

26 February 1948

UNITED STATES

v.

Leonhard MEYER

Case No. 000-50-2-91

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 23-29 May 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Leonhard Meyer acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the German Reich in exercise of belligerent control.

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

Particulars: In that Leonhard Meyer acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of 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 cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: The accused was a member of the SS at subcamps Rothschaige, Allsch and Muehldorf, subcamps of Dachau Concentration Camp, for a considerable period of time between the dates alleged. In addition to his general participation in the Dachau Concentration Camp mass

atrocities, he personally beat and mistreated many inmates and was the transport leader of the evacuation transport from subcamp Muehldorf to Sooshaupt on which several hundred inmates died or were killed. Prosecution's Exhibit P-Ex 2 (R 9) is a certified copy of the charges, particulars, findings and sentences in the Parent Dachau Concentration Camp Case (United States v. Weiss, et al., Case No. 000-50-2, opinion DJAWC, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post).

#### IV. EVIDENCE AND RECOMMENDATIONS:

##### Leonhard MEYER

Nationality:	German
Age:	47
Civilian Status:	Office secretary
Party Status:	None
Military Status:	SS First Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was an SS first sergeant at subcamp Rothscheibe from June to August 1944; from August 1944 to February 1945 at subcamp Alteich; and from March 1945 to 27 April 1945 at subcamp Muehldorf. His duties in the various subcamps were guard leader, detail leader and roll call leader (R 10; P-Ex 3, pp. 2, 3).

Basler, who was a German inmate in subcamp Muehldorf (Forest Camp No. 5 thereof) following August 1944, testified that he knew the accused and identified him in court (R 27, 28). The accused was in charge of the main construction site detail. On the marches back to camp, the witness saw the accused beat inmates (R 29) with his hands (R 30). He was told that inmates were hospitalized from these beatings (R 30). In April 1945 the accused was in charge of the inmate evacuation transport which left subcamp Muehldorf. There were approximately 3600 inmates on the transport and 56 inmates crowded into each freight car. On the transport there was only one issue of food, a piece of bread and a piece of cheese. The

accused told the inmates after they complained about the food that it did not matter whether they died one day earlier or later (R 30, 31). The transport lasted four or five days and the inmates, during that time, were not allowed out of the locked cars to relieve themselves (R 32). While the transport was stalled at Poing on 27 April 1945, an inmate tried to escape and he was beaten to the ground by 10 to 15 SS guards who were under the accused. The inmate's head was split open (R 32, 33). On 28 April 1945, the inmates received word that the war was over (R 33). All the inmates left the freight cars and attempted to escape. They were fired upon by members of the air force and the remnants of the SS guards. They were driven back into the freight cars. The inmates who were wounded and the bodies of those who had been killed were loaded back into the freight cars (R 34, 35).

Kanner, who was a Polish inmate at subcamp Muehldorf, testified that he left the camp in April 1945 on the evacuation transport and that the accused was the transport leader (R 60, 61). There were over 2,000 male and female inmates on the transport (R 61). There were approximately 100 inmates placed in each car and each inmate received one slice of bread and one small slice of cheese (R 62). The witness escaped the first night when the train stopped at Amping (R 63).

Schlaecher, who was a German inmate in subcamp Muehldorf from 1944 to the evacuation, testified that he knew the accused and identified him in court. The accused was a detail leader of the Weiss-Freitag detail (R 106, 107). During the feeding of inmates, he saw the accused beat inmates with a stick (R 108). He was told by inmates of the detail that the accused had beaten inmates who had to be taken to the dispensary (R 109). He further testified that in April 1945 he left subcamp Muehldorf on the evacuation transport and the accused was the transport leader. After two days the transport reached Poing. There was an air raid alert and the inmates tried to leave the cars and take shelter under them, but the accused refused to allow them to do it and he and other SS guards beat the inmates back into the cars (R 109).

The evacuation transport from subcamp Muehldorf in April 1945, consisted of approximately 3,000 inmates of which several hundred inmates were killed or died from hunger. There were about 200 inmates shot while the transport was at Poing. Approximately 400 inmates died or were killed on the transport. The accused was in charge of the transport when it left Muehldorf, but he and many of the guards deserted the transport before it arrived at Seeshaupt (R 58, P-Ex 14; R 102, P-Ex 16; R 104, P-Ex 18; R 105, P-Ex 19). After the transport arrived at Seeshaupt, many inmates died and were buried there along with those that were already dead when the transport arrived (R 50; P-Ex 10).

Eisenhaundler, who was a German inmate in Forest Camps 5 and 6 forming a part of subcamp Muehldorf, testified that he knew the accused and identified him in court. From the beginning of March 1945, the accused was the detail leader of the detail Weisse-Freitag (R 91). This detail worked a rather long distance from the camp. In the evenings while returning from work, the accused beat the sick inmates, who had difficulty keeping up, with a rifle to such a degree that they had to be carried into camp. This was done in order to hurry the detail back to camp so that the guards would not have to work so late. The guards, who were all under the command of the accused, also beat the inmates. The accused was very often drunk on the detail and would then treat the inmates very badly (R 91, 92).

Algawa, who was a Greek inmate of Dachau Concentration Camp and subcamps Allach and Muehldorf, testified that he knew the accused and identified him in court. At subcamp Allach the accused was the camp commander of the Jewish camp which formed a part of subcamp Allach (R 70, 71). Many inmates were beaten until they were unable to walk by capos and other personnel of the camp on the express orders of the accused. Once the witness and some other inmates stole some potatoes. Pursuant to directions of the accused they were each given 25 blows with a rubber hose (R 71, 72). The accused selected the inmates for work and those that were sick should have been permitted to stay in camp, but he would always send the sick inmates to work and some of the sick inmates died from the heavy work (R 72, 73).

The inmates were given punishment exercises such as lying down on the ground, rolling over, getting up, walking with bent knees, etc. Two capos were present at these exercises and beat the inmates with sticks. This was usually done in the presence of the accused (R 74, 75).

Neumark, who was a Polish inmate at subcamp Allach from June 1944 to the end of the war, testified that he knew the accused as the camp leader of the Jewish camp which was a part of subcamp Allach and identified him in court (R 82, 83). He further testified that once he took an apple from a cart. The accused caught him and slapped him four times in the face (R 84). The accused always inspected the kitchen where the witness worked, and if things did not suit him, he punished the inmates who worked there by making them run at the double around the building (R 84).

Balesa, who was a Hungarian inmate at subcamp Allach from September 1944 to January 1945, testified that he knew the accused and identified him in court. The accused was the camp commander of the Jewish camp which was a part of subcamp Allach (R 118, 119). Sick inmates had to attend roll call and were sent on the work details. Many of the sick inmates died as a result of the hard work (R 120, 121). The accused was always present at roll calls and observed what was taking place throughout the camp (R 120).

Weiss, who was a Hungarian inmate at subcamp Allach from September 1944 to May 1945, testified that he knew the accused and identified him in court. The accused was a roll call leader of the Organization Todt camp which formed a part of subcamp Allach (R 126, 127). The roll calls were of considerable length of time regardless of the weather. Many sick inmates were sent to work and died as a result of the hard work (R 127, 128). The accused was always present during roll calls and knew the condition of the inmates (R 128, 129). He further testified that he knew that one inmate, on orders of the accused, was given 25 blows for stealing potatoes (R 129).

Soschlico, who was a Polish inmate of subcamps Rothschweige and Allach from May 1944 to April 1945, identified the accused in court and testified

that he first knew the accused at subcamp Rothschweige as a detail leader (R 134, 135) and later as a roll call leader (R 136). At subcamp Allach the accused was the camp commander of the Jewish camp which formed a part of subcamp Allach (R 137). Once after an air raid in Munich, the accused took a detail of inmates there to clean up the debris. One of the inmates found some eggs in a house destroyed by bombs and took them. The accused reported this inmate to <sup>the</sup> main camp at Dachau. The witness was later told by friends that this inmate was hanged at Dachau (R 137, 138). The accused sent an inmate, who was sick in bed at the dispensary, to work at the BMW factory (Bavarian Motors Works) and the sick inmate died the same day (R 138, 139). The accused took a vast quantity of food belonging to the inmates to his home, thus depriving the inmates of sufficient food (R 139-141). The accused ordered capos to beat inmates who were caught stealing potatoes. The inmates received 25 blows (R 148). The witness was told by another inmate that the accused had beaten him and knocked out two of his teeth. He saw this inmate when he was leaving the guard building and his face was all bloody (R 148, 149).

Blum, who was a Romanian inmate of subcamp Rothschweige from June to September 1944 and at subcamp Allach from September 1944 to February 1945, identified the accused in court and testified that he knew the accused first at subcamp Rothschweige as a roll call leader and later at subcamp Allach, first as the roll call leader and then as camp commander (R 152-154). During roll calls the accused kept the inmates standing for long periods of time regardless of the weather. The accused selected sick inmates and sent them to work (R 154).

Scherzer, who was a Polish inmate at subcamp Allach from September 1944 to April 1945, testified that he knew the accused and identified him in court (R 158, 159). The accused was the roll call leader and in charge of the Jewish camp which formed a part of subcamp Allach (R 159). The accused beat the witness for attempting to bring a dog into camp on the orders of one of the capos of his detail. The accused struck him in the face, knocking two of his teeth out (R 160). Many sick inmates were

forced to work and many of them died as a result of sickness and heavy work (R 161). The witness saw many inmates punished in camp. These punishments were supervised by the accused. The inmates were given 25 to 50 blows with an ox whip (R 161, 162). On many occasions, especially on Sundays, the inmates were forced to "make some sport" meaning they were forced to double time around the camp, drop to the ground, roll around on the ground, jump up and run again, etc. The accused was often present and observed the "sport" And, if the inmates could not keep up with the fast pace, they were beaten (R 162, 163). He further testified that he saw the accused kick a Romanian inmate so viciously that he fell to the ground. This happened when the inmate's work detail was returning to camp. The victim was being helped by other inmates as he was weak and sick. Following the kicking the inmate was removed to the dispensary where he died 10 to 14 days later (R 163, 164). Once the accused forced an inmate to consume six or seven liters of soup, thus causing the inmate to have a stomach disorder and dysentery which may have been the cause of his death (R 168).

Toder, who was a Belgian inmate at subcamp Allach from September 1944 to February 1945, testified that he knew the accused and identified him in court (R 173-175). When the inmate transport which the witness was on arrived at subcamp Allach, the accused picked out the inmates with professional qualifications and sent them to the Sager and Woerner work detail. It was considered a punishment detail as the work was very heavy and the inmates could endure it for only a short period (R 175). Many inmates, who were sick and weak, were forced to work on this detail and died as a result thereof (R 177). Many sick inmates died after they had been bit by the dogs at the camp (R 176, 177). A Belgian inmate was caught stealing potatoes and was given 25 blows each day for three days. This punishment was on the direct orders of the accused. The orders also required that the inmate be deprived of a portion of his food ration. The victim was taken to the dispensary and died the next day (R 178). He further testified that he saw the accused in the dispensary point out sick inmates who were in bed and order them back to work. This was done

without the permission of the doctors (R 179).

There were many Russian, Polish, French and Italian prisoners of war at subcamp Muehldorf working in dangerous places and on military construction (R 58; P-Ex 14, pp. 1, 5). Hahn, who was an inmate at subcamps Rothschweige and Allach, testified that he knew the accused and identified him in court (R 325). This witness corroborated the testimony of other prosecution witnesses in that the accused was the one responsible for the sending of sick inmates to work on the various details (R 325-327).

Landau, who was an inmate at subcamp Allach, testified that he knew the accused and identified him in court (R 334, 335). The accused issued orders that, when a Jewish inmate became sick, no assistance would be given to him and that the dispensary was to be very conservative in admitting Jews as they were loafers and shirkers (R 337). At the dispensary the witness saw the accused beat sick inmates with a whip, his fists or kick them and order them back to work (R 338). A Hungarian inmate who was suffering from dysentery was beaten by the accused so viciously that he died. This beating was administered to the inmate because the accused found the bed of the inmate unclean (R 339, 340). Inmates were given punishment exercises, "making sport", on the orders of the accused (R 340). The dispensary gave inmates who were unfit for work a convalescent slip, but the accused disregarded these notations and sent the inmates to work (R 341-343).

Delikat, who was an inmate at subcamp Muehldorf, testified that he knew the accused and identified him in court (R 350). The accused was the detail leader of the detail Weiss and Freitag and the witness saw him beat inmates with a club (R 350-351). He further testified that he was on the evacuation transport and at Poing he saw the accused with a club beat the inmates back into the cars during an air raid alarm (R 351). He also saw one of the guards in the presence of the accused, shoot an inmate (R 353). The body of the inmate was then placed in the car provided for dead inmates (R 354).

Evidence for Defense: The accused testified on his own behalf that



he was transferred from the army into the SS at Camp Dachau in June 1944, due to the fact that his physical condition disqualified him for front-line duty (R 276). While he was at subcamp Rothschweige he was the commander of the guards and in charge of a construction detail (R 277,278). All the inmates at the camp were supplied with shoes (R 279). The inmates for the work details were selected by the labor commitment department and he did not have any say in selecting the inmates for work (R 280). After the details were formed in the camp they were marched to the gate where the detail leaders picked up their details and marched them to work (R 281). He never ordered a sick inmate, who was in bed at the dispensary, to return to work (R 282). He further testified that he had disagreements with the camp commander over shoes for the inmates. At one time he had ordered 800 pairs of shoes and after considerable trouble and argument he finally received 300 pairs (R 283). The Jewish inmates in the Organization Todt camp were fed by that organization. This food was much better than the regular concentration camp food (R 283, 284).

The accused further testified that he knew that the dogs which were used at subcamp Allach bit inmates. This question was taken up with the camp commander in an effort to have it stopped (R 285). He denied that he was the camp commander at the Organization Todt camp of subcamp Allach. He also denied that the roll calls lasted longer than approximately 20 minutes (R 286, 287). He never saw inmates being marched to work in the mornings who appeared to be in bad physical condition but in the evenings he did see some inmates who had to be helped back to camp by other inmates (R 288). He denied that he ever beat an inmate inside the guard house (R 289). He denied the testimony of the witnesses as to the inmate who was alleged to have been reported for stealing eggs in a bomb destroyed house in Munich and specifically denied that the inmate was on his detail (R 290, 291). However, he heard from other inmates that this inmate was caught looting while on a bomb disposal detail in Munich (R 291). He knew that four inmates were punished for stealing potatoes. They were punished at the direction of the camp commander (R 292, 293). While he was at

subcamp Muehldorf he was the detail leader of the Weiss and Freitag (R 295).

He further testified that he was placed in charge of the evacuation transport by his superior officer. When he was first informed that he was in charge of this evacuation transport, he was not informed as to the number of inmates that were to participate in the transport nor was he informed as to its destination. His superior officer also directed that, if he encountered any difficulties, he was to let the inmates go free and **deactivate** the transport in order to avoid any shooting or bloodshed (R 295-297). On the day the transport left, he was told that the destination of the transport was Oetztal in the Tyrol (R 296).

At the start of the transport the food situation was bad, but upon objection he was told that food would be sent to him. The supply of bread and cheese was very low, resulting in small rations for the inmates. The meager rations for the inmates were sent to the transport by the Organization Todt (R 298). When the transport reached Poing, the inmates were allowed to leave the cars (R 301). The food situation at Poing was very critical. In order to secure more food he called subcamp Muehldorf and dispatched a non-commissioned officer back to the camp to secure food. In the meantime details of inmates were formed and sent to the various farmers in the community where they secured potatoes. These were cooked at the station and passed out to the inmates (R 302). The accused further testified that he finally got in touch with Dachau by telephone and asked them for food, but was informed there was no food to be had. Consequently he deactivated the transport and returned to subcamp Muehldorf (R 303, 304). He denied the testimony of the rebuttal witnesses Landau and Delikat (R 360-362).

Oettermann, who was camp commander of Forest Camps 5 and 6 at subcamp Muehldorf from 12 August 1944 to the liberation, testified that he knew the accused and identified him in court (R 184). He was the accused's commanding officer at subcamp Muehldorf and the accused had made a good impression on him, as his attitude was absolutely correct. There were no reports made against the accused for mistreating inmates (R 185). He

further testified that he received orders that the evacuation transport was to leave subcamp Muehldorf for Oetatal. He had objected to the transport, but was told that it was the direction of the fuehrer. He was asked to name the transport leader. He proposed several names. The accused was selected (R 186, 187). The accused was selected because he was a quiet man who did not become excited. The accused was a little reluctant to take the transport assignment (R 187). After the transport had left subcamp Muehldorf, the witness was informed that it had stopped at Poing and that the accused had given the inmates their freedom and deactivated the transport (R 187). This was in compliance with orders he had given the accused. The witness directed the accused that no shots were to be fired. As far as the witness was able to learn, there were no shots fired (R 188). He did not mean for the accused to abandon the inmates without food (R 197, 198).

Schwabl, who was the railroad clerk at the Poing station, testified that he became acquainted with the accused on the 26th of April 1945 and identified him in court (R 199). On 26 April 1945, a transport of approximately 3600 inmates arrived at Poing. Due to the danger from the low flying airplanes, the transport was to remain there until dark. This was ordered by railroad officials in Munich (R 199, 200). The accused objected to the delay at Poing as the transport was without food. The inmates while at Poing, were allowed out of the cars and utilized the various water taps for washing and drinking (R 201, 205). He saw the body of an inmate which had been laid outside a car by an inmate doctor. The doctor informed him that the inmate had died from typhus or exhaustion. The doctor also informed the witness that one other inmate had died from exhaustion (R 202). The accused, in order to secure food for the transport, called Camp Dachau by telephone and ordered food to be sent to the transport (R 203). The following day, the accused sent a non-commissioned officer to subcamp Muehldorf to secure food for the transport. No food arrived for the transport from either source (R 204, 205). Schwabl further testified that on 27 April 1945 he left the station in the afternoon and returned at approx-

imately 1300 hours. While he was returning to the station, he met several inmates two or three kilometers from the station and they stated, "The war is finished, Hitler is dead and we are free". Then as he neared the village he saw air force soldiers rounding up the inmates. The accused had previously informed him that his orders were that if he could not reach his destination he was to set the inmates free and then disappear (R 206-208). There were many shots fired while rounding up the inmates (R 219) and he was told that some corpses were loaded on a car of the transport (R 220).

Ammer, who was an acting master sergeant in the SS and on duty at subcamp Muehldorf from July 1944 to May 1945, testified that he knew the accused first in June 1944 at subcamp Rothscheibe for about two weeks (R 226, 227). At subcamp Muehldorf the inmates were allowed to make complaints to the officer as to mistreatment (R 220). No inmate complained about the accused (R 231).

Kieber, who was a railread clerk at the Poing station, testified that he reported for duty between 1330 and 1400 hours on 27 April 1945 (R 236). He met the accused at the station at that time. He saw some of the inmates of the transport lounging around the cars, others were washing at the water taps and others were boiling potatoes (R 237). The accused told him that the transport was out of food and he had not been successful in getting any (R 237). The witness then called Camp Dachau by telephone and requested food (R 238). The accused sent inmates to the village where they scoured potatoes (R 238). At about 1730 hours the witness saw the inmates leaving the cars. Shortly thereafter he heard shots from the surrounding area. About that time air force soldiers arrived at the station. The witness did not see any corpses around the station prior to the arrival of the air force soldiers (R 239, 240).

Bauer, who was a member of the SS at subcamps Rothscheibe and Allach, testified that he knew the accused and identified him in court (R 251, 252). The accused was in charge of the guards at subcamp Rothscheibe (R 252). The witness never heard inmates say anything against the accused (R 252,

253). The accused was the roll call leader of the Organization Todt camp at subcamp Allach (R 253, 254). The inmate in charge of supplies told him that the accused was trying to secure shoes for the inmates (R 255). The accused received all of his orders from the camp commander (R 256). The witness heard of a large transport of inmates which arrived at subcamp Allach without shoes for the inmates (R 256). However, he had never heard of inmates being sent to work without shoes nor of unfit inmates being sent to work (R 257). He had never heard of inmates being given punishment exercises (R 257). The accused was transferred to subcamp Muehldorf as punishment because he protected the inmate food, secured shoes for them, and his roll calls were too short (R 259).

Rist, who was an SS Master Sergeant in charge of some of the guards on the evacuation transport from subcamp Muehldorf, testified that he knew the accused and identified him in court (R 267, 268). He corroborated the testimony of the accused and defense witnesses Schwabl and Kleber as to the scarcity of food on the evacuation transport, as to the procurement of potatoes in the town, as to the release of inmates from the transport by the accused, as to the arrival of air force soldiers, as to their rounding up the inmates, and as to their doing a lot of firing (R 271-273).

Sufficiency of Evidence: The accused held relatively important positions and he and those in his charge continuously beat and otherwise severely mistreated the inmates. The Court was warranted from the evidence as to the extent and nature of his participation in its findings of guilty. The sentence is not excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by Amalie Meyer, wife of the accused, 30 June 1947, 18 and 22 September 1947; Michal Gramml, 24 June 1947; Maria Metz, 25 June 1947; Wilhelm Ackermann, 25 June 1947; Franz Stoerchle, 1 July 1947; George Deichstetter, 2 July 1947; Mrs. Kathe Bammer, 3 July 1947; Hans Leonhardt, 3 July 1947; Wolfgang Bognor, 3 July 1947; Angon Biber, 5 July 1947; State Central Bank of Bavaria, 7 July 1947; Sigon Hofmann, 8 July 1947; Hans Dinkel, 9 July 1947; John Kastner, 17 July 1947; Viktoria Ertl, 18 September

1947; Frieda Buckl, 19 September 1947; George Bauer, undated; and Rupert Ertl, undated.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

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

Admission of Extrajudicial Statements: The Court's ruling in denying the defense's objection to admitting into evidence certain extrajudicial statements was proper (R 17, 18, P-Ex 4; R 15, 16, P-Ex 5; R 20, P-Ex 7; R 59, P-Ex 15; R 102, P-Ex 16; R 103-105, P-Exs 18, 19). Such statements by an accused or witnesses are always admissible regardless of the presence or absence of those who made them. A Military Government Court shall, in general, admit oral, written and physical evidence having a bearing on the issues before it and may exclude any evidence which, in its opinion, is of no value as proof (Section 5-329, Title 5, "Legal and Penal Administration" of "Military Government Regulations" published by Office of Military Government for Germany (US), 27 March 1947; Section 270, c(1), (2) "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended).

Motion to Dismiss: At the conclusion of the prosecution's case, the defense moved for a dismissal of Charge II and the particulars thereunder on the ground that there was not sufficient evidence for findings of guilty (R 182). The Court properly overruled the motion (R 183). 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 there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Change 1, Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947; Section 501, page 403 "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended). A similar practice is followed in courts-martial (Par. 71, d, "Manual for Courts-Martial, U. S. Army", 1928).

Superior Orders: The accused sought to justify his actions in parti-

icipating in the beating and mistreatment of some inmates and his participation in the evacuation transport from subcamp Muehldorf by offering evidence to show that he was 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; Llandoverly Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, opinion DJAWC, December 1945; United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, February 1946; 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 would 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 Llandoverly Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of the 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 1945; United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWC, December 1946.)

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

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

VI. CONCLUSIONS:

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

ELMER MOODY  
1st Lt Inf  
Post Trial Branch

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

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