

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

17 February 1948

UNITED STATES )  
                  ) v.                    ) Case No. 000-50-6-32  
Karl HORCICKA, et al. )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 2-10 October 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Karl HORCICKA, Johann WIRTH, Karl GAERTNER, Otto VOIGT, Johann GLAS, Wladislaus DOPIERALA, Karl SCHROEGLER, German nationals or persons acting with German nationals, acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses, and indignities, did, at or in the vicinity of the Mauthausen Concentration Camp, at Castle Hartheim, and at or in the vicinity of the Mauthausen Sub-camps, including but not limited to Ebensee, Gros-Raming, Gunsirkirchen, Gusen, Hinterbrühl, Lebnach, Linz, Loiblpass, Melk, Schwechat, St. Georgen, St. Lambrecht, St. Valentin, Steyr, Vienna, Wiener-Neudorf, all in Austria, at various and sundry times between January 1, 1942, and May 5, 1945, wrongfully encourage, aid, abet, and participate in the subjection of Poles, Frenchmen, Greeks, Yugoslavs, Citizens of the Soviet Union, Norwegians, Danes, Belgians, Citizens of the Netherlands, Citizens of the Grand Duchy of Luxembourg, Turks, British Subjects, stateless persons, Czechs, Chinese, Citizens of the United States of America, and other non-German nationals who were then and there in the custody of the then German Reich, and members of the armed forces of nations then at war with the then German Reich who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating thousands.

(Surname of GAERTNER actually spelled GÄRTNER, R 149; P-Ex 19. Surname of SCHROEGLER actually spelled SCHRÖGLER, R 147; P-Ex 17.)

III. SUMMARY OF EVIDENCE: All the convicted accused, except WIRTH, were inmates of Gusen I, a subcamp of Mauthausen Concentration Camp, for considerable periods of time between the dates alleged and were shown

to have been assigned positions in which they aided in the operation of the camp. Accused WIRTH was an SS sergeant assigned to subcamp Gusen I. All of the convicted accused were shown to have participated in the Mauthausen Concentration Camp mass atrocity. Prosecution's P-Ex 6 (R 13) is a certified copy of the charge, particulars, findings and sentences in the parent Mauthausen Concentration Camp Case (United States v. Altfuldisch, et al., COO-50-5, opinion DOJWC, February 1947, hereinafter referred to as the "Parent Case"; see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS.

1. Karl HORCICKA

Nationality:	Austrian
Age:	31
Civilian Status:	Carpenter
Party Status:	None
Military Status:	None
Ries:	MG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused was an inmate of subcamp Gusen I of the Mauthausen Concentration Camp from January 1942 to April 1945 (R 147, 282; P-Exs 16, 16A, 21, 21A). From the end of 1943 until March 1944 he was, by his own admission, a capo and room monitor (R 147; P-Exs 16, 16A). He was room eldest of block 18 from the end of 1943 until March 1944 (R 285).

Urbanik testified that in 1942 the accused beat a Polish inmate named Zoltmeski, who was ill in bed, with a stick 80 centimeters long and 10 centimeters thick, and kicked him severely when the inmate was prostrate. The victim died (R 48). This incident occurred five to seven meters from the witness. According to the witness, the accused was at the time room eldest in block 18, where the witness also lived (R 51, 52). At the time of this incident the accused also hit the witness in the face with a soup ladle, beat him with a stick and kicked him, causing some marks which were still visible at the trial (R 50, 51). Urbanik testified further

that the accused often sat on a chair in the morning and ordered an inmate whom he did not like to bring a bucket of water. When he required the inmate to kneel down, and to stick his head in the water; the witness stated, "that is how he drowned people". If the inmate resisted, the accused hit him with a 60-centimeter stick (R 49). In 1943 a number of Russian inmates were subjected to mistreatment in the roll call square by some SS men and capos and were then taken to the washroom where they were beaten to death. On one day there were 400 victims and on another 300. The witness saw the accused strike these inmates on roll call square with a stick (R 50).

Sack testified that the accused, while a capo with the water construction detail in June or July 1943, went to block IV looking for replacements for his detail (R 87). Because the inmates of that block, many of whom were Russians, had to work for their own detail and could not go with him, the accused beat several of them, including the witness, with a "whip" 80 centimeters long and 10 centimeters wide (R 87, 88).

Marciniak testified that in September 1943, while he was washing his shirt in block 12, from a distance of three meters he saw the accused take a Russian inmate to the washroom, slap him and, when the inmate fell, jump several times on his chest. The accused left the victim there. The inmate was dead (R 97, 98). This witness also stated that in August 1943, on occasions when he passed by block 18, he saw the accused beating inmates (R 97).

Konozak stated in an unsworn pretrial statement that in 1943 the accused mistreated inmates so brutally that they had to be taken to the sick quarters. He also stated therein that in 1944 he saw the accused drown two Italian inmates and one Yugoslav inmate in a barrel of water in the washroom of block 19 (R 141; P-Exs 7, 7a).

Stefan Krajewski stated in an unsworn pretrial statement that on 26 December 1944 he visited block 18 and observed the accused killing a Russian inmate who had stolen some bread. He personally observed the accused treat particularly badly Russian, Yugoslav and Polish inmates

(R 141; P-Exs 8, 8A).

Stanislaw Lobodzinski stated in an unsworn pretrial statement that in October 1942 he saw the accused, who was then room monitor of block 18, beat a Yugoslavian inmate there with a stick until the inmate fainted. The inmate died during the night. Later when the accused became camp capo he saw him continuously beating or mistreating the weakest inmates (R 141; P-Exs 9, 8A).

The accused, in an extrajudicial sworn statement, admitted mistreating inmates by beating and kicking them upon orders from block leaders (R 147; P-Ex 16A, p. 3). He also admitted that some of these inmates died later in the hospital as a consequence of his mistreating them (R 147; P-Ex 16A, p. 4). A similar admission appears in an extrajudicial sworn statement in the accused's handwriting wherein the accused stated that, in the performance of his duties, he punished offenders with slaps on the ears and beatings, from which several inmates died in the sick barracks (R 297; P-Exs 21, 2A). The accused admitted in his testimony that, while he was room eldest, he beat inmates almost every week (R 291).

Evidence for Defense: The accused testified that he had been an inmate of concentration camps since 1938 at Dachau Concentration Camp, Mauthausen Concentration Camp and Gusen I, a subcamp of the latter (R 282). He admitted boxing inmates on the ear or giving them a few blows with a water hose. He testified that those inmates had violated some camp rule by either stealing from other inmates, dirtying the block or tearing up blankets (R 286). He denied that he ever took inmates to the washroom or drowned them (R 287). He also denied that any inmate died as a result of his beatings (R 282).

The accused further testified that he saw his statement, Prosecution's P-Ex 16, 14 days after an operation, on the day he had received an opium injection (R 289). He suggested some corrections but was told to sign the paper without them because a new document would be drawn. The corrections were never made. The accused testified that, when he was asked whether he ever mistreated inmates and they later died, his answer

was "no". As to his pretrial statement which was introduced into evidence as Prosecution's P-Ex 21, the accused testified that Mr. Kitt, an interpreter of Danish nationality, threatened to deliver him to the Poles unless he made a statement to the effect that he had beaten inmates to death (R 298).

The accused specifically testified that the prosecution witnesses were not telling the truth in regard to the incidents about which they testified (R 294-296).

Dengelman, a former inmate of Gusen I (R 295), testified that he had known the accused since the end of 1943 (R 198). He lived in room A of block 18 while the accused was room eldest of room B in the same block. He further testified that the accused liked to beat inmates. However, during the period while the accused was room eldest, he neither saw nor heard of anything as serious as the killing of another inmate. Had this occurred it would have been common talk (R 199).

Sufficiency of Evidence: Austria was a co-belligerent of Germany. The testimony by the accused as to improper methods being utilized in procuring his extrajudicial sworn statements has little persuasiveness. Whether they were procured under such circumstances as to cause the accused to state untruths therein was a question for the Court to determine. It does not appear that the Court assigned inappropriate probative value thereto. In any event the findings and sentence are amply supported by other evidence.

Petitions: A Petition for Review was filed by Major Joseph L. Haefelo, defense counsel, 20 October 1947. Petitions for Clemency were filed by Arnold Damaschke, 17 November 1947; Theo Schmitz, 16 November 1947; Christian Wohlrab, 22 November 1947; Oskar Tandler, 30 November 1947; and accused, 22 December 1947.

Recommendation: That the findings and sentence be approved.

2. Johann WIRTH

Nationality: German  
Age: 35

Civilian Status:	Construction technician
Party Status:	Member of Nazi Party
Military Status:	SS Technical Sergeant
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 5 May 1945

Evidence for Prosecution: The accused, an SS sergeant, served in subcamp Gusen I of Mauthausen Concentration Camp from January 1940 until the liberation (R 151). He was a first sergeant until May 1944 and then a technical sergeant (R 153). Most of the time he was a detail leader in charge of a construction detail (R 151).

Kowalski testified that he saw the accused beat inmates with a stick. Most of the beatings occurred during air raids when the inmates ran for shelter and during the construction of a wall. He saw many beatings by the accused. The inmates were Poles, Russians, Spaniards, and Italians (R 104). In August or September 1944 from a distance of 20 to 25 meters the witness saw the accused kill a Russian inmate who was carrying some potatoes (R 104, 105, 114). The accused gave the inmate a kick, then beat him with a stick and kicked him again. The inmate was picked up by a detail. Later the witness saw the victim's dead body in the stone quarry (R 105).

Ogresnigg testified that, subsequent to 1 January 1942 when he was in the construction office to make a request for some repairs in his block, the accused entered. He had an argument with the inmate clerk Reichter about a document which had been prepared. He hit the clerk in the vicinity of his left eye (R 120, 121).

Kamiencki testified that at the end of the summer of 1942 he and other inmates were beaten with a stick by the accused, probably because they had not carried the right kind of stones from the quarry to the camp (R 134). The witness had blue marks on his back and his head was swollen as a result of the beating (R 135). Kamiencki further testified that in the fall of 1942 the accused beat three inmates severely with a wooden stick 70 or 80 centimeters long. They had stolen some potatoes (R 135). These in-

nites were taken by the accused to an SS sergeant and sent to the punishment work (R 135).

Evidence for Defense: The accused testified that he once caught and beat an inmate with a piece of wood. The inmate had smashed a door with an ax (R 100). He also testified that during his five years in concentration camps he had punished three or four inmates by boxing their ears. These inmates had either stolen material from a construction site or destroyed property (R 160). The accused's reason for the beating of the inmates was corroborated by three former inmates, Neumeier, Erwin Rinker and Christian Rinker, who testified on his behalf (R 171, 181, 192). Neumeier testified that, if an inmate did something really bad, the accused took him to work in the stone quarry to show him the difference between that work and the work he had been doing. After two or three weeks, the accused recalled the inmate to his detail and treated him as if nothing had happened (R 172).

The accused testified further that he showed consideration for the welfare of the inmates. He did not report a theft of construction material which was stolen to improve block 8, where inmates had been placed although the block was unsuitable for occupancy (R 156, 157). According to the surprise of the witness, Christian Rinker, the accused did not send Jehovah's Witnesses who were assigned to his detail to work in the stone quarry, even though the camp commander had so ordered following an inspection of the camp by Himmler (R 190, 191). The protective custody leader discovered unauthorized work done by some inmates in the workshop. However, the accused covered up for them (R 180). He allowed the inmates certain privileges, contrary to the order of the protective custody commander. He saved inmates from punishment by inventing a reasonable pretext for a fire which had broken out in the joiner shop (R 191). Denglerman testified that the accused gave the inmates a slip of paper which was necessary in order to obtain shoes. He also gave them cigarettes (R 196). When the inmates stood before him, he always requested them to replace their caps (R 197).

The accused specifically denied beating any inmates who had carried

stones from the quarry into the camp (R 159). He also denied catching and beating any inmate who had stolen potatoes (R 160).

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

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

Recommendation: That the findings and sentence be approved.

3. Karl GARTNER

Nationality:	German
Age:	39
Civilian Status:	Stonemason
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he was an inmate of subcamp Gusen I of Mauthausen Concentration Camp from February 1941 until the liberation. He held the position of fireman following November 1943. He was in charge of the fire brigade following February 1945 (R 148; P-Exs 18, 18A).

Gomez testified that in the summer of 1944 an inmate of unknown nationality was missing from a Sunday midday formation (R 79). The accused and a Czech inmate camp policeman found the missing inmate in a tunnel between two barracks and dragged him. The inmate was covered with blood. The witness did not see but merely heard of this incident (R 77). Gomez testified that at the beginning of 1945 the accused and the firemen were in charge of two gassings which occurred in barracks 31. The accused was the chief of the firemen and one of those who conducted about 600 or 700 inmates to barracks 31 (R 79). The witness also testified that he saw the accused beat hungry inmates with a rubber hose when they tried to pick up something to eat. He kicked them when they fell to the ground (R 78,79).

Zamierowski, a former inmate, stated in his extrajudicial sworn statement that at the end of March 1945 the accused and four other members of the fire guard, using wooden clubs and rubber truncheons, dispersed a large group of inmates who had gathered in front of the washroom of blocks two and three for bartering among themselves. The accused, using great force, struck an inmate of either Russian or Yugoslav nationality over the head with a wooden club. The victim fell to the ground, and lay there motionless, apparently dead. The observer saw the incident from 30 meters away. Fifteen minutes later a crematorium detail picked up the body of the inmate and carried it off toward the crematorium (R 142; P-Ex 10).

Majewski, another former inmate stated in his extrajudicial sworn statement that he saw the accused beat inmates of various nationalities on the roll call square, in the washroom and in the toilets at subcamp Gusen I. He further stated that in the spring of 1944, from a distance of five meters, he saw the accused beat a Polish inmate some six or seven times with a rubber hose about a half meter long and 30 millimeters in diameter, causing the inmate's head to bleed. He saw the accused beat inmates at least a hundred times. From a distance of approximately 10 meters, he saw the accused and others beat two inmates, a Pole and a Russian, forcing them to back into the electrically charged fence. These inmates were then shot and killed by SS guards. He saw the accused participate in such crimes at least six times. Sometimes the camp commander or roll call leader gave the instructions to kill the inmates (R 142; P-Ex 11).

Dombrowski, a former woman inmate, stated in her extrajudicial sworn statement that in January 1945 she saw from her window three young boys, two Poles and one Russian, being forced to stand near the electric wire fence approximately 20 meters away. The roll call leader Killemann ordered them thrown against the wire. She saw the accused pick up each of the three inmates and successively throw them against the electrically charged wire. From the tower the SS guards fired several shots into the bodies of the victims. The roll call leader patted the accused on the back and gave him 100 cigarettes (R 142; P-Ex 12).

In his extrajudicial sworn statement, the accused stated that in March 1945, pursuant to an order by roll call leader Killemann the statement does not indicate whether Killemann was present he chased two Russian inmates into the electrically charged wire. He admitted that he often beat inmates with his fists or rubber hoses (R 149; P-Exs 19, 19A).

Evidence for Defense: Zamisowski stated in his extrajudicial sworn statement that the accused, an inmate of subcamp Gusen I, held no position until 1944. He was an ordinary inmate, working as a mason, until the middle of 1944 (R 142; P-Ex 10, p. 9). He then became an ordinary fireman and following February 1945 he held the position of fire guard, capo, and camp policeman (R 142; P-Ex 10, p. 2). Folger and Beck testified that there were two fire details in subcamp Gusen I. The accused belonged to the one which answered fire calls outside the camp (R 249, 275-276). Beck testified that in the years 1944 and 1945 there were frequent alarms outside the camp, as a result of air raids, which the fire department answered (R 270).

Folger, a former capo, testified that, while he could not say he knew everything concerning the accused which happened in camp, any serious case involving block elders or capos would have been discussed (R 260). He did not hear that in January 1945 the accused had caused the death of three people by chasing them into the electric wire fence. Furthermore, inmates could have been driven into the electric wire fence only at night (R 250). The witness testified also that the former female inmate, who testified as to the incident in which three bodies were thrown against the electric fence, occupied room four of the barrack while in Gusen I and could not have seen the electric fence from the window of her room (R 253).

Although he did not testify, the accused, in one of his extrajudicial sworn statements, stated that in March 1945 he was ordered by the roll call leader to have two Russian inmates brought to the gate. That evening the roll call leader kicked one of them into the wire and shot the other in the presence of the accused (R 149; P-Exs 18, 18A).

Sufficiency of Evidence: The evidence tending to establish that one

of his acts of cruelty was at the direction of and possibly in the presence of a superior fails to establish that the accused was acting under the immediate compulsion of superior orders to any substantial degree. The Court gave ample consideration, as indicated by the sentence to imprisonment for life, to any element of superior orders which may have been present. Except to this minor extent, the accused failed to meet the burden of proof as to superior orders as required by pertinent authorities discussed in Section V, post. The Court was warranted from the evidence as to the nature and extent of his participation in its findings of guilty. The sentence is not excessive.

Petitions: A Petition for Review was filed by Major Joseph L. Haefele, defense counsel, 20 October 1947. A Petition for Clemency was filed by accused, 14 January 1948.

Recommendation: That the findings and sentence be approved.

4. Otto VOIGT

This accused was acquitted (R 344).

5. Johann GLAS

Nationality:	German
Age:	57
Civilian Status:	Miner
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	30 years, commencing 28 February 1947

Evidence for Prosecution: The accused was an inmate of subcamp Gusen I of Mauthausen Concentration Camp where he held the position of block eldest of block 38 and later of block eight (R 30).

Feder testified that in mid-April 1945 the accused beat a Polish inmate named Wasak about 10 or 15 times with the leg of a stool 50 or 60 centimeters long and seven centimeters thick (R 16) until the inmate collapsed (R 15).

The beating occurred three to four meters from the witness. The accused ordered the inmate carried to the washroom. The victim was dead (R 16, 17). Feder saw the dead, naked body of the victim in the washroom (R 17). He once saw the accused administer 25 strokes to a Russian inmate who allegedly stole some bread (R 18). The inmate was carried to the dispensary. The witness never saw the Russian again (R 18). Once he was told that the accused sent three (apparently Polish) inmates to the dispensary where, he heard, they received gasoline injections (R 18). The witness further testified that he was quite seriously beaten by the accused with a rubber club on the ears (R 19).

Jaroszewicz testified that in the beginning of 1944 the accused was block eldest of block eight, where invalid inmates were housed. The accused chased the inmates out to work every morning, driving them out into the cold while only half-dressed and made them stand outside for an hour and a half (R 30). In March and April 1944, at seven in the evening (R 30), the accused brought to the washroom of blocks seven and eight two Polish inmates, who had been beaten, and threw them into a water tank (R 30, 31). The accused beat them with a stick, 50 to 60 centimeters long and three centimeters in diameter, for a period of from five to 10 minutes (R 31). He threw them in the tank. The witness further testified that after five to 10 minutes he pulled out their dead bodies and threw them on the concrete floor (R 32).

Karminiak testified that at the end of January and February 1943 (R 95) two ill Polish inmates were thrown head first into a barrel of water by the accused and drowned (R 96). In January and February 1943 he saw the accused daily beat inmates with a cable when they called at the dispensary to see the doctor, and were being lined up by the accused (R 96, 97). The witness further testified that the accused was then a janitor at the dispensary (R 97).

Szymura testified that in the fall of 1944, from a distance of approximately three meters, he saw the accused giving a bath to an invalid inmate of unknown nationality in the washroom next to block eight (R 125, 126). The accused was scrubbing the inmate with a brush while beating him with a

stick. A half hour later the witness saw the inmate lying bleeding on the ground, apparently dead. He never saw the victim again. The witness testified further that the accused, together with the camp commander and the roll call leader, selected the weakest inmates of his block for invalid transports to Mauthausen (R 126).

Cognet, a former French inmate, stated in his extrajudicial sworn statement that while the accused was on duty in blocks eight and 32 during 1944 and 1945, he beat inmates ferociously with a rubber hose, stick and the usual devices. The beatings were frequently followed by death. During November or December (apparently 1944) a French inmate died after having been struck by the accused. The witness further stated therein that another French inmate died similarly at the beginning of the year (R 144; P-Exs 13, 13a).

Evidence for Defense: The accused testified that, when he took over block eight, he found it in a deplorable condition (R 216). He and other inmates stole the necessary material to render the block habitable (R 217). He brought a stove into the room (R 219). He refused to send inmates to work in the kitchen because three of them had been killed there (R 219-220). He refused to turn over to the camp capo, von Liesen, inmates intended to be drowned (R 220-221). For this last refusal, the accused was told he would have to walk into the electric wire fence, but he managed to be reported as dead and remained in hiding in block eight (R 222, 223).

The accused denied causing the death of an inmate in April 1945 (R 227). He testified that after the liberation he had occasion to meet former inmates of the camp at the dedications of monuments to inmates of Mauthausen and of Buchenwald. He addressed the gatherings (R 227, 228). He was not arrested until 10 March 1947 while in Dachau as a witness at a War Crimes trial (R 228). He was in Dachau to testify in the parent Dachau case. He was in Dachau when a monument to the former inmates of the camp was dedicated (R 228). His arrest was caused by prosecution witness Feder with whom he had a conversation in the mess hall (R 228-230).

The accused testified further that he knew a French inmate referred to in Prosecution's Exhibit P-Exs 13, 13A. He took care of him and another French inmate. The two were not happy together and often quarreled (R 230). The French inmate, whom the accused is alleged to have killed, insisted on being sent back to the dispensary (R 230-231). Subsequently, the accused returned the Frenchman to his invalid block to prevent him from receiving an injection (R 231).

The accused denied that he ever beat or drowned anyone (R 235, 242). Under cross-examination he asserted that the block eldest of block seven, Mackinger, a professional criminal, looked like him (R 237-238). He testified also that he was in the dispensary suffering from typhus from 3 March until 20 April 1945 (R 239).

The accused admitted boxing a Russian inmate on the ear for beating another inmate on the head with a hammer and taking a parcel away from him (R 241, 242). He admitted bathing inmates but only because they suffered from dysentery and were dirty (R 242). At the time of the liberation, when inmates of the camp went out looking for SS men to turn over to the Americans, the accused was present (R 333).

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

Petitions: A Petition for Review was filed by Major Joseph L. Macfals, defense counsel, 20 October 1947. A Petition for Clemency was filed by accused, 10 October 1947.

Recommendation: That the findings and sentence be approved.

6. Wladislaw DOPIERALA

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

7. Karl SCHROGLER

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Nationality:	German
Age:	42
Civilian Status:	Driver
Party Status:	None
Military Status:	None

Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused was an inmate of sub-camp Gusen I of Mauthausen Concentration Camp from the beginning of 1941 to September 1943, when he was released to join the army (R 33, 41). He served as block eldest in blocks five, 22, and 32 (R 73). Two witnesses referred to him as a big villain and murderer (R 33, 36, 60, 61). It was said he boasted that he killed more than 1500 inmates (R 33, 36).

Jaroszewicz testified that he saw the accused drown two Yugoslav inmates and a Polish inmate between March and September 1943 (R 33). The accused gave these inmates a bath in a tank in which he had poured some "chlor". He then pulled them out and dropped them on the concrete floor (R 33). After the bath the inmates were dead (R 34). Their bodies were carried to the next day's roll call and then sent to the crematory (R 35). The witness testified also that every night, when the inmates were in bed, the accused selected five to 10 inmates to whom he administered 10 to 25 blows on their naked buttocks with a stool or a rubber hose 70 centimeters long filled with sand (R 35).

Glowacki testified that during one night in May 1942 he saw the accused and two others drown 82 inmates, most of them being Polish nationals, by dunking them in a barrel of water head first and holding them down until they were dead (R 59).

Gomez testified that he saw the accused beat sick inmates with a rubber hose in block 32 (R 74). From a distance of 20 to 25 meters he saw the accused bathe an ill Spanish inmate, Manuel Vallejo, one afternoon after roll call. The accused put the victim in a shower. He beat the inmate with a rubber hose, 50 to 60 centimeters long and an inch thick, whenever the man tried to escape from the shower. Eventually, the force of the water floored the inmate (R 74, 75). The witness learned later that the inmate died (R 74). He never saw the victim again; the victim's name was on the list of the dead (R 75).

Opressnigg testified that, while the accused was block eldest of block 32, every day 200, 300 or 400 inmates from block 32 were bathed in a bath with a capacity for 400 inmates. They were kept under the showers until they collapsed and drowned in water approximately 50 centimeters deep (R 119, 120). When the bathing occurred, one or two SS men stood guard (R 120). Inmates unwilling to go into the cold water were beaten with fists and sticks and kicked. They were driven into the bath. The accused participated in those assaults (R 120). In the absence of SS men, the camp eldest, who was also present, and the accused were in charge of the inmates at the bathhouse. The accused was in charge (R 124). The witness, who while in subcamp Gusen I worked in the pathological institute where all deaths were registered (R 119), further testified that during the time the accused was block eldest of block 32 there were approximately 6000 deaths in that block (R 120). This same figure was corroborated by witness Kamienski (R 132).

Kamienski further testified that in January or February 1942 he saw the accused pour cold water on 10 Polish or Spanish inmates while they were lined up in front of block 32. He poured cold water on them until they collapsed. When they collapsed, the accused jumped on their chests and kicked them. The witness saw the frozen, dead bodies of the victims in front of the building (R 132, 133). He also saw several such incidents in November 1942 (R 132). He testified further that in June 1942 he saw 60 to 70 inmates being led by roll call leaders Brust and Grill, followed by the accused, from block 32 to the bathroom situated between blocks 27, 28 and 19, 20. They were forced into the room and beaten with sticks by Brust, Grill and the accused (R 133). After approximately an hour, the surviving inmates were returned to block 32 and "dead beds" were brought to the washroom of the block (R 133).

Evidence for Defense: In his unsworn pretrial statement, the accused admitted that a certain number of inmates from block 32 had to be killed each day. He stated that this was done in compliance with orders from the SS leaders of the camp, many of whom are mentioned in the statement.

The accused described fully the various methods used in the killing of inmates in subcamp Gussen I. He stated that inmates had to be taken to a shower bath late in the evening. These inmates who fainted were left there. Their bodies were collected the following morning and carried to the crematory. He admitted beating inmates rather frequently in order to maintain order. The accused denied that inmates were ever killed by his beatings. He denied ever giving an order to kill inmates. The death barracks, block 32, was closed in January 1943 whereupon the accused became block eldest of block 5 (A 147; P-Exs 17, 17A).

Folger testified that the unpopularity of the accused was due to the fact that he was in charge of the invalid block and that, because of his position there, the inmates were under the impression that the accused was responsible for the drownings ordered by the protective custody commander (R 266, 267). The witness testified that he saw the accused take 32 undressed inmates from the dispensary to block 32 for a bath (R 256). He stated, however, that the accused turned the inmates over to the labor allocation leader, Kluge, who was standing outside the door. The door was then shut. The accused discussed with the witness and another inmate the fate of the inmates he had just escorted. The accused could have done nothing to prevent the killings. Responsibility therefor rested with the protective custody leader and others (R 257).

Sufficiency of Evidence: With regard to the evidence offered in support of superior orders, the Court might well have concluded that the accused's participation in the killing of inmates was not in all cases in the presence of superiors; that his desire to cooperate with and to please superiors was stronger than other considerations; that he did not act unwillingly or under the immediate compulsion of superior orders; and that he failed to meet the burden of proof required by pertinent authorities discussed in Section V, post. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Major Joseph L. Baefels, defense counsel, 20 October 1947. Petitions for Clemency were

filed by Christian Wohlrab, 16 November 1947; Casar Tandler, 23 November 1947; Arnold Damaschke, 28 November 1947; accused, 10 December and December 1947; Franz Schulz, 3 January 1948; Reinhard Furuoker, 14 January 1948; and Hans Ertel, 21 January 1948.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: The Court had jurisdiction of the persons of the accused and of the subject matter.

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

Superior Orders: Accused GÄTNER and SCHÖGLER sought to justify their actions by offering evidence to show that they were acting in compliance with "superior orders". Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, opinion D&AWC, December 1946; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion D&AWC, February 1948; and French

Republic v. Wagner, et al., Court of Appeals (France), July 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior in fact, directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U.S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rules of the Law", by Ernst Fraenkel; United States v. Bury, et al., opinion DJAWC, September 1946, United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWC, December 1946.)

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

#### VI. CONCLUSIONS:

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

  
CLAUDIO DELITALA  
Attorney  
Post Trial Branch

Having examined the record of trial, I concur, this 16<sup>th</sup> day  
of April 1948.

*C. E. Straicht*  
C. E. STRAIGHT  
Lieutenant Colonel, JAGC  
Deputy Judge Advocate  
for War Crimes