness, who had been in Auschwitz, stated in his State-

ment that he was told by eyewitnesses that inmates arriving at Auschwitz on sick transports from other camps were immediately sent to the gas chambers to be exterminated (P-Ex 8, second section, pp. 2, 3, R 33). When this witness subsequently came to Muehldorf from Auschwitz Concentration Camp, on 16 September 1944, he was installed as a secretary for the keeping of various personnel records (P-Ex 8, second section, p. 2, R 33). Personally, or under his supervision, over 2500 cards were prepared showing some of the vital statistics of the inmates, including the date of arrival at Muehldorf, the date of death or the fact that the inmate was sent to Auschwitz (P-Ex 8, second section, p. 2, R 33). Some of the inmates selected for a transport arrived at Muehldorf from Waldlager and were then transhipped to Auschwitz. It was generally known that sick inmates were being sent to Auschwitz to be exterminated (P-Ex 8, first section, pp. 1, 2, R 33). Concerning the files kept by this witness, an entry showing the transfer of an inmate to Auschwitz on an invalid transport did not on its face specially state that the inmate had died. However, the witness further stated in effect that the phrase, transferred to Auschwitz, carried an import similar to a formal death certificate, inasmuch as it was common knowledge among Muehldorf inmates that sick inmates shipped to Auschwitz were intended for the gas chamber (P-Ex 8, first section, p. 2, R 33).

Evidence for Defense: The accused did not testify. A witness stated in his Statement that the accused was always a correct person; that she was a critic of the Hitler government as the ruination of Germany; that a Jew told the witness that he owed his life to the accused; and that the accused objected to the Nazi treatment of Jewish women (D-Ex 32, R 1295). An entry in the hospital book showed that in August 1944 an operation for appendicitis was ordered by the accused upon a concentration camp inmate (D-Ex 33A, R 1297).

Sufficiency of Evidence: The evidence clearly demonstrates that the accused participated in the common design. Furthermore, it established that she knew that at least the great bulk of all sick inmates

shipped to Auschwitz Concentration Camp were exterminated; that she knew that many of the sick inmates shipped to Auschwitz would die en route; that she knew extermination of such inmates was the objective of such shipments; that she knew her selections of sick inmates were accepted and acted upon by Muehldorf camp authorities; that she knew the sick inmates selected by her on the several occasions were in fact shipped to Auschwitz; that, under those circumstances and with full knowledge that some would die en route and at least the great bulk of them were to be shipped to their death, she selected additional hundreds for such shipments; that those thus selected were in fact shipped; that, irrespective of whether those shipped actually arrived at the destination, many of those thus shipped died en route; and that she played a dominant role in this important phase of the execution of common design. The Court was warranted from the evidence concerning the extent and nature of her participation in its findings of guilty. The sentence is not excessive.

Sentence: Death by hanging.

Petitions: Petitions for Review were filed by defense counsel, Robert E. Welch, 28 July 1947 and 26 August 1947. Petitions for Clemency were filed by Dr. Elio Apih, 15 May 1947; Anton Ostermann, 22 May 1947; accused's father, Dr. Hosenburg, 24 July 1947; and the accused, 15 December 1947.

Recommendation: Approval of findings and sentence.

6. KARL GICKELEITER

Nationality:	German
Age:	46
Connection with Muehldorf:	
(a) Period:	May 1944 - April 1945
(b) Status:	Nazi Party; PZ Civilian Employee
(c) Position:	Construction Engineer for PZ

Evidence for Prosecution: According to Hoffmann, as a representative of OT, he was in charge of supervising all construction in the Muehldorf area and the accused, as a representative of PZ, was in immediate charge

of the construction for that company at the main construction site (P-Ex 3, p. 11, R 52). This is corroborated by defense evidence (R 1022-1024). In his Statement, the accused admitted that under the orders of OT and PZ he was responsible for the construction and erection of the earthworks, the pouring of cement and the laying of tracks at the main construction site. He admitted that he heard of beatings of inmates by capos, but asserted that he had no power to prevent it as the capos were not under his control. He denied that he knew of any inmate dying from beatings or that he personally struck or slapped any inmate. However, he admitted that he knew that the inmates working at the main construction site were weak due to undernourishment and that their physical condition was not good (P-Ex 57, pp. 1, 2, 4, 5, R 826).

Accused No. 9, who supervised all activities at the main construction site for OT, stated in his Statement that the accused as the chief representative of the construction contractor, PZ, at the main construction site directed all foremen at the site to drive the inmates in an effort to finish the project as soon as possible in order to increase the profit for PZ (P-Ex 27, p. 3, R 106). A second witness testified that the accused ordered beatings of the inmates in the cement carrying details and also beat them himself (R 475). A third witness testified that the accused frequently reported inmates who stopped work a few minutes before quitting time resulting in their being deprived of soup and bread at the evening meal (R 829, 830). In his Statement, accused No. 14 stated that this accused was often on the site of the work when undernourished 14 to 16 year old inmates worked in the cement carrying details. He also asserted that when he protested to the accused that these inmates were too young and weak to perform hard labor, he was told by the accused that they must be worked regardless of their condition. He further stated therein that all PZ men working in the cement carrying details beat the inmates (P-Ex 29, p. 4, R 107). In another Statement, he stated that the accused ordered his foremen and supervisors to mistreat the inmates in order to get the maximum amount of work from them, as directed by Berlin. On another

occasion, the accused said that beatings would accomplish this result (P-Ex 58, second section, p. 1, R 821). A fifth witness, a former head capo at the main construction site, testified that the accused told him that the work was not proceeding fast enough; and that when the accused was told that the inmates were dying from undernourishment and overwork, he merely shrugged his shoulders. In another similar conversation, the accused replied that it was not his affair, it was a matter for the camp. The witness was told by the accused to push his capos harder. The witness further testified that the accused was present on some occasions when inmates were beaten (R 1440, 1444, 1445, 1448, 1449).

Evidence for Defense: The accused did not testify. The accused denied in his Statement that he ordered his foremen to mistreat inmates in order to obtain the maximum amount of work from them (P-Ex 57, p. 3, R 826). Several witnesses testified that the accused made life more bearable for the inmates by installing tea kitchens, barber shops, wash-rooms, and by the distribution of premium coupons, based on maximum production, for cigarettes and other commodities, together with extra food. He was known as an adversary of the Nazi regime (R 1044, 1045, 1056; D-Ex 7, R 1052). In his Statement, a witness stated that the accused was not an enemy of the Jewish people and did not mistreat inmates (D-Ex 8, R 1052). Upon order of the accused, a circular was distributed to the OT men at the main construction site forbidding them to beat inmates (R 1045). In his Statement, accused No. 14 stated that the incriminating allegations against this accused in P-Exs 29 and 58 were untrue, having been made to put the blame upon the accused to reduce his own complicity (D-Ex 42, R 1435).

Sufficiency of Evidence: It was for the Court to determine the weight of the evidence and the credibility of the witnesses, including the unusual reversal of position on the part of accused No. 14. The evidence establishes that the accused assumed an important role in the common design; that he had no regard for the health and lives of the inmates; and that he beat and ordered the beating of the inmates. The

Court was warranted by the evidence concerning the extent and nature of his participation in its findings of guilty. The sentence is not excessive.

Sentence: 20 years imprisonment, commencing 13 May 1947.

Petitions: Petitions for Review were filed by defense counsel, Robert E. Welch, 28 July 1947 and 26 August 1947. Petitions for Clemency were filed by Sigiberta Seitz, 4 March 1947; Wilhelm Degen, 16 May 1947; Max Tennenbaum, 21 May 1947; Alfred Lewin, 22 May 1947; Luise Benedetti, 29 May 1947; Alfons Baer, 22 June 1947; Paul Holzwarth, 25 June 1947 and 3 July 1947; Karl Weiss, 21 July 1947; Bavarian Lignite Industry, Inc., 25 July 1947; Herbert Janosch, 26 July 1947; Ludwig Heinrich, 28 July 1947; Paul Rogalla, 28 July 1947; Andreas Horndler, 28 July 1947; Philipp Genthner, 28 July 1947; Herbert Dieckermann, 28 July 1947; Karl Jatzek, 28 July 1947; Karl Fusseder, 28 July 1947; Heinrich Poch, 28 July 1947; Florian Drygas, 29 July 1947; The Workers Committee of Polinsky and Zoellner, Inc., 29 July 1947; the accused's wife, Else Gickeleiter, 16 October 1947; and O.H. Leiling, 29 October 1947.

Recommendation: Approval of findings and sentence.

7. HERMANN GIESLER

Nationality: German
Age: 48
Connection with Muehldorf:
(a) Period: June 1944 - April 1945
(b) Status: OT Official; Nazi Party
(c) Position: Director in charge of OT

Evidence for Prosecution: The accused testified that he was an architect; that he was the recipient of awards for his work; that he was presented to Adolf Hitler in 1935; that following 1938 he was one of Hitler's favorite architects; and that he was made the nominal head of Organization Todt's "Task Group Russia" (also known as Task Group Giesler) in 1943 (R 1379, 1381-1383, 1386, 1387). He testified that when OT was formed in June 1944, the Reichsminister of Armament asked

him to take formal charge (R 1394). In his Statement, the accused admitted that, under the guidance and supervision of Organization Todt, Berlin, he was the director of OT which had the responsibility of supplying material for the construction at Muehldorf. He also stated that OT maintained departments charged with furnishing food and medical care to OT personnel and concentration camp inmates working on the project. He held frequent conferences with Reichsfuhrer Adolf Hitler. One of these conferences concerned the advisability of constructing the airplane facilities at Muehldorf. Another related to the use of concentration camp labor there, which he had been informed was inefficient. The accused admitted that the inmate labor was not efficient, but denied knowing that the lack of efficiency was due to a starvation diet. He stated that he believed them to be unqualified and inexperienced in the work (P-Ex 14, R 44). In another Statement, the accused stated that his appointment as chief of OT was in name only, Max Gimple being actually in charge. However, he admitted that he was contacted when important conferences required his authority (P-Ex 15, p. 2, R 46).

Four witnesses testified and two witnesses stated in their Statements that the accused was generally recognized as the responsible head of OT (R 75, 123, 140, 839; P-Ex 27, p. 2, R 106; P-Ex 57, p. 3, R 826). A seventh witness stated, in an unsworn and unsigned pretrial statement made prior to his escape, that this accused was his immediate superior, and that he, the witness, supervised all OT construction in the Muehldorf area (P-Ex 3, p. 4, R 52). An eighth witness, a German physician, who was the head of the OT medical department, testified that in the fall of 1944 he submitted to the accused both a written and an oral report as to the lack of hospitals, doctors, drugs, instruments and medical personnel in the Muehldorf Ring; that he also made a report to the accused at the same time as to the high death rate of five to fifteen inmates daily; that he warned the accused of an epidemic which would constitute a danger to both the inmates and the German workers; that he reported the conditions to the accused because he was in a position to remedy them; and that the

conditions were not improved, although the accused promised to discuss the matter with the OT personnel at the construction site and with the SS doctors. Another consultation with the accused, to the same effect, was held in December 1944. As a result, the accused ordered the construction of delousing units at two of the camps in the Muehldorf Ring, but the situation regarding medical care did not improve (R 839-843). In other written reports to the accused, this witness expressed the opinion that the SS was diverting to SS units medicines intended for the inmates (R 845). In another report, this witness requested that a determination of the responsibility for the medical care of the inmates be made and advised the accused of the catastrophic consequences of continued indifference by the SS in this respect (R 859; P-Ex 87, R 1461). A total of four to six conferences were had with the accused regarding these conditions. On one occasion, at a meeting of the construction directors in the accused's office, the witness delivered an oral report on the unsanitary situation in the Muehldorf Ring (R 850, 851). The witness further testified that the accused was at the main construction site at least 10 to 15 times and knew of the deplorable state of health of the inmates working there (R 843, 844). The accused had the authority to withdraw medicines and bandages from the OT warehouse at Schwindegg for the needs of the Muehldorf Ring or could have requisitioned them from drug stores, the German army or other Organization Todt, Berlin, agencies (R 843). Due, however, to the omission of the accused to improve the situation, this witness, on his own responsibility and without orders, requisitioned medical supplies from the Schwindegg warehouse for the use of the inmates of the Muehldorf Ring (R 851-855). This procedure was approved later by OT, but disapproved by Organization Todt, at Berlin (R 855).

Evidence for Defense: The accused testified that he was to be in formal charge and Max Gimple was to be in actual charge of OT (R 1394). The plans and authorization for materials for the project at Muehldorf came from the Organization Todt, Berlin (R 1395). The function of OT

was to fill requisitions for materials at the site (R 1396). Due to shortages of materials, the construction of air raid shelters at the site could not be commenced (R 1397). The accused denied that he visited the construction site; that he received reports as to the bad conditions existing in the Muehldorf Ring; and that he received reports concerning the high death rate among the inmates (R 1398, 1431). The accused by his testimony also denied knowledge that there was a medical supply warehouse at Schwindegg and that he could have requisitioned medical supplies from drug stores, the German army or other Organization Todt, Berlin, agencies. The accused admitted that he heard that inmates were dying, but he asserted that he did not interpret the report to mean that the conditions were in such a bad state (R 1433). In his Statement, Albert Speer, Chief of Organization Todt, Berlin, stated that the accused was the chief of OT, but that the responsibility for the treatment, work, food and quarters of the concentration camp inmates was that of the SS (D-Ex 30A, p. 1, R 1284). Another witness testified that decisive questions were taken up with the accused but that the details concerning OT operations were handled by Gimple (R 972, 973).

Sufficiency of Evidence: The evidence establishes that the accused was in charge of OT; that he took a reasonably active part in directing its operations; that its principal operations were with and in the area of the Muehldorf Ring; that the accused was at the site of the construction work several times and that by virtue thereof, together with reports made to him, he was aware of the conditions obtaining there, including the functions performed by OT personnel, the manner in which inmate labor was being used, the inmate death rates, and the abuses and the starvation to which the inmates were being subjected. The Court was warranted from the evidence as to the extent and nature of his participation in the execution of the common design in its findings of guilty. However, it is not clearly established that he was a moving force behind the vast amount of beatings and deaths resulting therefrom. The sentence is excessive.

Sentence: Life imprisonment.

Petitions: Petitions for Review were filed by defense counsel, Robert E. Welch, 28 July 1947 and 26 August 1947. Petitions for Clemency were filed by Willy Soherer, 5 February 1947; Ottmar Frey, March 1947; Max Spiess, 2 March 1947; A. Doeringer, 4 March 1947; Alois Baumann, 9 March 1947; Hermann Fleiner, 13 March 1947; Dr. Wilhelm Burckmann, 15 April 1947; Jul. Th. Schweighart, 30 April 1947; Adolf Gerke, 26 May 1947; the accused's wife, Milly Giesler, 30 May 1947; Ernst Gilberg, 30 May 1947; August Kroeninger, 30 May 1947; Erwin Goller, 30 May 1947; Herbert Stoss, 30 May 1947; Hanna Kutschera, 30 May 1947; Dr. August Bauer, 30 May 1947; Albertine Erlinger, 31 May 1947; Georg Vogel, 31 May 1947; Dr. Kaempffer, 31 May 1947; Dr. Messler, 31 May 1947; Josef Hebel, 1 June 1947; Alois Brenner, 1 June 1947; Klaus Zettler, 1 June 1947; Walter Freyberger, 2 June 1947; Maximilian Wineberger, 9 June 1947; Hans Natter, undated; Mrs. Ziegenthaler, undated; and Gottfried Huber, undated.

Recommendation: Approval of findings and sentence, but that the sentence be reduced to imprisonment for 25 years, commencing 13 May 1947.

8. DANIEL GOTTSCHLING

Nationality: Romanian
Age: 39
Connection with Muehldorf:
(a) Period: 28 October 1944 - 2 May 1945
(b) Status: SS (July 1943) Corporal
(c) Position: Accountant Muehldorf Kitchen

Evidence for Prosecution: In his Statement, the accused admitted that he beat eight to ten inmates with a stick for stealing. He asserted that these beatings were upon the orders of accused No. 13, an SS sergeant (P-Ex 26, p. 2, R 105). One witness, a former Romanian inmate, testified that during cold winter weather the accused and accused No. 13 turned cold water from a big hose upon inmates who stole. On one occasion, the accused severely injured a Hungarian inmate by jabbing a large fork

into his legs for trying to take a few potatoes. As a result he had to be taken to the hospital (R 714). A second witness testified that the accused hit and kicked hungry inmates who tried to lick out empty food pails; and that he also beat others who stole potatoes (R 567). A third witness testified that the accused struck young inmates with a large stick. Many were knocked to the ground, receiving injuries from which they bled. These inmates were struck because they were seen taking potatoes (R 454, 455). A fourth witness testified that he saw some inmates in the warehouse potato cellar, a room off the kitchen, hanging with their feet off the floor and their hands tied behind their backs, by wire or rope. Upon inquiry the witness was told that the accused thus suspended the inmates (R 728, 738). A fifth witness testified that the accused required an inmate to give another inmate 25 strokes on the buttocks. The inmate was so severely injured by the beating that he was sent to the hospital (R 774). One of these witnesses testified that a large amount of food intended for the inmates on the evacuation transport in the latter part of April 1945 was put back into the warehouse. When he asked the accused about this he was told, "Oh, well, those prisoners - they don't have to eat; the people are already finished" (R 707).

Evidence for Defense: The accused did not take the stand. A former SS guard testified that he saw the accused beat inmates occasionally with his hand when they tried to steal potatoes. He never heard of the accused hanging inmates by their wrists (R 1253, 1254).

Sufficiency of Evidence: Romania was a co-belligerent of Germany. The Court was warranted from the evidence concerning the extent and nature of his participation in its findings of guilty. The sentence is not excessive.

Sentence: 15 years imprisonment, commencing 13 May 1947.

Petitions: Petitions for Review were filed by defense counsel, Robert E. Welch, 28 July 1947 and 26 August 1947. Petitions for Clemency were filed by the accused, 27 June 1947 and 5 July 1947.

Recommendation: Approval of findings and sentence.

9. WILHELM GRIESINGER

Nationality: German
Age: 38
Connection with Muehldorf:
(a) Period: 10 May 1944 - 1 May 1945
(b) Status: OT Official
(c) Position: OT Principal Technical Supervisor of Construction at Main Construction site

Evidence for Prosecution: Two witnesses stated in their Statements that the accused was employed by OT as the principal superintendent at the main construction site (P-Ex 12, p. 7, R 43; P-Ex 57, P. 4, R 826). A third witness testified that the accused was responsible for the "entire work commitment". The accused kicked an inmate and caused him to fall in the cement (R 565, 567). In his Statement, the accused stated that he was the OT technical supervisor of construction at the main construction site (P-Ex 27, p. 1, R 106). In his Statement, accused No. 14 stated, and another witness testified, that the accused told the foremen and capos to beat all inmates in order to keep the cement carrying details moving (R 476, P-Ex 20, p. 4, R 107). Accused No. 14, a PE man, also stated in his Statement that when the use of 14 to 16 year old inmates in the cement carrying details was protested to the accused, he replied that they must be worked regardless of their condition (P-Ex 29, p. 4, R 107). One of the foregoing witnesses testified that he saw the accused slap inmates on two occasions (R 476). A fifth witness testified that he overheard a conversation between the accused and others concerning the fate of inmate eyewitnesses to crimes committed in the Muehldorf Ring, during which conversation the accused stated, "There is only one thing to do, to exterminate these people" (R 258, 259). Five additional witnesses testified that the accused distributed premium certificates for tobacco, etc., to the inmates and capos. The certificates were given as rewards for higher work production. Hence, when the accused approached a detail, the capos beat and drove the inmates, thereby obtaining faster work, through mistreatment, and more certificates for themselves. As a result

of the beatings many inmates collapsed at their work (R 611, 612, 775, 776, 823, 830, 831, 872; P-Ex 71, R 870). An eleventh witness, former head capo, testified that the accused ordered that the work proceed faster and was indifferent to his protest that the inmates could not produce more due to their undernourished and overworked condition (R 1446, 1449).

Evidence for Defense: The accused did not take the stand. Three witnesses testified that the accused was an opponent of the Nazi system and was outraged at the treatment of the Jews (R 1079, 1125, 1373). A fourth witness testified that the accused was a member of a society whose aim was inimical to the Nazi policies. This society was dissolved by the Reich and its property was confiscated (R 1309, 1312; D-Ex 35A, D-Ex 36A, R 1310). A fifth witness testified that at weekly meetings of the OT main construction site department heads, the accused often complained of the insufficiency of clothing, shoes and food supplied to the inmates, saying that conditions must improve (R 1147). A sixth witness testified that six Jewish inmates were fed in her kitchen in the presence of the accused and without objection on his part (R 1124, 1125). A seventh witness testified and another witness stated in a Statement that the accused was in authority over the OT men at the construction site; and that in September 1944 he distributed a circular forbidding the beating of inmates by OT personnel (R 1045, 1050; P-Ex 3, p. 13, R 52). Two additional witnesses testified that the accused did not urge the inmates to work faster, order the foremen to drive them, carry a pistol, nor club or beat inmates (R 384-386, 1329, 1334, 1338). In his Statement, accused No. 14 stated that previous incriminating charges against the accused made in two prior Statements (P-Exs 29 and 58) were untrue because he had hoped to divert blame from himself (D-Ex 42, R 1435). An eleventh witness testified that the accused installed a tea kitchen at the site, four barber shops, and various safety measures, including air raid shelters (R 1335).

Sufficiency of Evidence: It was for the Court to determine the

weight of the evidence and the credibility of the witnesses, including the unusual reversal of position on the part of accused No. 14. The evidence establishes that the accused assumed an important role in the common design: that he had no regard for the health and lives of the inmates; and that he beat and ordered the beating of inmates. The Court was warranted by the evidence concerning the extent and nature of his participation in its findings of guilty. The sentence is not excessive.

Sentence: 20 years imprisonment, commencing 13 May 1947.

Petitions: Petitions for Review were filed by defense counsel, Robert E. Welch, 28 July 1947 and 26 August 1947. Petitions for Clemency were filed by Rosa Bergmann, 24 April 1945; Alexander Strakosch, 26 April 1947; Auguste Unger, 26 April 1947; Ester Almosen and Piri Delikat, 12 June 1947; Carl Raab, 11 July 1947; Otto Dollerer, 21 July 1947; Alfred Haller, 25 July 1947; Jurgen von Grone, 30 July 1947; Gustav Obergfell, 30 July 1947; Otto Grotz, 31 July 1947; Karl Sikler, 1 August 1947; Gustav Klett, 1 August 1947; Mr. Gauss, 2 August 1947; Richard Ulmer, 2 August 1947; Ph. Schlagenhauff, 3 August 1947; Hans Pedersen, 3 August 1947; Kurt Mannel, 3 August 1947; Otto Stahl, 4 August 1947; Richard Reissner, 4 August 1947; Mr. Banhart, 6 August 1947; Prof. Hoss, 11 August 1947; the accused's wife, Sophie Griesinger, 2 November 1947; and the accused, 2 October 1947, 17 January 1948, and one undated.

Recommendation: Approval of findings and sentence.

10. WILHEIM JERGAS

Nationality: German

Age: 51

Connection with Muehldorf:

(a) Period: 5 December 1944 - 2 May 1945

(b) Status: SS (19 April 1940) Technical Sergeant

(c) Position: In Charge of SS Guards at Main Construction Site

Evidence for Prosecution: In his Statement, the accused stated that he was in charge of the guards at the main construction site (P-Ex 38, p.

He frequently used a whip or a stick at roll call to beat those inmates who did not assemble quickly. The witness also saw the accused knock inmates down and kick them (R 199). A second witness testified that the accused beat inmates with a whip so severely that they collapsed and were removed to a hospital (R 262). A third witness, Raskin, a former inmate who was in turn a Belgian air force officer, a member of the French underground, a concentration camp inmate, an American C.I.C. employee, and assistant director of the Hebrew Immigration Aid Society (this witness claims that he established a residence in the United States of America) testified that he was beaten by the accused with a whip and kicked into unconsciousness. Some friends took him to the hospital where he remained for four days (R 464-466). This witness also testified that in the winter of 1944 he saw a young inmate working on a detail which was digging out tree roots near the main camp. The accused, appearing to believe that this inmate was working too slowly, beat him with a shovel. The inmate collapsed under the blows administered by the accused and was removed to the hospital, where he died within 20 minutes from the blows received (R 466, 467). This witness testified that he saw the body of the inmate in the hospital soon after the beating; that he was told by hospital personnel that the inmate was dead; and that he knew from his experience with many dead bodies that the inmate was dead (R 467). A fourth witness testified that he and two French inmates evaded going on the evacuation transport. They were seen by the accused during their escape and he threatened to shoot them. Prior thereto the witness also saw the accused beat inmates (R 692).

Evidence for Defense: The accused did not testify.

Sufficiency of Evidence: The Court was warranted from the evidence concerning the extent and nature of his participation, especially that relating to severe beatings and the killing of an inmate by beating him with a shovel, in its findings of guilty. The sentence is not excessive.

Sentence: Death by hanging.

Petitions: Petitions for Review were filed by defense counsel,

Robert E. Welch, 28 July 1947 and 26 August 1947. No Petitions for Clemency were filed.

Recommendation: Approval of findings and sentence.

11. ANTON OSTERMANN

This accused was acquitted (R 1582).

12. JAKOB SCHMIDBERGER

Nationality: German

Age: 51

Connection with Muehldorf:

(a) Period 1 October 1944 - 30 April 1945

(b) Status: SS First Sergeant

(c) Position: In Charge of SS Guards on Outside Details

Evidence for Prosecution: In his Statement, the accused admitted that he was in charge of the SS guards on outside details in the Muehldorf Ring. He had about 20 guards under his control who marched 500 to 600 inmates daily to and from their details. He also admitted being on the evacuation transport which consisted of 1500 to 2000 inmates (P-Ex 28, pp. 2, 4, R 106). One witness testified that the accused frequently beat inmates with a cudgel approximately 70 to 80 centimeters long and 10 to 15 centimeters in diameter (R 263, 264). A second witness, Raskin, testified that the accused beat the inmates almost daily and on one detail, in order to hurry the inmates to work, ran after them and indiscriminately struck them with a club over their heads and shoulders. This witness testified that when an American air raid destroyed the railroad station yard in the city of Muehldorf, a detail of inmates was used to carry off sugar and tobacco from a wrecked train. During this operation, he heard a shot and upon arrival at the scene observed that one of the inmates was shot and killed. When the witness went over to see the body, he was chased away by the accused who said, "This man was stealing tobacco, and besides it's none of your business. Go away". The dead inmate was a Lithuanian boy (R 467-469). A third witness testified similarly as to the shooting. He testified that the shot was fired by a policeman.

ed that he did so upon the orders of this accused (P-Ex 26, p. 2, R 105). One of the foregoing witnesses testified that when the accused caught an inmate stealing potatoes he would beat him to death (this witness did not testify as to a specific instance of such killing and apparently did not see any). This witness also testified that he heard that inmates who were late for roll call were punished by hanging either by wrists or feet on orders of the accused; and that in the spring of 1945, one inmate died as a result of this mistreatment (R 678, 679). A fourth witness, who worked in the kitchen, testified that he saw the accused drag a Jewish inmate into the kitchen and severely beat him with a wire club. The next morning the witness saw the body of the victim at the dispensary with its head and back out "open" and bloody (R 709, 710). A fifth witness testified that in December 1944 she saw the accused beat an inmate hospital patient so severely with a large stick that the inmate collapsed (R 397-399). One of the foregoing witnesses testified that a Czech inmate was beaten into unconsciousness by the accused for speaking to a woman inmate; and that on one occasion the accused said that there was no point in feeding the inmates in the hospital as they would die anyway (R 608). Three additional witnesses and two of the foregoing witnesses testified that the accused struck inmates for minor infractions, such as improper salutes; that he threw stones at them; and that, during the winter of 1944, he sprayed inmates with cold water from a hose when they were caught stealing (R 369, 549, 653, 654, 714, 726, 727). One of the foregoing witnesses testified that the accused removed chocolate, cigarettes and coffee from Red Cross packages intended for French prisoners of war. The coffee was used by the SS and the accused smoked the cigarettes (R 724, 743).

Evidence for Defense: The accused did not testify. A former SS guard testified that the accused beat inmates to prevent stealing, but that his beatings were not severe enough to cause inmates to need medical treatment. This witness also testified that the accused never carried a stick; and that he had not heard that any inmates were hanged by their wrists in Muehldorf (R 1248-1250).

Sufficiency of Evidence: The evidence establishes that the accused was active in administrative matters. There is overwhelming evidence as to his frequently administering severe beatings. However, it is not proved beyond a reasonable doubt that any of his beatings resulted in death or that others killed inmates at his direction. The Court was warranted from the evidence concerning the extent and nature of his participation in its findings of guilty. The sentence is excessive.

Sentence: Death by hanging.

Petitions: Petitions for Review were filed by defense counsel, Robert E. Welch, 28 July 1947 and 26 August 1947. Petitions for Clemency were filed by Erich and Emma Bosdorf, 6 May 1947; G. Eisenberg, undated; Rudolf Palme and Gustav Rattke, 28 May 1947; Ingeborg Rogazinski, 29 May 1947 and 7 June 1947; Cilly Ziehlke, 30 May 1947; Schaefer and Schulte, 31 May 1947; Heinrich Schiebel, 11 June 1947; Friedel Wagner, 27 July 1947; Fritz Stage, 24 July 1947; Franz Baumgarten, 24 July 1947; Ida Grossmann and Willy Schulz, 17 July 1947; Rudolf Mauer, 16 August 1947; the accused's sister, Erika Spaeth, 17 September 1947; and the accused, 6 October 1947.

Recommendation: Approval of findings and sentence, but that the sentence to death by hanging be commuted to imprisonment for life.

14. OTTO SPERLING

Nationality:	German
Age:	34
Connection with Muehldorf:	
(a) Period:	10 May 1944 - 2 May 1945
(b) Status	PZ Civilian Employee
(c) Position:	Supervisor of Cement Mixing at Main Construction Site

Evidence for Prosecution: In his Statement, the accused stated that as an employee of PZ he supervised the mixing of cement on the south side of the main construction site from September 1944 to April 1945. He admitted that he beat inmates on the cement carrying details with "any stick

that was handy". The accused also stated that, although the inmates were sick and undernourished and the work was too hard for them, he still believed that he was required to beat them in order to assure the presence of enough cement to give a proper mixture to the resulting concrete (P-Ex 29, pp. 1-4, R 107). In another Statement, the accused admitted that he beat inmates with a stick more than ten times (P-Ex 58, p. 4 R 821). One witness, Raskin, testified that the accused habitually beat inmates with a big club to hurry them in the carrying of the cement. Many of these inmates collapsed and "were carried back to the camp, dead or as well as dead" (R 477). He further testified that he was at the construction site twice and that for an unstated period he worked on a wood sawing detail there [however, insofar as the evidence indicates, the witness based his testimony, at least primarily, on hearsay] (R 479, 480). A second witness testified that the accused beat him as he was going to the barber shop, saying, "You dog, where do you want to go?" The witness stated that the accused was known among the inmates as a beater who frequently beat inmates with a stick (R 689, 690, 703). A third witness, a former Greek inmate, testified that in December 1944 the accused forced two inmates to remove their clothing and carry cement while naked. The weather was piercingly cold (R 768, 772, 773). A fourth witness, an Austrian capo, testified that the accused beat inmates often. On one occasion the witness apparently saw the accused beat an inmate with a "billy" so severely that he collapsed. The witness helped carry the victim to the point where the details left for the camp. The inmate was carried to the camp and the dispensary. Upon inquiry, the witness was told two days later that the inmate had died (R 828, 829). A fifth witness, a former head capo who worked at the main construction site, testified that the accused slapped his face several times; that other inmates also complained to him that the accused had beaten them; and that beatings there by all the capos were frequent and occurred daily (R 1440, 1447).

Evidence for Defense: The accused did not testify nor produce any evidence in his defense.

Sufficiency of Evidence: The Court was warranted from the evidence concerning the extent and nature of his participation, especially that relating to beating of inmates so severely that some probably died, in its findings of guilty. However, the position he occupied was not extremely important and it is not proved beyond a reasonable doubt that deaths resulted from his acts of violence or those of others at his direction. The sentence is excessive.

Sentence: Death by hanging.

Petitions: Petitions for Review were filed by defense counsel, Robert E. Welch, 28 July 1947 and 26 August 1947. Petitions for Clemency were filed by Hans Schaefer, 19 June 1947; and Herbert Schiller, 16 October 1947.

Recommendation: Approval of findings and sentence, but that the sentence to death by hanging be commuted to imprisonment for life.

VII. CONCLUSIONS:

An examination of the entire record of trial fails to disclose any error or omission in the conduct of the trial which resulted in injustice to the accused, and discloses that the evidence is legally sufficient to support the findings of the Court. Accordingly it is recommended that the findings of the Court as to all accused be approved; that the sentences as to all accused be approved, but that the sentences to death by hanging as to accused SPAETH and SPERLING be commuted to imprisonment for life and that the sentence to imprisonment for life as to accused GIESLER be reduced to imprisonment for 25 years commencing 13 May 1947.

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

OLIVER C. HARDY

ABRAHAM S. BERNSTEIN
Attorneys
Post Trial Branch

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

C. W. PHIFER
Lieutenant Colonel, USAF
Acting Deputy Judge Advocate
for War Crimes