

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

UNITED STATES  
VS.  
FRIEDRICH BECKER,  
et al.

Case  
No. 000-50-46

REVIEW AND RECOMMENDATIONS  
OF THE DEPUTY JUDGE ADVOCATE  
FOR WAR CRIMES  
and  
ACTION BY APPROVING  
AUTHORITY

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21 May 1947

VS.

Friedrich BECKER, et al.

Case No. 000-50-46

*REVIEW AND RECOMMENDATIONS*

**I. TRIAL:** The accused were tried at Dachau, Germany, during the period 12 June 1946 to 22 January 1947, before a General Military Government Court appointed by paragraph 36, Special Orders No. 123, Headquarters Third United States Army, 17 May 1946, as amended by paragraph 1, Letter Orders (Stat Code KA) AG 300.4 (6 Nov. 46) 11-506, Headquarters, U.S. Forces, European Theater, 7 November 1946, redeploying Colonel Edward B. Jackson to the Zone of Interior, and paragraph 8, Special Orders No. 313, 9 November 1946, by the last named headquarters, restoring Lieutenant Colonel Lewis S. Sorley, Jr. to the Court after having been removed by verbal orders of the appointing authority on 23 July 1946 (R 1923) in order that he might sit as a member of another war crimes tribunal.

**II. CHARGE AND PARTICULARS:**

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

**PARTICULARS:** In that Friedrich Becker, Joseph Becker, Franz Berger, Konrad Blomberg, Peter Bongartz, Wilhelm Brusck, Ludwig Buddensieg, Karl Buttner, Georg Degner, Christian Eisbusch, August Fahrbauer, Johann Geisberger, Michael Geilhardt, Karl Frederick Alois Gieselman, August Ginschel, Karl Graeber, Gerhard Haubold, Josef Hauser, Peter Herz, Georg Reinisch, Alois Jakobith, Karl Keiling, Hans Johann Lipinski, Eduard Losch, Karl Mathoi, Gustav Matzke, Raymond Maurer, Christian Mohr, Erich Musselidt, Walter Paul Adolf Neze, Willi Oschewski, Josef Oswald, Hermann Pachen, Otto Pawliczek, Erich Penz, Josef Pinter, Theodor Retzlaff, Walter Reupsch, Albert Roller, Dr. Heinrich Schmitz, Kurt Erich Schriber, Cornelius Schwanner, Ludwig Schwarz, Alois Schubert, Stefan Szczetymski, Bruno Skierka, Hermann Sommerfeld, Georg Weilback, Ludwig Winkler, Wenzel Wodak, Erhard Wolf, Joseph Wurst, 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 near the vicinity of Flossenburg Concentration Camp, near Flossenburg, Germany and at or near the vicinity of the Flossenburg out-camps, particularly Hersbruck, Wilkenburg, Garacker and Leitnitz, and with transports of prisoners evacuating said camps, all in German or German-controlled territory at various and sundry times, between the 1st of January 1942 and the 8th of May 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of Poles, Frenchmen, Jugoslavs, citizens of the Soviet Union, Norwegians, Danes, Belgians, citizens of the Netherlands, citizens of the Grand Duchy of Luxembourg, British subjects, stateless persons, Czechs, citizens of the United States of America and other non-German nationals who were then and there in the custody of the then German Reich, and members of the armed forces of nations then at war with the then German Reich who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich to killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating many thousands.

Prior to arraignment, the Court, on motion by the prosecution, permitted the withdrawal of the charges against accused Stepan SZETYNSKY (R 50).

All of the remaining accused pleaded not guilty to both the charge and particulars (R 66-70).

**III. FINDINGS AND SENTENCES:** On 17 December 1946, prior to the announcement of the findings and sentences, by direction of the appointing authority, acting through the Deputy Theater Judge Advocate for War Crimes, the Court entered a nolle prosequi as to the accused Friedrich BECKER, Georg DEGNER, Josef OSWALT, Dr. Heinrich SCHMITZ, Ludwig WINKLER and Wenzel WODAK (R 8258, 8259, P-Ex 93, R 8257).

The Court announced the following findings (R 9426-9472) and sentences (R 9473-9490) as to the remaining 45 accused, on 20 and 22 January 1947, respectively: (The numbers preceding the names are those assigned by the Court to the respective accused. These numbers will be used hereinafter to facilitate reference to the various accused).

Accused	Plas Findings	Sentences
1. BECKER, Friedrich	NG	Nolle prosequi
2. BECKER, Joseph	NG	1 year, commencing 3 May 1945
3. BERGER, Franz	NG	3½ years, commencing 7 June 1945
4. BLOMBERG, Konrad	NG	Death by hanging

Accused	Plas Findings	Sentences
5. BONGARTZ, Peter	NG	15 years, commencing 2 May 1945
6. BRUSCH, Wilhelm	NG	Death by hanging
7. BUDDENSEG, Ludwig	NG	Life imprisonment
8. BUTTNER, Karl	NG	NG
9. DEGNER, Georg	NG	Nolle prosequi
10. EISBUSCH, Christian	NG	Death by hanging
11. FAHRNBAUER, August	NG	15 years, commencing 19 May 1945
12. GEISBERGER, Johann	NG	Life imprisonment
13. GELHARDT, Michael	NG	Life imprisonment
14. GIESELMAN, Karl Frederick Aloys	NG	NG
15. GINSCHHEL, August	NG	Death by hanging
16. GRAEBER, Karl	NG	10 years, commencing 2 May 1945
17. HAUBOLD, Gerhard	NG	20 years, commencing 11 June 1945
18. HAUSER, Josef	NG	Death by hanging
19. HERZ, Peter	NG	NG
20. HOINISCH, Georg	NG	NG
21. JAKUBITH, Alois	NG	Life imprisonment
22. KEILING, Karl	NG	Death by hanging
23. LIPINSKI, Hans Johann	NG	10 years, commencing 26 August 1945
24. LOSCH, Ediard	NG	20 years, commencing 3 May 1945
25. MATHOI, Karl	NG	Life imprisonment
26. MATZKE, Gustav	NG	14 years, commencing 17 December 1945
27. MAURER, Raymond	NG	30 years, commencing 9 July 1945
28. MOHR, Christian	NG	Death by hanging
29. MUSSFELDF, Erich	NG	Life imprisonment
30. NEYE, Walter Paul Adolf	NG	15 years, commencing 7 May 1945
31. OLSCHIEWSKI, Willh	NG	Death by hanging
32. OSWALT, Josef	NG	Nolle prosequi
33. PACHEN, Hermann	NG	Life imprisonment
34. PAWLUCZEK, Otto	NG	Life imprisonment
35. PENZ, Erich	NG	Life imprisonment
36. PINIER, Josef	NG	Life imprisonment
37. RETZLAFF, Theodor	NG	NG
38. REUPSCH, Walter	NG	20 years, commencing 9 May 1945
39. ROLLER, Albert	NG	Death by hanging

Accused	Offense	Findings	Sentences
40. SCHMITZ, Dr. Heinrich	NG	NG	Nolle prosequi
41. SCHRUEBER, Kurt Ezech	NG	G	20 years, commencing 5 July 1945
42. SCHWANNER, Cornelius	NG	G	Death by hanging
43. SCHWARZ, Ludwig	NG	G	Death by hanging
44. SCHUBERT, Alois	NG	G	Death by hanging
45. SZETYNSKI, Stepan	NG	Not tried	
46. SKIERKA, Bruno	NG	G	Death by hanging
47. SOMMERFELD, Hermann	NG	G	15 years, commencing 28 April 1945
48. WEILEACH, Georg	NG	G	Life imprisonment
49. WINKLER, Ludwig	NG	NG	Nolle prosequi
50. WODAK, Wenzel	NG	NG	Nolle prosequi
51. WOLF, Erhard	NG	G	Death by hanging
52. WURST, Joseph	NG	G	Death by hanging

IV. GENERAL STATEMENT OF EVIDENCE:

A. FOR PROSECUTION:

Flossenburg was a Class III concentration camp, a class of camp the facilities of which included quarries, and in which the hardest and most severe work had to be performed (R 2481, 2482). Approximately 94,200 prisoners, including 16,000 females, were imprisoned there during the period 1942 to April 1945 (R 1161, 1168-1170). Among the thousands of inmates confined in the main camp and its numerous out-camps were Russian, Polish, French, Czech, Italian, Greek, Danish, Norwegian, British, Canadian, and American nationals (P-Exs 12-19, R 1247-1254, 1487, 1488, 1651, 1652, 6529, 6525, P-Ex 2, R 1238, 1241, 1246, 1448, P-Ex 33, R 1419, 1457, 1647, 1648, 1669, 1671, 4615).

The administration of Flossenburg was in charge of the Camp Commandant and Adjutant and it was divided into 12 departments, viz: (a) Basic Affairs, (b) Political, (c) Disciplinary, (d) Administrative, (e) Security, (f) Labor Commitment, (g) Labor Service, (h) Construction, (i) Medical, (j) Outside Labor Details, (k) Guard, and (l) Arrest (R 2256-2258, P-Ex 64, D-Ex 5, R 2308). Each department and subdepartment was in the charge of an SS officer or noncommissioned officer (R 2258, 2259).

During the latter half of 1944 and the beginning of 1945, there were 42 prisoner-details working outside of Flossenburg comprised of approximately 30,000 male and 15,000 female inmates. An additional 6,000 to 8,000 prisoners worked inside the main camp. The work details at out-camps Hersbruck, Leimeritz, Elsbach and Muehsen were called "death details" because their mortality rates were about 12% to 16% per month (R 2262).

Among the inmates confined in Flossenburg were the Prince of Hesse (R 1667); the Chancellor of Austria, SCHUSCHNIGG (R 1669); the

Chief of the Danish "Second Bureau"; the Danish Consul of Danzig (R 1669); General PAPAGOS, Commanding General of the Greek Army, and four other Greek generals; Major SANEK, Chief of the Slovak insurrection; a Norwegian naval captain; Prince ZAMOSKI, Chief of Polish resistance; 17 British or Anglo-Saxon officers; two American Army sergeants; 2 Polish Air Force officers; 2 Russian generals, Army Corps General PRIVALOV and Chief of the Russian Police in Ukraine and Division General BESSONOF (R 1671); 4 French generals; and a Czech minister (R 4615).

1. Reception. Prisoners arriving at Flossenburg were sometimes beaten with rifle butts while being unloaded at the railroad station and, on occasions, they were mistreated during their march to the main camp (R 647, 648). Upon arrival at the camp, they were often beaten by SS personnel to make them "familiar with the camp discipline" (R 937). Roll call would then be taken and all watches, eye glasses, orthopedic supports in their shoes, leather shoes, money and other valuables were taken away. All their clothes were removed and they were forced to take a shower which sometimes lasted four to five hours. Following the shower, inmates were given concentration camp clothes, including, as a rule, wooden shoes in place of the leather ones. They were then confined in a prisoner block. During and after the shower and while clothes were being distributed, the prisoners were often beaten and exposed to the cold weather (R 550, 551, 2275, 2276, 651, 652, 823, 852, 936, 938). Newly arriving inmates were usually taken to the Political Department. Many were beaten en route thereto (R 941). Their backgrounds were scrutinized there (R 942); they were interrogated; and all papers concerning each inmate were placed in individual files (R 1148).

Incoming inmates were hastily classified by the camp doctor in accordance with what appeared to be their ability to perform labor. A number was then placed on the forehead of each prisoner, designating his classification (R 381, 342). On some later occasions, inmates who had been classified as weak and sick were reclassified and sent out to perform hard labor to fill shortages in the quota for stronger men (R 122, 125). Weak inmates sometimes died from overwork (R 383, 384).

In the last months of 1944, many transports arrived from Buchenwald and Auschwitz Concentration Camps. Many of the inmates on these transports were very weak and there were numerous bodies lying around the railroad station (R 4798, 4799). In October 1944, a transport of 1800 prisoners arrived, most of whom were ill from an epidemic. By the following month, the rumor had spread that all except 30 to 400 died (R 2998).

2. Housing. Flossenburg was constructed to accommodate 3,000 to 4,000 prisoners (R 103). In 1944, an average of 8,000 to 12,000 inmates, and in 1945, an average of about 12,000 prisoners were confined there. At one time during 1945, 16,000 inmates were in the camp (R 103). Barracks which contained 200 to 210 beds were used to house 1,000 to 1,200 inmates (R 103, P-Ex 30, R 1413).

There were 19 prisoner blocks at Flossenburg in January 1942, accom-

modating 3,000 to 4,000 inmates and, in April 1945, there were only 14 or 15 blocks to house as many as 16,000 prisoners. In 1942, each prisoner ordinarily had his own bed but, in 1945, there were but inmates to each bed (R 943). When other camps were evacuated to Flossenbürg, there were six to eight prisoners to a bunk (R 2268, 2286). Bunk beds were usually unheated in the winter, due to insufficient fuel. Inmates, as a rule, were issued one blanket each and at the most two. There were instances where two prisoners shared only one blanket (R 2576, 2277).

3. *Food.* The greatest causes of death in Flossenbürg were starvation and diseases resulting therefrom (R 121). Camp rations were always insufficient. Breakfast usually consisted of a cup of artificial coffee without sugar or milk. At noon, one liter of cabbage or potato soup with no fat or meat was distributed. Three times a week, very small amounts of meat were in the soup. Until the fall of 1944, supper consisted of a little black bread and a spoonful of marmalade, 10 grams of margarine, or a small slice of war sausage. In addition, during part of the time, those who worked received an extra daily portion of two small slices of bread with margarine. This supplemental distribution was suspended several times. After the fall of 1944, rations became smaller; the coffee and liter of soup were continued; the bread ration was decreased; and the special distribution of bread and margarine for those who worked was suspended (R 214, 215, 946, 2278). The rations at out-camps Wolkenburg (R 2354), Hershbruck (R 1682, 1683), and Muelzen (R 1832, 1833) were about the same as above described.

Russian prisoners were fed separately and, at one time, received particularly bad food which stank and was inedible (R 1626). The physical condition of Russian inmates was very bad. They were so undernourished that their bones protruded (R 1627).

During the last 11 months before liberation, many prisoners died as a result of eating raw and inedible food (R 4422).

When many thousands of prisoners began the evacuation march from Flossenbürg to Dachau, or about 20 April 1945, little or no food was distributed among the inmates prior to departure. Some received one handful of cereal grains. On 21 April 1945, the marching inmates received no food, but on the following day they each received 100 grams of bread and four raw potatoes (R 791, 806, 807, 930). After the prisoners were evacuated, large stores of rice, oatmeal, potato flake, canned sausage, honey, sugar, margarine, and fresh meat were found at Flossenbürg (R 931).

4. *Clothing.* Prisoners on the outside work details were very inadequately clothed. Usually, they were given a cap, a fatigue jacket, a pair of fatigue pants, a pair of foot rags, a pair of wooden shoes, and a thin fatigue overcoat. No additional clothes were issued during the winter months (R 2267, 2268). Wooden shoes did not last long in the quarry and provided very little or no protection in snow and rain (R 3032).

5. *Suppression of religious worship.* There was no church, chapel or place of worship at Flossenbürg. Priests who were detained there

were forbidden to conduct religious services (R 560, 2028, 2038, 2039). On one occasion, a book of the Holy Scriptures was found on a prisoner by an accused in this case who threw it to the ground, stamped on it, and said that it was of no use in a concentration camp (R 544, 555). In February 1945, a capsule containing the Ten Commandments was found on a Polish Jewish inmate by another accused. As a result, the prisoner was beaten and kicked until he bled, fell down and died (R 2029 to 2034, 2036, 2037, 3042).

6. *Medical treatment.* The hospital at Flossenbürg was very often overcrowded, and in some instances two very ill patients were forced to occupy one bed (R 365). The camp doctor, by refusing to admit many ill inmates to the hospital and by mistreating many who requested medical attention, caused the death of some prisoners (R 119, 252, 254, 387, 388). He sent inmates back to work before they had recovered from their illnesses (R 120, 252, 253, 670, 673, 686-688). Many sick prisoners were furnished insufficient or no medical attention (R 288, 411, 494, P-Ex 63a, R 2234). Patients were the victims of unnecessary operations causing many fatalities (R 289, 368, 369, 483, 484, 486, 487, 488, 489, 524, 845, 856). Operations were performed on inmates without taking proper hygienic precautions (R 302, 308-310, 490, 491, 495, 496, 832).

During a typhus epidemic at Flossenbürg from about November 1944 to January 1945, a great number of prisoners died due to the lack of proper medical control and treatment (R 299, 301, 608, 620, 641, 642, 644, 645). Approximately 4,000 deaths occurred during this epidemic (R 368).

About February 1945, 250 of a group of 600 prisoners who were transferred to the out-camp Obertraubling died from dysentery, typhus and tuberculosis, principally due to the lack of necessary medical supplies (P-Ex 62a, R 2234).

7. *Medical experiments.* From May until September 1944, 25 to 30 inmates were injected or vaccinated weekly with "tuberculin" (R 581). An average of 20 out of 25 of those injected died (R 582). This ratio was reduced to 5 out of 25 when the "tuberculin" solution was modified (R 583). These injections continued until March 1945 (R 581). On one occasion, "tuberculin" injections were given 22 inmates who suffered from tuberculosis, causing the death of seven the following day (R 120).

The camp doctor often performed unnecessary operations on inmates (R 368, 369). From 3 July 1944 to 23 March 1945, this doctor operated on 75 prisoners for ulcers of the stomach and of the "first part of the intestine". Only about 10 of these were necessary operations. Fifty-two of the victims died within 24 to 72 hours (R 483, 484). He performed 10 gall bladder operations on inmates, resulting in the death of six within two days (R 484, 485). Fourteen prisoners were the victims of an "exploratory laparotomy" operation which is "a surgical promenade in the stomach" for the purpose of having "some fun" (R 483, 487). About 280 to 300 amputations were made on "all parts of the body except the head" (R 487). Approximately 6% of the victims died

within a week. Some amputations were made too late; others were unnecessary (R 487, 835, 856).

When informed that the death register reflected that more than 10,000 prisoners had died in Flossenbürg, the Camp Doctor stated that this was "a very good result" (R 122).

8. *M order and mistreatment.* Many forms of killing and mistreatment were used at Flossenbürg. To list some, inmates were killed by shooting, hanging, injections, driving them into the electric fence, strangulation, clubbing, unnecessary operations, starvation, and lack of medical attention (R 109—111, 121, 139, 149, 288, 368, 399, 442, 443, 486, 487, 737, 788, 740, 895, 1043—1045, 1194—1197, 1353, 1374, 1521—1523, 1570, 1571, 1631, 1652, 1870, 1990, 1993—1996, 2051—2053, 2058, 2073, 2106, 2124, 2247, 2248, 8642, 8643, P-Ex 3-a, 57a, 58a, R 2334).

Inmates were also subjected to beatings with spade handles, clubs, sticks, leather whips, rubber hoses, large metal spoons, iron bars, picks, broomsticks or planks with protruding nails (R 108, 128, 129, 136, 247, 248, 413, 416, 443, 444, 468, 747—749, 966, 991, 1050, 259, 4553, 1373, 1516, 1517, 1569, 1570, 1655, 1748, 1749, 1926, 1924, 5736, 5738, 8484, 8486, 8497).

It appears these killings, tortures and abuses were a part of the SS system of extermination (R 2714, 2715). The Camp Commandant often visited the Messerschmitt factory with SS personnel who would beat and kick prisoners for any trivial reason in order to get a smile from the commander (R 2678, 2679).

About October 1944, a transport of prisoners arrived at Flossenbürg from Cologne and were assigned to block 31. In this block, the dead were thrown in the latrine and often many corpses would accumulate prior to removal. Although the majority of the 600 inmates who arrived from Cologne were healthy, about 90 of them died within three weeks to a month (R 552).

Prisoners were forced to do hard labor in the quarry while they were repeatedly beaten. They were often beaten so badly with a rubber hose that they became partially incapacitated. An average of 20 to 30 exhausted inmates were dragged into camp every night. Many were shot after voluntarily running into the electric fence (R 1493, 1494). French, Polish, Russian, Austrian and Czech nationals were victims of beatings and killings in the quarry (R 1043—1045). At one time, leave was granted to guards who made an accurate hit while shooting inmates (R 1047, 1048, 1484, 8075, 8076, 8079, 8080).

About June 1942, there were approximately 2,000 Russian prisoners of war at Flossenbürg. These inmates received the worst treatment. In the morning, regardless of whether it was snowing or raining, they had to remove their wooden shoes and march to the quarry. There they were forced to do hard labor, usually barefooted, with insufficient clothing and nourishment. These prisoners of war were treated so badly that, at the end of 1943 or the beginning of 1944, there were only 80 to 90 left in the camp (R 337).

English and American prisoners of war were placed in dark, isolated cells. Some of these inmates remained in these cells from their arrival until April 1945, a few as long as 11 months. One Canadian major and two British officers who were in the camp prison during April 1944 were missing in April 1945 (R 1647, 1648). An American second lieutenant who was confined in this prison was hanged the day before Good Friday in April 1945 (R 1487, 1488, 1652).

Sick and weak inmates were usually quartered in blocks 20, 22 and 23. Capos very often silenced those prisoners who were screaming from pain by beating them. Sometimes 30 of 40 of these victims died during a night and were brought into the latrine. On one occasion, one or two inmates, who were put into the latrine at night, were not dead and managed to crawl out through the corpses, returning to their barracks. The sick capo in charge was irritated by their groaning and screaming. He beat them to death and hid the bodies put back in the latrine. A witness to this incident testified that "Hell itself would be no comparison to all that happened there in that night" (R 2231, 2282).

Camp personnel administered punishment on their own initiative and without regard to higher authority (R 3178, 3217, 3218).

Prisoners in the punishment company were required to carry stones weighing as much as 100 pounds and to walk therewith in mud where they sank about one-half meter. Personnel of this company shot three or four prisoners daily (R 4773). Work in the punishment company was unbearable. Some inmates could endure it for one day, some for only two hours. Many were killed (R 4832, 4870).

Some young prisoners, in order to live better, "accepted" to be the "sentimental little friends" of the blockmen (R 699).

At out-camp Hersbruck, the chief capo had authority to beat inmates to death (R 181). If a prisoner complained, he received such treatment. It was commonly known that Hersbruck was an extermination camp (R 1812). At out-camp Muehlen, undernourished prisoners worked 12 hours daily. As many as 10 inmates died there every day (R 1832, 1833). At out-camp Obertraubling, the prisoner doctor had no medicine and, when inmates became ill, they were beaten with rifle butts and some died as a result thereof (R 2092, 2093).

### 9. Executions.

a. Executions. Many prisoners were executed by hanging and shooting in the courtyard outside the confinement cells (R 1641, P-Ex 33, R 1658—1661). Some of the victims were French, English, Russian, Czech, Polish and American nationals (R 1651).

Inmates were prepared for executions by first taking them to the washroom. If one were afraid, he was told to undress for a bath. After all his clothing was removed, his hands were tied behind his back and he was led to the courtyard. If he were to be shot, he was placed facing the wall and was shot in the neck with a .22 caliber rifle from a distance of 10 to 20 centimeters. At hangings, the victim had to climb a step ladder.



The nose was placed over his head and the ladder pulled away. If more than one inmate were shot, the bodies remained in place until all were killed. On one side of the wall there were four or five gallows and on the other side two or three gallows. The bodies remained hanging for one-half hour (P-Ex 54a, R 2234).

Sometimes prisoners were hanged in the central square of the camp. When two or three inmates were hanged simultaneously, large hooks or nails were placed on each side of a big lamp post. The victim was forced to stand on a table or on a plank between two chairs. A rope was placed around his neck and the chairs or table were removed, causing the prisoner to strangle instead of breaking his neck (R 109). This method sometimes required as much as 30 minutes before the victim died. Inmates were forced to attend these hangings to demonstrate the punishment for sabotage, laziness and other infractions of the camp rules (R 110).

Another form of execution was by shooting the victim in the neck with a noiseless pistol (R 111).

On some occasions, the victim was beaten before he was hanged, some receiving as many as 50 blows. In one case, two Russian inmates each received 25 blows because they failed to beat, with the prescribed severity, a fellow Russian prisoner who was about to be hanged (R 108). In some instances, officers and officials who assisted in executions received liquor or cigarettes as a reward (R 111, 3714j, 3714k, 6919). On 2 April 1945, 13 English newspapermen were executed (P-Ex 2, R 1238, 1241, 1246). On or about 13 April 1945, three French female prisoners were executed (P-Ex 3, R 1240). In January 1942 30 Russian soldiers were executed by shooting (P-Ex 58a, R 2234). In 1944, six inmates were hanged in front of a "Christmas tree" (R 108). A group of American or British fliers were confined in the "special section" of the camp prison (R 1448, P-Ex 39, R 1419, 1457). These prisoners of war were believed to have been hung (R 1456). In January 1945, a group of young Polish inmates, approximately eight to twelve years of age, were executed about two hours after their arrival at Flossen- burg (R 1056). In March 1945, approximately 20 Russian prisoners, who had been employed by the Wehrmacht as informers, were shot (P-Ex 53a, 54a, R 2234).

Many other inmates, including Russians and Poles, were executed by shooting or hanging (R 1336, P-Ex 63a, R 2234, 930). During the spring of 1944, four to six shootings and hangings took place almost daily (R 1152). From June to December 1944, there were sometimes 20 shootings daily (P-Ex 54a, R 2234). During the period 1942 to April 1945, at least 2,000 inmates were executed (R 1169, 1170).

b. Injections. Inmates were also killed by injections of phenol which caused immediate death (R 11, 605-607, 3191). In compliance with an order allegedly issued by Himmler, inmates who were too weak to do useful work were killed by injections. A special room was provided in block 13 which was assigned the number "13-C". When an inmate

was examined and found incapable of doing use ful work, the camp doctor would put the fatal "13-C" on his body in red ink. Sometimes he was given the alternatives of continuing to work or going to the crematory. A number of weak prisoners preferred the crematory. Room "13-C" accommodated 20 to 25 people and all those taken there in the morning were killed in the afternoon by phenol injections. After a period during which an average of 20 inmates were killed daily, camp personnel represented that the order, allegedly issued by Himmler, had been countermanded and this form of execution was discontinued (R 139, 140, 665-668, 906, 909, 975).

On one occasion, the camp doctor injected a female Hungarian Jewish inmate, who had a broken leg, with three ampoules of cyanide, causing her immediate death (R 114, 115, 294, 492). He also injected an old Russian prisoner, who was too weak to work, with phenol, resulting in his immediate death (R 115). On another occasion, 10 cubic centimeters of camphor oil were intravenously injected into a sick Russian inmate, causing his death one-half hour later (R 291, 292, 328-333).

c. Outgoing transports. Inmates who had a limited working ability, or were completely unable to perform work, were sent to Auschwitz and Bergen-Belsen Concentration Camps, a trip popularly termed "Ascension" by prisoners (R 2380). It was common knowledge at Flossen- burg that these prisoners were sent there to be killed (R 1055-1064). Transports containing 1,000 to 2,000 of this type of prisoner left Flossen- burg for the above camps approximately four times a year (R 1064). From June 1942 until April 1945, an estimated 12,000 prisoners were sent to their deaths in this manner (R 1066, 2278-2280).

10. *Death rates.* From 1942 to 1945, 94,200 prisoners, including 16,000 females, arrived at Flossenburg and its out-camps. Of this number, 25,309 died from 1942 to April 1945, 1,060 of whom were female inmates (R 1161, 1168-1170). Of those who died, 2,000 were execution victims (R 1169, 1170). Apparently, the witness meant by "execution", death by hanging or shooting.

In March 1943, the records of the main camp reflected that approxi- mately 2,000 inmates had been cremated there. This number increased to about 14,000 at the time of liberation (R 113, P-Ex 36, R 1424, 1459, P-Ex 37, R 1434, 1459, P-Ex 38, R 1425, 1459, P-Ex 39, R 1425, 1460, P-Ex 40, R 1435, 1460, P-Ex 41, R 1425, 1460, P-Ex 42, R 1426, 1464, P-Ex 45, R 1427, 1465). During February, March and April 1945, so many deaths occurred in the main camp that the bodies could not be disposed of at the crematory. When this condition occurred, corpses were stacked for several days and, as soon as 400 to 500 accumulated, they were buried on an open wood fire (R 114, 2281).

Records of the camp indicate that 89,960 inmates were detained at Flossenburg and its out-camps between March 1944 and 15 April 1945. Of this number, 14,739 died. The deaths included 2,300 Russians, 6,000 Poles, 2,600 Jews, 1,200 Frenchmen and 600 Czechs (P-Exs 12-19, R 1247-1254).

During the period 28 February 1945 to 12 April 1945, except for two days for which the records were missing, 4,495 prisoner deaths were recorded in the Flossenbürg strength reports. These deaths occurred in the main camp and out-camps and included 205 female inmates (P-Ex 11, E 1246, 1247).

Gold and platinum were removed from dead prisoners' mouths at the daily rate of 10—15 during June, July and August 1944, 20—25 during September 1944, 60—70 during October and November 1944, 80—100 during December 1944, and 250—300 during January and February 1945 (R 871, 873, 874). During part of the period 193—1944, seventy grams of such gold were received in the dental office daily (R 1229).

The monthly deaths at out-camp Hersbruck in November 1944 were 506; in December 1944, 460; in January 1945, 300; in February 1945, 500; and in March 1945, 70 (R 6548—6550). The mortality rate at Hersbruck was high and, according to nationalities, was as follows (R 6524, 6525):

French . . . . .	35%	Russians . . . . .	10%	Poles . . . . .	22%
Italians . . . . .	33%	Czechs . . . . .	15%		

Between January and March 1945, about 1,300 of the 5,000 prisoners who were confined at Hersbruck died (R 6588).

The garrison doctor at Flossenbürg signed 6,000 to 8,000 death reports on prisoners between October 1944 and April 1945 (R 9049).

11. *Evacuation marches.* During the latter part of April 1945, just prior to liberation, the remaining thousands of prisoners who were confined in Flossenbürg and its out-camps were evacuated to Dachau, principally by foot in large marching columns. Orders were given to the effect that all weak or sick inmates who could not continue to march were to be shot and that no prisoners would be allowed to fall into enemy hands alive. As a result of these orders, large numbers of ill clothed, weak, sick, starving and exhausted inmates were shot and killed by the guards and other SS personnel (R 451, 1130, 1132, 1136, 1139, 1317, 1320, 1321, 1431—1434, 1521—1525, 1550, 1551, 1623, 1753, 1794, 1801, 1805—1807, 1814, 191, 1917, 1927, 1928, 1942, 1943, 2014, 2015, 2017, 2021, 2022, 2025, P-Ex 59a, P-Ex 63a, R 2234, P-Ex 65, R 2229, 2332, 2359, 2382, 2373—2391, 3010—3012, 3025, 3040, 4389, 5436, 5141, 5251, 5252, 5206, 6873—6875, 8227—8236, 8246, 8302, 8310, 8449, P-Ex 102, R 9139).

When Flossenbürg was liberated, only a few thousand prisoners remained. They were dirty, unkempt, ill clothed and appeared to have been starved. Many had welts on their bodies from beatings (R 1401).

#### B. FOR DEFENSE:

Himmler was in charge of the concentration camp system in Germany. He prescribed the hours of labor for prisoners at not less than 11 hours daily while civilian workers in war industries were required to work

2 hours daily (R 2433). The assignment of prisoner workers and the allocation of food were the responsibility of higher authority and not that of the local camp officials (R 2433—2435). Policies concerning the treatment of prisoners were established by directives from the main security office of the nation and were not the result of a "common design" (R 2532, 2526, 2558).

1. *Clothing.* Sweaters were issued to every prisoner in Flossenbürg each winter (R 3022, 3031). At out-camp Hersbruck, prisoners were adequately clothed (R 6665, 6847).

2. *Housing.* No discrimination was made in housing because of nationality (R 2782); however, juveniles were given special consideration and were isolated from older prisoners (R 3157). Each block contained a wash room with two troughs and a barrel of reserve water (R 2797). At out-camp Hersbruck, each man had an individual bed and two blankets (R 6847).

3. *Food.* There was not an acute food shortage in Flossenbürg (R 3002, 3004, 3005, 3029, 3030). Prisoners in some blocks sometimes suffered because other inmates dissipated food. Daily, prisoners who were sent to bring the food to the blocks spilled several kettles, ate the contents, and ran away with sacks of food. Some prisoners received extra portions by using a dead man's number to get into line more than once (R 3002, 3003, 3020). The camp physician or the garrison doctor checked the food daily and it was never inedible (R 3609, 3317). It was always rated good or very good (R 3618).

All prisoners received the same food ration, except in the Messerschmitt factory where details received slightly more (R 2701, 2702). Workers in the quarry received an extra ration of bread and margarine in the morning (R 3240).

At out-camp Hersbruck, sick prisoners and heavy workers received extra rations and the average prisoner received a little less food than the average German civilian (R 6906, 6619, 6621). The food was adequate (R 6650). The food was good at out-camps Obertraubing (R 7023), Holleischen (R 4749), and Johannsorgenstadt (R 7058).

4. *Medical treatment.* In Flossenbürg after 1942 medical treatment was difficult because of epidemics due to the arrival of foreigners in the camp (R 3019). However, in Flossenbürg and out-camp Obertraubing, efforts were made to curb epidemics (R 5027, 5028, 7081, 7111—7113).

In Flossenbürg, the sick or injured were taken care of, either at the Messerschmitt factory or the camp hospital (R 2669). In out-camp Obertraubing, a doctor accompanied the work details, and those who became ill were transported to camp on a wagon (R 7021). There was a well furnished and well staffed hospital in out-camp Johannsorgenstadt (R 7057, 7058). In out-camp Hersbruck, there was one doctor in each ward and several doctors were in the surgical ward. Generally, there was sufficient medicine, and sanitary conditions were good (R 6631, 6632, 6638).

b. *Murder and mistreatment.* Crimes against the prisoners by SS personnel and other employees of Flossenbürg were subject to the jurisdiction of the SS court in Nurnberg (R 2445, 2466, 2517, 2518, 2529, 2521, 2531). Unnatural deaths were investigated and reports forwarded to that court (R 2535, 2536, 2561, 2574).

The maximum authorized punishment in a concentration camp was "beating", which had to be first approved by higher authority at Oranienburg (R 2437, 2442).

Guards were required to sign on oath that they would adhere to a regulation forbidding them to mistreat prisoners (R 2473, 2474); camp personnel were instructed not to harm prisoners (R 573, 5759); and capos were required to bring prisoners to the clerk's office for punishment (R 3007). However, sometimes it was necessary for block elders to use immediate force to maintain order because foreigners among the prisoners stole from each other, operated a black market, and fought and killed each other (R 2785, 5786, 2809, 2825, 2826, 2835, 3020—3023, 3031). The camp physician was present at beatings in the camp prison (R 3226). At out-camp Hersbruck and Obertraubling, unconditional orders were issued prohibiting beatings and checks were made to assure compliance (R 6792—6796, 7083—7085).

A criminal prisoner who was in Flossenbürg from 1938 to April 1945, testified that he saw only one man killed by a capo (R 2998, 3006). A prisoner, who was in the camp from March 1943 to January 1945, heard of only one prisoner being killed by a capo (R 3131, 3190, 3191). Another witness testified that from 11 November 1944 to April 1945 only one prisoner was shot to death and this occurred at an out-camp (R 2594, 2595). There was no punishment detail in the quarry (R 3238). Prisoners working in the Messerschmitt factory were paid in coupons that could be used in the canteen (R 2701, 2852, 3137).

#### 6. Executions.

a. Executions could be carried out only on the authority of the Reich's Security head office following a court proceeding (R 2440, 2472, 3204, 3705). Regulations required that the protective custody leader, an officer representing the Camp Commander, a doctor, and the roll call leader or master sergeant of the Camp Commander be present at executions (R 2467). There were no executions at Flossenbürg from 1 January 1942 to 3 October 1942 (R 5693, 5699).

b. Outgoing transports One witness testified that he was told that Balsem was a convalescent camp (R 5947).

7. *Evacuation marches.* On evacuation marches from Flossenbürg to Dachau in April 1945, no orders were given to shoot prisoners who were too weak to continue marching and such prisoners were not shot (R 3044, 3045, 5268—5270, 5499, 5529, 6744, 7595, 7599, 7614, 7617, 7624, 7631, 7632, 7692, 7744, 7958—7960, 7962, 7963, 8002, 8003, 8153, 8155, 8203). Two doctors marched with each column and designated those who were too ill to march and they were transported on vehicles

(R 6745, 6747). On one such march, stronger prisoners robbed and killed weaker prisoners and many men who had been in charge of details were beaten to death in revenge. No SS man dared to go among the prisoners to interfere (R 3008, 3009, 3023—3029).

V. *MOTIONS:* Several motions were made by the defense at the outset of the trial. Four were properly denied by the Court, and one was sustained.

The first motion asked the Court ". . . to quash the Charge and Particulars . . . to quash the Charge as not being supported by the Particulars, in that the Particulars do not recite any violations of the laws and usages of war by the accused as to killings, beatings, tortures, starvation, abuses and indignities . . ." (R 6, ". . . nor any crime whatsoever" (R 15—17). This motion was overruled by the Court (R 13).

The second motion asked that the particulars be amended by adding the word "unlawfully" after the word design in line 14 and by adding the phrase ". . . and who were not serving sentences lawfully imposed by competent German authority in punishment for offenses which are recognized as felonies by the laws of the United States of America . . ." after the word Reich in the fourth from the last line thereof (R 18). This motion was denied by the Court (R 19).

The third motion asking for severance (R 19) was also denied by the Court (R 20).

The fourth motion ". . . that the Particulars be made definite and certain" (R 20) was denied by the Court (R 22).

The fifth motion asked that all witnesses be excluded from the courtroom prior to the initial questioning of the accused by the Court (R 25, 26). This motion was sustained by the Court (3 26, 27) in conformity with the provisions of Section 501, page 409, "Manual for Trial of War Crimes and Related Cases", 15 July 1946, to the effect that witnesses may be in the courtroom only during the course of their interrogation. The legal aspects raised by the first four motions above mentioned are discussed under appropriate headings in Section VI, post.

Immediately after the Court entered a nolle prosequi against accused Nos 1, 9, 32, 49, 49 and 50, defense counsel made two motions, viz., first, to strike the testimony of the witness Jedrys which appears on record pages 1833—1866, because his testimony was directed against accused No. 9, and second, to strike the testimony given by witnesses against accused Nos 1, 49 and 50 (R 8260). These motions were denied by the Court (R 8262).

With regard to these two motions, the defense pointed out that the accused against whom a nolle prosequi had been entered were no longer subject to trial in this case; that the charge of common design was still an element of the case; and that the testimony in question involved some of the not-prosecuted accused who had not introduced evidence. The defense contended that under these circumstances the testimony against such not-prosecuted accused was without basis and that, if the remaining

accused should be convicted of participation in the common design, an injustice would result because (1) the not-prosecuted accused were no longer interested in refuting evidence directed primarily against them and (2) because the not-prosecuted accused could not be called as witnesses by the remaining accused (R 8260, 8261).

The contentions of defense counsel are not well founded. The testimony in question was not exclusively directed against any particular accused, but in most instances, in addition to disclosing acts by one accused, also revealed general information about the entire illegal operation of Flossen- burg, i. e., the common design to subject inmates to illegal acts. The testimony relating solely to the individual acts of accused No's 1, 9, 49 and 50, certainly could not be considered prejudicial to the rights of the remaining 45 accused. Any of the remaining 45 accused could have called one or all of the accused against whom a *nolle prosequi* was entered as defense witnesses and, in fact, some did this very thing. The Court did not err in denying these motions.

## VI. QUESTIONS OF LAW:

### A. JURISDICTION:

1. *In general.* The Military Government Court which heard this case was properly constituted pursuant to the orders referred to in Section I, supra. It is well settled by accepted international law that members of an enemy armed force, or civilian nationals of an enemy country, may be punished by properly constituted courts established by the occupying power for crimes against the laws and usages of war committed prior to the cessation of hostilities. (See War Department Basic Field Manual 27-10, "Rules of Land Warfare", paragraph 346.1 set forth in Change 1, 15 November 1944, and paragraph 346 and 347, as the latter is amended by said Change 1; In re Yamashita, 66 Supreme Court Reporter 340; United States v. Wiegand, November 1945, and authorities cited therein, which case is digested in Section 122, "Manual for Trial of War Crimes and Related Cases", 15 July 1946; and United States v. Altfuldisch, et al., February 1947, known as the Mauthausen Concentration Camp case)

2. *Nationality of victims.* The parent Dachau Concentration Camp case is authority for the proposition that a Military Government Court of the occupying power may try those accused of war crimes committed by them against nationals of a power allied or co-belligerent with the occupying power (United States v. Weiss, et al., 000-50-2, March 1946, known as the Dachau Concentration Camp case and authorities discussed in Section 420, "Manual for Trial of War Crimes and Related Cases", 15 July 1946). In view of the fact that the charge and particular in the instant case name as victims not only allied and co-belligerent nationals, but also citizens of the United States of America, this Court had, a fortiori, jurisdiction of the subject matter (Dachau Concentration Camp case, supra, and Section 5-300.3, Title 5, "Legal and Penal Adminis-

tration", of "Military Government Regulations", published by Headquarters, US Forces, European Theater, 30 November 1946).

3. *Nationality of accused.* A question not raised during the course of the trial merits discussion, viz., did the Court have jurisdiction of the persons of accused who are allegedly nationals of other United Nations. OLSCHESKI, No. 31, is a national of the Netherlands, and PENZ, No. 35, and PINTNER, No. 36, are nationals of Yugoslavia. War criminals, brigands, and pirates are the common enemies of all mankind and all nations have an equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated in "Wheaton's International Law", Volume I, Sixth Edition, at page 269, that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed" (underscoring supplied). Nationals of other United Nations were sentenced, which sentences have been approved and carried into execution, in the Mauthausen Concentration Camp case, supra, and in the Belsen Concentration Camp case, British Army of the Rhine, December 1945. Apparently, all concerned with the reviews and approvals in those cases considered the universality of jurisdiction over war crimes to be so well recognized that discussion was not necessary. Military Government Courts have jurisdiction over the nationals of any country who are in the United States Zone of Occupation, except as to certain classes of American and other nationals, e. g., military personnel, which are not pertinent to the jurisdictional question here involved. Concerning jurisdiction over war crimes, no limitation is imposed. (See Sections 5-300.2 and 5-300.3, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, US Forces, European Theater, 30 November 1945). Concerning the general question of universality of jurisdiction over war crimes, see "Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pp. 177-218.

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

### B. LEGAL SUFFICIENCY OF CHARGE AND PARTICULARS:

1. *Allegations of criminal acts.* The defense contended, in support of its first motion, that the Court should quash the charge and particulars for the reason that the particulars do not support the charge in that an accused can be tried only for a specified crime which was a crime when committed and that a common design to accomplish a killing or any of the other acts alleged in the particulars, is not in itself necessarily unlawful (R 6, 15-17).

This first motion challenges the sufficiency of the particulars on the ground that to allege a common design to accomplish a killing does not state an offense because a killing "is not in itself necessarily unlawful".

However, the particulars allege a common design "wrongfully" to subject certain persons to killings, etc. It is clear from the authorities that those particulars charging that the victims were "wrongfully" subjected to killings, etc., are as strong as or stronger than particulars charging that victims were "unlawfully" subjected to killings, etc.

The word "wrongfully" is defined in Balentine's "Law Dictionary" as follows:

"Webster defines the word as meaning: 'In a wrong manner; unjustly; in a manner contrary to the moral law, or to justice.' 'Unlawfully' is not the full equivalent of the word. A thing may be unlawful without being contrary to good morals, or to natural justice. Wrong is the opposite of right, whether considered with reference to strict law, or the principles of equity. The word 'wrongful', therefore, has a much broader and stronger meaning than the word 'unlawful'. See Board of Commissioners of Howard County v. Armstrong, 91 Ind. 538, 536."

See also Fidelity and Casualty Co. of New York v. Blount Plow Works, 78 Ind. App. 529, 36 N.E. 559, 567.

The word "unlawfully" is not a word of art, the inclusion of which in a charge and particulars is essential to an adequate allegation of an offense. This is particularly true in trials for violation of the laws of war. It was pointed out by the United States Supreme Court in the Yamashita case, *supra*, that:

"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."

The words "wrongfully" and "unlawfully" are used interchangeably in the specifications in courts-martial proceedings. In IM 27-255, "Military Justice Procedure", Chapter 5, paragraph 25b, at page 24, it is provided:

"In drawing up a new specification, care must be taken to show that the acts done by the accused were unlawful by stating that he did the acts 'unlawfully' or 'wrongfully', otherwise no offense may be stated. For example, an allegation that the accused 'took and carried away' the property of another person does not set out an offense since he may have had permission to take it or have done so under orders from a superior. If, however, it is stated that he took it 'wrongfully' or 'unlawfully', it is clear that an offense was committed."

See also various prescribed charges and specifications set forth in Appendix 5, "Manual for Courts-Martial, U. S. Army", 1928.

Thus, it is clear that this attack upon the charge and particulars is without merit.

It is not clear from the record whether or not defense counsel, by their motion to quash, intended to attack the sufficiency of the alle-

gations in the particulars on the ground that a "common design" to commit unlawful acts is not a crime. In so far as this question is concerned, the charge and particulars in this case are the same in all pertinent respects as those in the Daehan and Mauthausen Concentration Camp cases, *supra*. It was held in those cases that particulars containing allegations of a common design to commit illegal acts adequately state an offense under international law.

The second motion by the defense was not well founded. Had the motion been granted, there would have been eliminated all proof of acts committed pursuant to the common design, which involved war crimes against certain inmates who were serving sentences lawfully imposed by properly constituted German authorities for the commission of felonious acts.

2. *Definiteness*. The fourth motion by the defense seeking an order directing that the charge and particulars be made more definite and certain as to what acts were charged against each accused and the place, the date, and against whom they were committed, was properly overruled by the Court (Mauthausen Concentration Camp case, and In re Yamashita, both *supra*).

C. *SEVERANCE*. The Court did not abuse its discretion in denying the motion by the defense for severance of the accused as defendants. Severance is not a right or a privilege of 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 Concentration Camp case, *supra*).

D. *CONDUCT OF TRIAL*. The accused were all represented by competent American counsel and, in addition, some of the accused were represented by 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. Each of the 45 accused, whose trial was completed, was given an opportunity to testify in his own behalf and all chose to do so except No. 3, Joseph BECKER, No. 6, BRUSCH, No. 12, GEISBERGER, No. 19, HERZ, No. 24, LOSCH, No. 36, MATZKE, No. 28, MOHR, No. 49, MUSSFELDT, No. 31, OLSCHESKI, No. 41, SCHREIBER, and No. 44, SCHUBERT. The findings and sentence as to each accused, who was found guilty, were approved by a two-thirds vote of the members present. The trial was conducted with fairness to all convicted accused.

On 24 July 1946, Lieutenant Colonel Walter H. Skjelvig, a member of the Court, became ill (R 2016) and did not resume his seat on the bench until 29 July 1946 (R 2190). The President of the Court, in compliance with Section 120, as amended, "Manual for Trial of War Crimes

and Related Cases", 15 July 1946, permitted him to resume his seat and directed him to read the record of the proceedings of the Court held during his absence (R 2190). Later, Lieutenant Colonel Skjelvig announced in open court that he had complied with the President's directions (R 2328).

At the time Lieutenant Colonel Skjelvig resumed his seat, the defense objected to his presence on the Court thereafter for two reasons, viz., first, that the provisions of the Manual, referred to in the preceding paragraph, were based upon a directive of Headquarters, United States Forces, European Theater, 11 July 1946, which was issued after the trial had commenced and, in so far as this case was concerned, it would be an "ex post facto proceeding" (R 2190, 2191); second, that Military Government Courts in this theater were created under Ordinance No. 2 and governed by the rules of procedure set forth in the "Technical Manual for Legal and Prison Officers", 2nd edition, which provided in paragraph 305, subparagraph 2 (4) as follows:

"No addition to or substitution in the membership of the court shall be made in the course of a trial. The failure of any member to be present throughout any trial shall not invalidate the trial, provided that the court is at no time reduced below the legal minimum. No member who has been absent at any time shall take any further part in the trial."

The defense contended that the 11 July 1946 directive by Headquarters, United States Forces, European Theater, did not and could not modify the above quoted paragraph (R 2192-2194).

The contentions of the defense are not well founded because, at the time of the trial, the rules of procedure as to the trial of war criminals were governed by Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, United States Forces, European Theater, 30 November 1945, wherein it is provided in Section 5-393 relating to war crimes trials, as follows:

"The procedure in Military Government Courts appointed for the trial of the offenses referred to in MGR 5-390 shall be in accordance with the rules set forth in Section C of this Title except as modified for such Courts by the Theater Commander . . ."

In Section 5-350 of such Title 5, it is provided as follows:

"The purpose of proceedings in Military Government Courts and of the principal enactments enforced by them is the protection of the U.S. Forces in occupation and the advancement of the political, military and administrative objectives declared by the Control Council and the Theater Commander. All enactments will therefore be interpreted broadly and in accordance with their obvious intention. Proceedings will be conducted with a view to the attainment of this purpose to the fullest possible extent. Technical and legalistic viewpoints will not be allowed to interfere with such a result."

It is clear that the Theater Commander had the authority to issue the directive in question which provides that, if after the trial has begun a member, "on account of unavoidable absence during a trial misses part of the proceedings, the president will cause such member to read the record of the proceedings had . . . during his absence. . . ." The Court did not err in permitting him to resume his seat.

#### E. SUPERIOR ORDERS:

As indicated in Section VII, post, accused Nos. 6, BRUSCH, 13, GELHART, 25, MATHCI, 35, PENZ, 36, PINTER, 51, WOLF, and 52, WURST 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; Handoverly Castle Case, 16 American Journal of International Law, page 708; United States v. Dominikus Thomas, December 1945; and United States vs. Alfons Klein, et al., Hadamar Murder Factory Case), February 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 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 7-10, War Department, U.S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Handoverly Castle case cited therein; "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148; "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 Rule of the Law", by Ernst Faannel, and opinions of the Deputy Theater Judge Advocate for War Crimes in U.S. v. Albert Bury and Wilhelm Hofner, September 1945, U.S. v. Dominikus Thomas, December 1945, and U.S. v. Gerd Beck and Otto Weinreich, December 1946.)

The evidence offered on behalf of each of these accused in mitigation of punishment because of the element of superior orders is discussed in Section VII, post.

#### VII. 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 assigned by the Court. 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 21 May 1947, described as to date, the accused on whose behalf they are filed, and the name of the person filing the same, together with such discussion, 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. FRIEDRICH BECKER

A nolle prosequi was entered in favor of this accused on 17 December 1946 (R 8258, 8259, PEx 93, R 8257).

##### 2. JOSEPH BECKER

Nationality: Roumanian  
Age: 26

Connection with Flossenburg:

a. Period: April 1945

b. Status: SS

c. Position: Guard at out-camp Wolkenburg and on the evacuation march.

*Evidence:* Three witnesses testified that this accused was a guard at the out-camp Wolkenburg and on the prisoner evacuation march from Wolkenburg to Dachau between about 13 and 27 April 1945 (R 2183, 2330, 2357, 7937-7929). Wolkenburg was used exclusively for female inmates (R 2329). Some of them were Polish and Russian nationals (R 2354). Prisoners at this out-camp were punished by face slapping and by the withholding of food for slight offenses (R 2352, 2346). On one occasion, 26 February 1945, the inmates were forced to stand outside in summer dresses and without stockings or sweaters for three hours because they had complained about food distribution (R 2346, 2347). Approximately 400 female prisoners started on the evacuation march, but only about 116 arrived in Dachau (R 2329, 2352). During the march, the commandant of Wolkenburg gave an order to the effect that inmates who fell out would be shot (R 2354).

*Sufficiency of Evidence:* The extent and nature of his participation were such that the Court was warranted in its findings. The sentence is not excessive. Roumania was a co-belligerent of Germany.

*Sentence:* One (1) year imprisonment, commencing 3 May 1945.  
*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

##### 3. FRANZ BERGER

Nationality: German

Age: 36

Connection with Flossenburg:

a. Period: November 1944 - April 1945

b. Status: SS (1 August 1933) Sturmbannfuhrer (Major)

c. Position: Deputy camp commandant, in charge of SS Personnel Section and Wehrmacht Motorpool, Commander of a guard battalion and commander of a prisoner evacuation transport and march.

*Evidence:* Four witnesses testified that this accused was deputy camp commandant of Flossenburg (R 1478, 2708, 7562, 7938). Ten witnesses testified that he was in command of a prisoner evacuation transport and march en route from Flossenburg to Dachau, beginning about 16 April 1945 (R 1473-1481, 1518, 1519, 3182, 4628, 4629, 5534, 5633-5636, 5774, 7579, 7619, 7644, 7645, 9111-9118). One witness, a former SS medical aid man, testified that, on or about 16 April 1945, an SS man shot a wounded prisoner on the above mentioned prisoner transport at or near the railroad station at Floss (R 1479-1481, 1489, 1490). Another witness testified that the transport consisted of about 1,000 to 1,300 prisoners (R 1521) and that one of the groups in the prisoner march was led by accused No. 16, a guard, who gave orders to about 15 guards under him to shoot any prisoner who fell out and could not proceed. In conformity with these orders, 79 to 80 prisoners of this group were shot (R 1621, 1522). Prior to the time that the prisoner transport left by rail, all inmates who had been injured during an air attack at the town of Floss were shot (R 1523).

This accused testified that from November 1944 to about 7 January 1945 he was given an assignment to get the Flossenburg SS Personnel Section in order and to take charge of the Wehrmacht motor pool. Then he became commander of a guard battalion and also served as deputy camp commandant on two occasions for one or two days (R 7947, 7948, 7976, 7992, 8022). He was ordered to take charge of a prisoner evacuation transport on 15 April 1945 (R 7851), which consisted of approximately 1700 prisoners and 100 guards. He instructed his guard officer that no prisoners were to be mistreated and that weapons were to be used only in cases of extreme emergency (R 7952, 7962, 7963, 8002, 8003). Prisoners who became ill were to be taken to the mayor of the nearest village (R 7963). He denied having knowledge of the killing of any prisoners by his guards at Floss (R 8006) and testified that the transport was subjected to several air attacks on the way to Schwarzenfeld and that some prisoners escaped, but none was shot.

(R 7958-7960). At Schwarzenfeld, the transport was divided. Prisoners who could not march were sent to Halburg and the others were put in charge of accused No. 47 and proceeded on foot to Dachau (R 7962).

On cross-examination it was shown that this accused acted in the capacity of a representative of the Camp Commandant on a number of occasions during November and December 1944 and January, March and April 1945 (P-Ex 81a, R 8028, P-Ex 86a, R 7977, 8022, P-Ex 87, R 7981, P-Ex 88, R 7983, 8017, P-Ex 89, R 7986, 7987, 7989, 8018, P-Ex 90, R 7991, 8021, 8028).

One defense witness, a former SS woman, corroborated the accused's testimony as to the evacuation transport and march (R 5636-5638, 5643, 5644, 5650, 5651, 5652, 5657, 5673, 5675). Six other defense witnesses testified that, on the evacuation transport, this accused issued an order to the effect, or made it known, that no shots were to be fired (R 3782, 4650, 5499, 7580, 7632, 7649, 7652-7654); that an order was given that no prisoner was to be mistreated; and that anyone who became ill was to be turned over to the mayor of the next village (R 7652-7654, 3782). Prisoners on this march were treated well (R 4628, 4629, 4665) and allowed to escape (R 4630).

Other witnesses testified that this accused was kind and friendly toward prisoners (R 7933); that he was the most humane officer in the SS (R 3965); that he never acted for or as the Camp Commandant (R 7356); that he was a good soldier, fair and just (R 757, 7578); that he never mistreated prisoners (R 4548, 5962); that his actions were above reproach in the camp; and that he was referred to by the Camp Commandant and Adjutant as being too soft (R 5973).

In his Statement, a former inmate of Flossenbürg said that this accused always conducted himself in a quiet and humane manner, never ordered mistreatment of prisoners, and was known in the camp as a "decent fellow" (D-Ex 67a, R 7941, 7945).

*Sufficiency of Evidence.* It is clear that the extent and nature of his participation were such that the Court was warranted in its findings. The sentence is not excessive.

*Sentence:* Three and one-half (3½) years imprisonment, commencing 7 June 1945.

*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

#### 4. KONRAD BLOMBERG

Nationality: German

Age: 47

Connection with Flossenbürg:

a. Period: February 1944 — April 1945

b. Status: Civilian

c. Position: Chief of the Political Department and a column leader on evacuation march.

*Evidence.* One witness testified that this accused was present in April and May 1944 at executions of Polish and Russian nationals (R 1192, 1193). Another witness and accused No. 42 testified that this accused, on 8 September 1944 at out-camp Johanngeorgenstadt, participated in and supervised the hanging of a Russian inmate by reading the sentence (R 1322, 1314, 7051, 7056). A fourth witness testified that this accused was present at executions (R 962, 5963). A fifth witness testified that in November or December 1944 the accused kicked a Ukrainian guard and that his mistreatment of a Russian inmate caused the latter to let out "a yell of agony" (R 1225-1228).

Accused No. 40 testified that from July 1944 to September 1944 he treated five to eight Russian prisoners for skin-bleeding which had been evidently caused by beatings administered by the accused with a stick (R 8894, 8865, 8869, 8868) and that the accused admitted to him that he had beaten two prisoners (R 8866, 8867). A seventh witness testified that some prisoners were executed without a trial, within one or two weeks after interrogations by the accused (R 1150). In his Statement, accused No. 46 said that this accused was appointed one of the leaders of the fourth column of prisoners in the evacuation march from Flossenbürg to Dachau (P-Ex 61a, R 2234). In his Statement, accused No. 42 said that in the summer of 1944 this accused came to out-camp Johanngeorgenstadt and "reported to me that he had to carry out the execution" of a recaptured Russian prisoner. This Russian was later executed while the accused was present (P-Ex 62a, R 2334). In his Statement, accused No. 21 said that "Commissar BLOMBERG" was present at the executions by shooting and hanging of Russian and Polish prisoners suspected of mutiny, who had been sent to Flossenbürg from out-camp Muidsen (P-Ex 63a, R 2234).

In his Statement, this accused said that he exercised his authority to recommend executions as punishment for prisoners, that he assisted in the administrative procedure for ordering executions; that prisoners were executed without having been given a hearing; and that, in his excitement at the interrogation of prisoners, he threw objects at them and mistreated them (P-Ex 83a, R 7443-7446).

The accused testified that his department had no connection with executions; that he was present at one execution held at Johanngeorgenstadt (R 7422-7426); that P-Ex 83 was warded differently when he signed it (R 7473-7481); and that his duties were only in connection with prisoner records and files (R 7416).

Two defense witnesses corroborated the accused's claim that the political department had nothing to do with orders for executions, except to record them (R 7792, 7496-7499). Accused No. 40 testified that he never saw this accused beat anyone (R 8897). A fourth defense witness testified that prisoners liked to work in the accused's department (R 7351). He acted correctly toward inmates working in his department, according to a witness and two Statements of former inmates (R 7531 to 7534, D-Ex 63 and 64, R 7353). Cries did not emanate from the accu-



sed's office and prisoners did not appear to have been beaten when the accused had concluded interrogating them (R 7354, 7359).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning his participation in executions and beatings, his position and the nature and extent of his general participation in camp operations in its findings of guilty. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* A Petition for Review was filed by German defense counsel Dr. Richard Wacker, 12 April 1947. Petitions for Clemency were filed by this accused's wife Friederike Blomberg, and father, Konrad Blomberg, 10 March 1947.

*Recommendation:* Approval of findings and sentence.

#### 5. PETER BONGARTZ

Nationality: German

Age: 39

Connection with Flossenburg:

a. Period: 13 February 1945 — April 1945

b. Status: Inmate

c. Position: Chief capo at Hersbruck, chief capo Nurnberg detail, and a column leader in evacuation march.

*Evidence:* One witness testified that the accused treated prisoners very badly and beat several of them daily (R 1679, 1688, 1689), sometimes with a stick or board (R 1681). About two weeks before the evacuation, when the accused detected a Russian inmate stealing food from a railroad car, he beat him until he was unconscious and then kicked him in the chest (R 1680, 1687, 1693, 1694), causing the victim to die in the hospital (R 1680). On the evacuation march from out-camp Hersbruck to Dachau, the accused beat most of the Jewish, Polish, and Russian prisoners who were marching in his column until they could march no farther (R 1682).

A second witness testified that in March 1945, in the washing barracks at Hersbruck, the accused hit a Polish prisoner twice because he was a little dirty. Then he forced the victim to strip completely in very cold weather and sprayed cold water over him. When the victim collapsed, the accused kicked him in the region of the heart, beat him with a shovel handle for a long time, pressed the shovel against the prisoner's neck and thus "finished him off" (R 1893—1895, 1898, 1811).

A third witness testified that, during the evacuation march, he saw the accused club the witness' brother-in-law (apparently a Pole, R 9202) three or four times on the head until he was dead (R 8344, 8349, 8353, 8354, 8355, 8356, 8367, 8368, 8370, 8373, 8375, 8378, 8384).

The accused testified that he did not beat the above mentioned witness' brother-in-law to death and that the name of the alleged victim, a Polish inmate (R 9202), was not listed on the camp rolls at the time of the alleged incident (R 9203). He denied that his beating of a Russian

inmate on the Nurnberg railroad detail caused his death (R 6732, 6739, 6739, 6740). He also denied beating an inmate in the washing barracks (R 6741, 6773, 6778). The accused stated that through his efforts, his work detail received some Sundays off (R 6735). This was corroborated by three witnesses (R 6223, 6497, 6251, 6252). As chief capo of the Nurnberg detail, he supervised about 800 prisoners (R 6722, 6723). He further testified that he never beat prisoners, except for a few times when he boxed them on the ears (R 6736, 6737, 6767, 6768, 6772, 6773, 6777, 6778). Eight witnesses testified either that this was so or that they never heard of the accused beating prisoners (R 6238, 6302, 6306, 6309, 6310, 6312, 6321, 6329, 6346, 6369, 6493, 6501, 6592, 6593, 6250, 6269).

Two witnesses testified that, on the evacuation march, the accused bought food for the prisoners (R 9080, 9082, 9083, 9108). Four witnesses testified that the accused cared for the sick and wounded (R 6426, 6269, 9079, 9086, 9105).

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

*Sentence:* Fifteen (15) years, commencing 2 May 1945.

*Petitions:* A Petition for Clemency was filed by accused's mother, Elise Bongartz, 29 April 1947.

*Recommendation:* Approval of findings and sentence.

#### 6. WILHELM BRUSCH

Nationality: German

Age: 54

Connection with Flossenburg:

a. Period: 22 May 1944 — April 1945

b. Status: Waffen SS Oberscharfuhrer (T/Sgt)

c. Position: Commander of out-camp Wolkensburg after 23 August 1944, and a leader of an evacuation march.

*Evidence:* One witness testified that, between 13 May 1945 and 27 May 1945 during the evacuation march of female prisoners from Wolkensburg to Dachau and while in the vicinity of Weiden and Irrenlohe, two gypsy prisoners were shot to death and that the next day two Polish prisoners were shot to death without a trial because a few potatoes were found on them (R 8826—8829, 8832, 8833, 8835, 8837, 8838, 8840, 8847, 8948). A second witness testified that this accused was in command of the evacuation march (R 2329, 2335). The testimony of prosecution and defense witnesses overwhelmingly establishes as a fact that the evacuation march referred to by this witness occurred in April 1945 rather than in May 1945, which is obviously true because Germany collapsed on 3 May 1945 (R 2329, 7226, 7880, 7888, 7889, 7890, 7920, 8967). During the evacuation march, a female Polish inmate fell from

execution. A shot was heard and she was never seen again by the second witness (R 2320-2331). The accused and a guard armed with a pistol and a carbine, respectively, took three gypsy women and two female Polish prisoners into the woods. Shots were heard, and these five prisoners were never seen again by this witness (R 2332, 2372, 2393, 2399, 2340). A third witness testified that she personally saw the accused shoot the Polish prisoners (R 2359, 2369).

A defense witness testified that he, and not the accused, was in command of the evacuation march from Weiden to Dachau (R 7883, 7884, 8026) and that near Irrenlohe three German women and two Polish women were tried by an "Emergency Court" for looting, found guilty and legally sentenced to be shot. The accused participated in these executions (R 7891-7896, 7906, 7911, 7914, 7916). A second defense witness testified that the first defense witness assumed command of this evacuation transport at Weiden (E 7922). A German lawyer testified that, if the facts as related concerning the trial were true, the death sentences imposed upon the two Polish women were consistent with punishment for looting in Germany during the late war (R 8081, 8082). A fourth defense witness testified that near Irrenlohe he was told by the first defense witness that two women of unknown nationality were legally sentenced to be shot (R 9021); that they were shot; that the accused participated in this execution only to the extent of keeping civilians from interfering (R 8971, 9026, 9027, 9028, 9039); and that the first defense witness above mentioned gave the order to fire (R 8977, 9040).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, particularly that relating to his position as Camp Commandant of out-camp Wolkenburg and that involving him in killings, in its findings of guilty. The Court was warranted in placing little value, if any, on the evidence offered on behalf of the accused regarding two of the three killing incidents having been preceded by alleged appropriate trials by courts created by properly constituted German authority. This defense is inconsistent with his contention that he participated in the two shootings pursuant to superior orders. In any event, he failed to establish that he acted under immediate compulsion to a material degree as required by the authorities discussed in Section VI, E, *supra*. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* Two Petitions for Review were filed by German defense counsel, Dr. Richard Wacker, 25 January 1947, and 12 April 1947. Petitions for Clemency were filed by accused's wife, Agathe Brusch, 27 February 1947 and by his daughters, Helene Brusch, 11 April 1947, and Gisela Brusch, 11 April 1947. The accused filed a petition for Clemency, 8 May 1947, setting forth a summary of his activities after being drafted into the SS and stating that he is innocent. He maintains that five inmates were shot on the march, 20 and 21 April 1945, but that he acted only as a road block sentry and stood from 30 to 25 meters

away. The accused requests a reopening of his case so that he can take the witness stand and present his case. He further states that his attorney, Dr. Wacker, kept him from testifying; that two defense witnesses were likewise denied him; and that 12 other witnesses for him were not summoned.

*Recommendation:* Approval of findings and sentence.

## 7. LUDWIG BUDDENSIEG

Nationality: German

Age: 61

Connection with Flossenburg:

a. Period: 30 August 1939 — 31 March 1944

b. Status: Waffen SS (30 August 1939) Hauptsturmfuehrer (Capt)

c. Position: Guard company and battalion commander.

*Evidence:* One witness, a former SS medical aid man, testified that the accused was a guard company and battalion commander (R 1482, 1491) and that he recommended furloughs for guards who shot prisoners when they went near the wire fence or attempted to escape (R 1484). Another witness testified that on one occasion a guard yelled to a capo in the quarry, "I have an appointment outside of Flossenburg and I need some leave". Then a capo chased one of the inmates into the wire. This practice was terminated because so many incidents occurred that leave time became excessive (R 1048).

In his Statement, the accused admitted that he was company commander of the 1st Guard Company from November 1939. His duties consisted of taking care of the company in all official matters, including the preparation of the guard duty roster. His guards were distributed around the entire camp, including the quarry. Guards who prevented an inmate from escaping by making use of their weapons usually received a special furlough. This privilege was later discontinued. He further stated that, during his tour of duty of nearly five years, less than 100 prisoners were shot by guards while attempting to escape" (P-Ex 56a, R 2234).

The accused testified that he led the 1st Guard Company in 1942 (R 6085). Guards on duty took their orders from the Camp Commandant, or the leader of the Security Service, and the Company Commander had no power of command (R 6090). Only ten cases of shooting occurred during 1942 and 1943 by his company (R 6094). He denied the accuracy of his Statement, P-Ex 56, which said that not over 100 prisoners were shot to death (R 6095, 6101), and testified that in 1942 approximately eight were fired upon and that in 1943 approximately two escaping prisoners were fired upon by his company (R 6101). He instructed his men that mistreatment of prisoners was forbidden. The Camp Commandant rewarded with furloughs guards who fired according to orders. He

denied recommending these furloughs (R 6105) and denied knowing of any cases where prisoners were chased into the wire (R 6107, 6130). Guards were never punished for shooting a prisoner (R 6110). He knew of no case where an escaping prisoner was shot to death (R 6133).

Other witnesses testified that, from 1 January to April or July 1942 (R 8079, 8080, 8076—8077), the Camp Commandant himself granted furloughs to guards who shot at escaping prisoners and that this accused had nothing to do with these furloughs (R 6143). Furlough papers were signed by this accused in only four or five cases between 1 January 1942 and March 1944 (R 6148). The accused acted as battalion commander of the guard part of the time (R 6151). This witness heard of ten instances of the shooting of escapees (R 6145).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, particularly his position as guard commander for a long period of time, in its findings of guilty. The sentence is not excessive.

*Sentence:* Life imprisonment.

*Petitions:* Two Petitions for Review were filed by German defense counsel, Dr. Richard Wacker, 25 January 1947 and 12 April 1947.

*Recommendation:* Approval of findings and sentence.

#### 8 KARL BUTTNER

This accused was found not guilty (R 9432).

#### 9 GEGORG DEGNER

A nolle prosequi was entered in favor of this accused on 17 December 1946 (R 8258, 8259, P-Ex 93, R 8257).

#### 10 CHRISTIAN EISBUSCH

Nationality: German

Age: 28

Connection with Flossenburg:

a. Period: 9 January 1943 — April 1945

b. Status: inmate

c. Position: Gapo and hospital orderly at out-camp Ganacker after 20 February 1945.

*Evidence:* One witness, a Belgian army major in the intelligence service who was formerly an inmate (R 894, 895, 8644), testified that shortly after 20 February 1945 at out-camp Ganacker the accused beat a Belgian prisoner with a pickhandle so severely that the victim died two days later in the prisoner barracks (R 895). In March 1945 the accused beat another Belgian inmate, Judge Calneau, the witness' "best friend", in the lower abdomen with a pickhandle, causing him to urinate blood. The victim died the next day in the arms of the witness (R 895). A second witness testified that, in February 1945 on a prisoner transport

between Flossenburg and Ganacker, the accused beat and kicked a Polish Jewish inmate because he asked for a second helping of bread. The victim by then all night. The next morning the accused beat him again. The victim died that day (R 1090, 1088—1096).

In his testimony, the accused denied participation in the beatings and deaths as testified to by prosecution witnesses (R 4717—4722). A psychiatric report on accused indicated that, while he was of subnormal mentality, he was not suffering from a mental defect, disease or derangement at the time of the alleged offense and that he was able to understand the nature of the trial proceedings and to assist his defense counsel in the preparation and trial of his case (D-Ex 18).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, especially that relative to killings, in its findings of guilty. The Court was within its prerogative and was warranted by the evidence in concluding that the accused's mental capacity was such that he was capable of distinguishing right from wrong and of adhering to the right. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* A Petition for Clemency was filed by defense counsel, Mr. Russell S. McKay, 27 January 1947.

*Recommendation:* Approval of findings and sentence.

#### 11 AUGUST FAHRNBÄUER

Nationality: German

Age: 56

Connection with Flossenburg:

a. Period: 23 February 1945 — April 1945

b. Status: SS (1 September 1944) Oberscharführer (T/Sgt)

c. Position: Chief work detail leader and deputy camp leader at out-camp Plattling.

*Evidence:* One witness testified that during the prisoner evacuation march from out-camp Plattling, which began 30 April 1945, the accused shot and killed three prisoners, one of whom was a Polish national (R 2051—2052, 2058). About 300 prisoners started this march (R 2052) but only about 200 survived, the remainder having been shot to death (R 2060). A second witness testified that, at the time he escaped, only 120 to 130 inmates of the original 300 were alive, the others having been shot to death (R 2063, 2064). The accused shot and killed a Polish Jewish prisoner who had stopped on the march to relieve himself (R 2064) and, after the accused assumed leadership of the column, many prisoners were shot (R 2073). The witness was beaten by the accused (R 2076). This second witness admitted that he and the first witness had talked over this case; that they had agreed it would be a pleasure to know the accused "would be sentenced for the killing that he committed"; and

that "we were happy to get revenge for what we had suffered" (R 2066, 2073). He later explained that by these remarks he was expressing the hope that the accused would be brought to justice (R 2120-2131).

The accused testified that he did not have charge of the prisoner evacuation march and that he never shot any inmates during the march (R 5603, 5604, 5617, 5629). Two witnesses corroborated these assertions by accused (R 5313, 5315, 5316, 5335).

*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:* Fifteen (15) years, commencing 19 May 1945.

*Petitions:* A Petition for Clemency was filed by defense counsel Mr. Albert W. Hall, 24 January 1947.

*Recommendation:* Approval of findings and sentence.

## 12 JOHANN GEISBERGER

Nationality: German

Age: 34

Connection with Flossenbürg:

a. Period: 24 January 1945 — April 1945

b. Status: SS Hauptscharführer (1st Sgt)

c. Position: Block leader, assistant report leader and report leader.

*Evidence:* It was this accused's duty to assist and take part in executions. He had to be present during the famous "25 beatings" which were given inmates, sometimes administering them himself and sometimes inviting block leaders or caps to do so (R 339). On two or three occasions, this accused beat inmates 10 to 15 strokes with a leather whip. It was this accused's duty to hold daily roll call maintain order in the camp, see that prisoners had clean clothes and that newly arrived inmates received their baths and had warm clothing. The accused compelled about 1,000 prisoners in an incoming transport to stand on the roll call square for hours. As a result six or seven died (R 1256).

During January 1945, the accused brought Czech, Polish and Russian inmates to the camp prison courtyard for the purpose of being executed (R 1054). Accused No 17 testified that this accused was a roll call leader and was present at some executions of prisoners during March and April 1945 (R 7803). In his Statement, No 17 said that a Hauptscharführer GEISBERGER was present, sometime in March or April 1945, at the execution of 4 prisoners at the arrest barracks (P-Ex 53a, R 2254). In his Statement, accused No 12 stated that, in about February 1945, this accused was present at an execution of prisoners (P-Ex 62a, R 2254). Accused No. 11, in his Statement, said that an Oberscharführer GEISBERGER was sometimes present between June 1944 and 18 December 1944, at executions of prisoners at the camp prison either as a witness or possibly as a report leader (P-Ex 54a, R 2254). On 20 April

1945, this accused fired several shots without justification with his automatic gun into barracks No. 19, slightly injuring one of the inmates (R 1339).

In his Statement, this accused admitted that he was present from January until April 1945 as a witness at four or five executions in the camp prison when at least seven prisoners were killed. In about the middle of April 1945, 8 to 12 convicts were executed by shooting in the prison courtyard, but he was only a witness to this execution. He further stated that, during the prisoner evacuation march to Dachau, he saw about 80 to 100 inmates who had been shot, lying by the edge of the road (P-Ex 5'a, R 2254).

Defense witnesses testified that roll call under this accused was conducted quickly and in an orderly manner (R 4797, 7135); that he never beat a prisoner (R 4798, 7135); and that he had a good reputation (R 3589).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, especially that evidence connecting him with many executions in its findings of guilty. The sentence is not excessive.

*Sentence:* Life imprisonment.

*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

## 13 MICHAEL GELHARLT

Nationality: German

Age: 30

Connection with Flossenbürg:

a. Period: October 1940 — April 1941

August 1941 — April 1945

b. Status: SS (October 1940) Rottenführer (Cpl)

c. Position: Guard, dog handler, block leader, work detail leader in the quarry, and member of an execution detail.

*Evidence:* One witness testified that in the fall of 1942 the accused beat a Polish inmate on the back and head with a spade handle, causing the victim to bleed and fall down. The inmate was carried away and never seen again (R 1748, 1749). In the winter of 1943, the accused beat a Polish or Czech prisoner with his hands and then helped to cover him with snow. Twenty minutes later, when the victim was dug out, he was very pale, had blue lips, and did not move (R 1750, 1751). Another witness testified that he saw the accused strike prisoners with his fists four or five times; that he himself was beaten by the accused with a shovel handle (R 1869, 1870, 1882); that from January to April 1942 Russian officers were brought into Flossenbürg two or three times a week, where they were shot (R 1870); and that, while he did not see this accused actually do the shooting, he saw him in four or five execu-

tion details returning from the executions of these Russians (R 1670, 1671, 1674—1883). In his Statement, the accused admitted that he was a guard and that he participated in an execution involving eight out of a group of 30 Russian soldiers in January 1942 (P-Ex 28a, R 2234).

The accused testified that the execution of the eight Russians occurred in September 1941 and not in 1942 (R 5168, 5169, 2206); that his participation was compulsory and that the execution was effected because the Russians had been sentenced for atrocities committed on German troops (R 5171). He testified further that P-Ex 58 had been obtained by duress (R 5190—5268). The accused denied committing assaults on inmates and covering a Pole with snow (R 5165—5168).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, including that relative to beatings and assistance in executions, in its findings of guilty. The findings are appropriate, irrespective of the quality of the evidence in accused's Statement. The contention of the accused that his participation in one execution was in obedience to superior orders does not warrant a reduction in the sentence because his evidence in support thereof fails to establish immediate compulsion to a material degree as required by the rule set forth in Section VI, E, supra. The sentence is not excessive.

*Sentence:* Life imprisonment.

*Petitions:* A Petition for Clemency was filed by defense counsel, Mr. Albert W. Hall, 24 January 1947.

*Recommendation:* Approval of findings and sentence.

#### 14. KARL FREDERICK ALOIS GIESELMAN

This accused was found not guilty (R 9:57).

#### 15. AUGUST GINSCHFEL

Nationality: German

Age: 24

Connection with Flossenburg:

a. Period: 2 August 1943 — April 1945

b. Status: Inmate

c. Position: Orderly in block 1 and guard on prisoner evacuation march.

*Evidence:* One witness testified that the accused often beat hungry prisoners on the head with a large iron spoon while they were waiting to receive soup from him. On several occasions, the victims were beaten so badly that they had to be taken to the hospital (R 13). A former French inmate testified that the accused beat "various people" and that he himself was beaten by him twice without justification, once in October 1944 and again in February 1945 (R 389, 395—399). A third witness testified that the accused violently struck inmates who were

carrying soup to block 1 because they were not moving fast enough. As a result, the victims fell down (R 480, 481). On another occasion, he struck other inmates (R 481). A fourth witness testified that in January 1945 inmates who were receiving second portions of food were beaten on the head with a large metal spoon by the accused. A Russian or Polish inmate collapsed, bled profusely, and was carried into the washroom. One hour later, the victim was carried out of the washroom dead (R 1353, 1373). During the same month, the accused hit a sick Jewish prisoner, probably a Russian or a Pole, on the head with a beer bottle. The evidence indicates that the victim died while being carried to the hospital (R 1353, 1374, 1375). A fifth witness testified that in February or March 1945 the accused so severely beat a Russian inmate with a "firehook" that the victim fell to the floor and had to be carried to the hospital. Later, this inmate was reported to have died (R 1570, 1571).

A sixth witness testified that the accused was a guard on a prisoner evacuation transport from Flossenburg in April 1945 and that he beat prisoners with his fist, butt and shot an injured inmate, who was "probably a Polish Jew" (R 1522, 1523, 1531—1535). Another witness testified that, while the evacuation transport was in the town of Floss just after an air raid, he saw the accused shoot at two Polish Jews lying on the ground. Immediately thereafter one of them began to bleed from the neck (R 8301, 8304, 8330—8324).

A prosecution rebuttal witness testified that, when the accused was interrogated at Dachau about May 1946, the witness heard the accused say that 300 prisoners were shot on the evacuation transport. He also heard the accused say that an order was issued that the weak in the transport were to be shot (R 8894).

The accused testified that he became an orderly for block 1 on 29 May 1944 (R 4614). He was attacked by prisoners and knocked down twice into the hot soup while he was giving out food in front of block 1. Once he struck at prisoners with the soup ladle while he was on the ground (R 4617—4619). He joined the evacuation transport on 16 April 1945 (R 4638). He denied the testimony of the first (R 4542 to 4644), fourth (R 4684—4687), and sixth (R 4687, 4688) prosecution witnesses against him, stating that he had had trouble with them.

Two former inmates testified that the accused, who had only one arm, was sometimes stoned by prisoners while he distributed food and he had to defend himself with a ladle (R 2988, 2996, 3012—3014, 3117). One of these witnesses testified that he never heard of the accused killing prisoners (F 3190). Accused No. 21 testified that this accused "never once used a ladle to strike anyone . . ." (R 4600). Accused No. 25 testified that he couldn't say that anyone ever spote ill of the accused (R 4229, 4230).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, particularly that

connecting him with killings, in its findings of guilty. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* A Petition for Clemency was filed by American defense counsel Mr. Russell S. McKay, 27 January 1947.

*Recommendation:* Approval of findings and sentence.

#### 16. KARL GRAEBER

Nationality: German

Age: 54

Connection with Flossenbürg:

a. Period: 27 February 1945 — April 1945

b. Status: SS (June 1944) Oberscharführer (T/Sgt)

c. Position: Guard at Flossenbürg and on evacuation march.

*Evidence:* One witness testified that, in the beginning of 1943 after an order was read that certain Polish inmates had to be shot (R 2160), a person named GRAEBER and others marched 40 Polish prisoners in the direction of the remotorium. After a few minutes, shots were heard from that direction. These 40 inmates were never seen again (R 2155, 2162). A second witness testified that, during the prisoner evacuation march about 16 April 1945, the accused was in charge of a group of guards and that he ordered them to shoot any prisoner who fell out and could not proceed. The accused shot two or three Polish Jewish (R 1523) prisoners on this march and his guards shot 70 to 80 (R 1521, 1522). A third witness testified that, between 18 and 22 April 1945 on the evacuation march, the accused shot a Jewish prisoner who was weak and could not walk any farther (R 8302, 8310). During the incident this witness was 10 to 12 meters away (R 8319) and did not see the actual shooting (R 8334, 8323, 8324) but heard the shots (R 8319), turned around, and saw the accused with a gun in his hand (R 8327, 8334, 8340).

The accused testified that he was drafted into the SS in June 1944 (R 5540). He did not have any duties at Flossenbürg nor on the rail transport from that camp to Schwarzenfeld (R 5541). He left Schwarzenfeld with accused No. 47 on 19 April (1945), marching behind the last of six columns comprised of from 150 to 200 prisoners each (R 5542, 5543). He denied shooting two or three Polish Jewish prisoners, as testified to by a prosecution witness and stated that he never had a pistol in his hand in all his life. Throughout his entire service during the war, he never fired a gun except for 10 shots which he fired during training (R 5555). He further denied being in charge of guards during the march and denied giving an order that prisoners who could not proceed were to be shot (R 5555, 5556). On examination by the Court, he admitted that he acted as a guard on the train from Flossenbürg to Schwarzenfeld (R 5576).

Defense witness testified that the accused was a guard on the prisoner evacuation transport and march; that on the day after leaving the train, this accused's rifle burned (R 5495, 5496, 5523); that he continued on the march as a guard without a weapon (R 5497, 5498, 5535); and that he treated prisoners very humanely (R 5534).

*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:* Ten (10) years imprisonment, commencing 2 May 1945.

*Petitions:* A Petition for Clemency was filed by defense counsel, W. Albert W. Hal, 24 January 1947.

*Recommendation:* Approval of findings and sentence.

#### 17. GERHARD HAUBOLD

Nationality: German

Age: 39

Connection with Flossenbürg:

a. Period: 16 February 1945 — April 1945

b. Status: Waffen SS (15 November 1938) Oberscharführer (T/Sgt)

c. Position: In charge of the camp prison.

*Evidence:* One witness testified that the accused was in charge of the camp prison in April 1945 when an American second lieutenant was hanged there (R 652, 1663). On one occasion, he whipped and beat prisoners who were later executed. Shortly before this execution, he was seen in the prison courtyard with a ladder and some rope (R 1662). Accused No. 51 said in his Statement that a person named HAUBOLD was in charge of the camp prison in March 1945 and he saw him perform executions of prisoners by shooting. In March 1945 HAUBOLD participated in the execution of approximately 20 prisoners believed to be Russians, shooting at least five or six of them himself (P-Exs 54a, 57a, R 2234).

The accused said in his Statement that he had charge of the prominent prisoners in the camp prison from 5 March 1945. He admitted that he was present as a witness at the execution of 14 prisoners, but denied having participated in any of them. He further said that he was present at the shooting of approximately 20 Russians in March (apparently 1945) (P-Ex 53a, R 2234).

The accused testified that he witnessed 14 "official" executions of prisoners during his tour of duty, among whom were Poles and Russians (R 7849, 7863). About 20 March 1945, 20 Russians were executed by shooting after being "sentenced to death by a field court because of espionage" (R 7849). He admitted loading a rifle for the man who executed the Russian (R 7850), but stated he only witnessed the shooting.

He denied participating in the execution of the 14 prisoners mentioned in his Statement, except as a witness (R 7851, 7868). He never beat prisoners (R 7864). He denied ever carrying a rope and ladder, as charged by a prosecution witness (R 7855, 7866), and stated that no American lieutenant was in the camp prison (R 7858). On cross-examination, he testified that he was the highest ranking man at the camp prison; that, in the prison courtyard, ropes and ladders were used for executions (R 7862); and that all prisoners were under his jurisdiction (R 7877). Three witnesses testified that his reputation for telling the truth was good (R 7211, 7212, 7214, 7215, 7215).

*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:* Twenty 30 years imprisonment, commencing 14 June 1945.

*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

#### 18. JOSEF HAUSER

Nationality: German

Age: 34

Connection with Flossenburg:

a. Period: 20 April 1942 — April 1945

b. Status: Inmate (Criminal)

c. Position: Capo in Messerschmitt factory.

*Evidence:* Two witnesses testified that in March 1945 the accused struck a French prisoner 100 blows with a rubber hose or club and three days later the victim died (R 740, 442, 443, 738, 737). Another witness testified that the accused beat prisoners to speed up production (R 887) and that in June 1944 he beat a Polish inmate in the stomach, causing blood to come from the victim's mouth. This prisoner was not seen again at the workshop (R 887, 892). In July 1944 the accused gave a Russian daily beatings and withheld his daily bread ration and, after 15 days, the victim was not seen again (R 887). A witness, who worked in the hospital, testified that injured prisoners were constantly coming to the hospital because of mistreatments by this accused (R 904). A fourth witness testified that the accused demanded prisoners' food rations and that he beat and kicked a Polish Jew who refused to cooperate. The witness heard that the victim died in the hospital two days later (R 1816—1817, 1826—1828). A fifth witness testified that the accused often beat prisoners with iron bars, wood, and rubber hose (R 443); and that he gave a French prisoner 25 lashes with a whip for carrying a rosary. The victim died in March 1945 after frequent beatings (R 444, 452). On one occasion, the accused beat his entire work detail of 800 inmates on their buttocks with a rubber hose (R 443, 455).

The accused testified that he broke up fights among prisoners (R 3744), protected them (R 3745), permitted night workers to sleep (R 3748), sent the sick to the hospital (R 3750), and aided an escaping prisoner (R 3752). He admitted that he beat prisoners with a hose five or six times for stealing and denied beatings for sabotage (R 3809, 3810). Our witness testified that the accused sought labor advantages for the prisoners working for him (R 3140); that he had never heard of the accused killing anyone (R 3190); and that he never saw the accused beat an inmate (R 3206). A second witness testified that the accused was the capo in charge of 170 to 180 Russian, Polish, French, Italian, Belgian and Dutch prisoners and that they did not complain of the treatment received from the accused (R 2929, 2935). Two witnesses testified that they had never seen or heard of the accused beating inmates (R 2882, 3641, 3642). A fifth witness testified that the accused was quick tempered and slapped prisoners with his open hand, but never with any weapon (R 2918, 2919). Another witness testified that the Jews like the accused so much that he was called "Capo of the Jews." (R 443).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, especially that involving him in killings, in its findings of guilty. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* A Petition for Clemency was filed by defense counsel, Mr. Russell S. McKay, 27 January 1947.

*Recommendation:* Approval of findings and sentence.

#### 19. PETER HERZ

This accused was found not guilty (R 9441).

#### 20. GEORG HOINISCH

This accused was found not guilty (R 9441, 9442)

#### 21. ALOIS JAKUBITH

Nationality: German

Age: 33

Connection with Flossenburg:

a. Period: 1938 — April 1945

b. Status: Inmate

c. Position: Assistant quarry capo, quarry capo, guard on evacuation march.

*Evidence:* One witness testified that the accused, as assistant capo or capo at the quarry, supervised 200 to 300 men including Polish, French and Belgian prisoners (R 3577, 3580). A second witness testified that the

accused often beat him and other prisoners at the quarry (R 421) and that he forced prisoners on his detail to carry very heavy stones and to double time with them for several hours (R 435, 436). A third witness testified that, when inmates fell down, this accused would beat them and make them return to work. Prisoners on his detail often died during the night (R 557). A fourth witness testified that the accused clubbed French, Italian, Greek, Russian, Polish and Czech prisoners with all his strength, sometimes causing them to bleed from their heads (R 1050). A former French inmate testified that the accused beat him on two occasions (R 665, 677) that he sought excuses to beat prisoners (R 676) and that he beat weak inmates (R 678).

A sixth witness testified that the accused usually beat inmates with shovels or picks, causing their hospitalization (R 747, 748). Another witness testified that many prisoners were delivered to the hospital because of mistreatment by the accused (R 905, 984). The accused beat a Russian inmate in March 1944 with a pick handle so severely that the victim fell unconscious and bloody. The victim was carried to the hospital and never seen again (R 1715—1717, 1734). A ninth witness testified that the accused beat prisoners with wooden and rubber clubs (R 1926, 1934). Another witness testified that the accused beat a Polish inmate with a stick and that the victim died five or six days later (R 8281, 8284, 8290, 8291, 8297). The accused beat prisoners daily with a stick or his fists (R 8286). A defense witness testified that the accused was the capo of a punishment company which had the worst reputation of all the details (R 2838, 2839).

The accused testified that, as assistant capo in 1943, he tried unsuccessfully to stop the capo's cruelty to the prisoners (R 3065). He denied beating prisoners (R 4038—4041), except when they slept on a work detail or stole other prisoners' food (R 3971, 3972, 4039). He took care of sick inmates (R 3939, 3970), treated his prisoners well, and did not chase them into the wire or beat them to death (R 3970). On the prisoner evacuation march he was a guard, but SS personnel, and not he, shot those who lagged behind (R 3087, 3988, 4051—4053). Five defense witnesses testified that after the accused was promoted to capo in 1943 conditions for the prisoners improved (R 3924); that the accused treated the prisoners well (R 3114, 3252, 4633—4635); that inmates sought to work in his detail; and that he did not beat them (R 967—9169).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, especially that relating to numerous severe beatings and other mistreatments of inmates working under him in the stone quarry, in its findings of guilty. The sentence is not excessive.

*Sentence:* Life imprisonment.

*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

## 22. KARL KEILING

Nationality: German

Age: 53

Connection with Flossenburg:

a. Period: 4 March 1940 — April 1945

b. Status: Waffen SS (February 1940) Sturmcharführer (M/Sgt)

c. Position: Guard at Flossenburg and in evacuation march.

*Evidence:* A Czech witness testified that, during the prisoner evacuation march in April 1945, the accused, who was in charge of the SS guards for one column, "finished . . . off, with two slots" from his pistol, a sick Czech prisoner who had fallen to the ground (R 1132, 1136, 1137, 1139). The witness further testified that the accused was in charge of the guards in his column; that he saw eight instances of prisoners being shot by the guards; and that he saw more than eighty bodies lying along the road (R 1130, 1131). Except while on the evacuation march (R 1134), this witness had never seen this accused during the entire time he was at Flossenburg (14 October 1941 to 20 April 1945, R 1129, 1194). The first time the witness saw the accused since the march was at the trial (R 1139, 1140). The killing apparently occurred on 21 April 1945 and the witness last saw the accused on 23 April 1945 (R 1130—1132, 1139).

The accused testified that he was drafted into the SS in February 1940 (R 5453, D-EX 30a), sent to Flossenburg on 4 March 1940, and assigned there as a guard (R 5454—5456). He had no duties in connection with the evacuation march (R 5460) and was usually 200—300 meters behind the column (R 5462). He never had seen the witness who testified against him. He denied having shot any prisoners (R 5460) and testified that he did not see any corpses (R 5475). He admitted carrying a pistol, but testified that he never took it out of the holster during the march (R 5484, 5485). He admitted that he did not leave the column until 23 April 1945 (R 5469).

A former inmate testified that the accused was an SS top sergeant in 1942 and that he had never seen him mistreat or beat a prisoner during the period April 1942 to December 1944 (R 5111, 5112).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation in its findings of guilty. It was within the province of the Court to determine the weight to be given the prosecution and defense testimony. However, it is not believed that the extent and nature of his participation is such as to warrant the death penalty.

*Sentence:* Death by hanging.

*Petitions:* A Petition for Clemency was filed by defense counsel, Mr. Albert W. Hall, 24 January 1947, and by Franz Hundt, 27 February 1947.



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

23. HANS JOHANN LIPINSKI

Nationality: German  
Age: 25

Connection with Flossenbürg:

- a. Period: 18 February 1945 — April 1945
- b. Status: Inmate (criminal)
- c. Position: Camp capo

*Evidence:* One witness testified that the accused beat a Polish inmate "to the ground" and that on another occasion, he beat prisoners with his fists while they were standing in formation (R 1076). A second witness testified that he saw him beat a Polish and a Russian prisoner until their faces and bodies were bleeding (R 1257). A third witness testified that the accused was a "notorious beater" and that his beatings were referred to as "deadly" (R 2135). He often beat Hungarian Jews, Polish Jews, Poles and other nationals when they did not leave block 20 in a hurry to answer roll call. Inmates who were sick and lying on the floor were kicked by this accused. On one occasion, the accused beat three Hungarian Jews and, as a result, one of the victims was taken to the hospital and not seen again (R 2134). On another occasion, the accused was seen beating prisoners who wanted warm clothing (R 2134, 2135). Shortly before the evacuation, the accused was heard to say, "So we lose, but we kill the Jews before that" (R 2135). This witness was informed that some of the victims of the accused died in the hospital (R 2135, 2151).

A fourth witness testified that immediately after roll call, between blocks 1 and 19, the accused beat a prisoner from the quarry detail in the stomach with his fists and the victim was taken to the hospital (R 8459). The accused wore a brassard with the inscription "Camp Capo" (R 8460). Three other witnesses testified that the accused was camp capo with several devils under him (R 2698, 5035, 9149).

In his testimony, the accused denied beating prisoners (R 5085, 5089) and testified that he was not camp capo at the time a man supposedly died in block 20 (R 5084).

Three defense witnesses testified that the accused did not mistreat prisoners (R 2043, 3285) and that he was never known to have killed inmates at Flossenbürg (R 2730).

*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:* Ten (10) years imprisonment, commencing 26 August 1945.

*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

24. EDUARD LOSCH

Nationality: German  
Age: 61

Connection with Flossenbürg:

- a. Period: 1943 — April 1945
- b. Status: SS (rank unknown)
- c. Position: Work detail leader.

*Evidence:* A Czech witness testified that, during the winter of 1943 and 1944, the accused beat inmates on a cabbage storage detail with a wooden stick or his fists at least ten times (R 1144). The accused was a leader of this detail (R 1141A, 1141B). Sometimes the beatings were "strenuous and sometimes they were light". He beat the victims on their entire bodies (R 1145). On one occasion, the witness saw him from a distance of about 80 meters beat a Russian or Polish prisoner until he fell to the ground. The victim was carried away (R 1141A, 1141B). The majority of workers on the cabbage storage detail were weak, undernourished, and elderly inmates (R 1142). In April 1945, when the accused was working as a coachman on the horse stable detail, he severely lashed the witness in his face four times with a whip, causing wounds on his cheeks and one eyelid (R 1142—1144). A second witness testified that the accused supervised the vegetable sorting detail which consisted of from 20 to 100 prisoners. During the fall of 1944, this witness never saw the accused without a stick or other implement with which he beat prisoners daily. The accused's detail consisted of prisoners who could no longer do heavy work and his victims were sometimes beaten until they collapsed and were taken to the hospital. These victims were usually Poles, Russians, Frenchmen and Belgians. There were very few Germans in the camp at that time (R 1362—1363).

Accused No. 37, a criminal inmate, testified that in the winter of 1944 this accused aided some prisoners in moving a large kettle up a hill although the Camp Commandant had ordered him not to do so; that this accused gave potatoes to inmates (R 4954); and on one occasion refused to accept some tobacco from No. 37, stating "You are poorer than I am" (R 1955).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, particularly that relative to numerous severe beatings, in its findings of guilty. The sentence is not excessive.

*Sentence:* Twenty (20) years imprisonment, commencing 3 May 1945.

*Petitions:* A petition for clemency was filed by defense counsel, Mr. Charles E. O'Connor, 27 January 1947, on which a concurrence is endorsed by Lieutenant Colonel Walter H. Skielbig, a member of the Court, recommending a reduction of the sentence to a term of five years. This petition requested the reduction because the accused was 62 years old and in very bad health. It is asserted in the petition that the evidence

against him indicates that he only slapped and beat inmates and that a sentence of twenty years is excessive in view of his low rank in the SS and his position in Flossenbürg.

*Recommendation:* Approval of findings and sentence.

25. **KARL MATTHEI**

Nationality: German

Age: 39

Connection with Flossenbürg:

- a. Period: October 1943 — March 1945
- b. Status: Inmate (political)
- c. Position: Camp eldest and hospital capo.

*Evidence:* One witness testified that shortly after the accused arrived at Flossenbürg "a real reign of terror started". The accused broke a Russian prisoner's arm by beating him. Sometimes, when he was ill-tempered and didn't approve of the crowd in front of the canteen shop, he took an iron bar and beat inmates indiscriminately (R 136). He often beat inmates who requested admission to the hospital, using any instrument at hand. He also abused them by "faking their heads against the stone walls" (R 136, 137). He enjoyed performing one or two post mortems a day in a manner which resembled "a kind of butchering". Although he was not qualified, he gave intravenous injections (R 193, 194). A second witness testified that the accused beat inmates with a rubber club each morning in block 2 (R 247). At various times, he beat "with passion" inmates on work details (R 448). He was seen in the dissecting room laughing and beating the naked corpse of a Polish prisoner with a rubber club (R 248).

A third witness testified that the accused's brutality toward hospital inmates was very great (R 310). On one occasion he beat a Polish prisoner who refused to take some pills. The next day the victim died (R 311, 370). He prevented three Polish inmates from entering the hospital by beating them and remarked that "these three men can die" in the block (R 311—313). A fourth witness testified that the accused sometimes performed minor operations on prisoners which often resulted in "grave mutilations" to the victims (R 541, 540), some of whom later died (R 547). A fifth witness testified that in March 1944 the accused struck a weak 18 or 19 year old Russian inmate with such a "terrific blow" that the victim fell against a machine. His head was ripped open; he bled profusely; and died a few minutes later (R 1196, 1197). A sixth witness testified that the accused beat prisoners (R 652) and that he killed a prisoner by kicking and striking him with a pick (R 655).

A seventh witness testified that the accused often beat inmates with broomsticks at daily assemblies. Once he used a plant with protruding nail (R 779, 780). On one occasion, the accused struck a Frenchman in the face twice and then kicked him with all his strength. The victim

died that night (R 782, 796) or the following night (R 783). An eighth witness testified that the accused gave an apparently healthy Fossian inmate three intravenous injections of benzine and another liquid causing his immediate death (R 826, 827, 837). The accused beat inmate patients without reason, resulting in the death of many in a few days (R 828).

The accused testified that he beat prisoners only when forced to do so by his superiors or on occasions when it would be better to beat them than to report them. Because reporting would result in a far greater punishment (R 4117—4120, 4134, 4230, 4249, 4280, 4250, 4252, 5254). His beatings never resulted in death of the victims (R 4200). He denied the truth of all testimony of the prosecution witnesses relative to his mistreatments resulting in death (R 4288, 4289). He testified that he was forced to be a camp eldest (R 4114); that he had the reputation of helping inmates (R 4201); and that he did favors for them (R 4133, 4135, 4136, 4245, 4217). On examination by the Court, the accused admitted that some beatings of prisoners by him with a rubber hose were not ordered by a superior officer (R 4281).

One defense witness testified that the accused struck prisoners when they raided the bread and potato wagons (R 4441, 4442); another, that he never heard reliable people speak ill of the accused (R 4550); and a third, that he was kind and his beatings did not result in death (R 4587, 4588). A fourth defense witness testified that the accused did not beat prisoners sufficiently to hospitalize them (R 2826, 2844) and another, that he was constantly reprimanded by his superiors because of his leniency (R 3712). The sixth and seventh defense witnesses testified that while the accused was a hospital capo he treated the prisoners well (R 3300, 3381). The eighth and ninth witnesses, former inmates, testified that the accused was relieved of his duty as camp eldest because he refused to participate in executions (R 3086, 3150). This was corroborated by the Statements of three additional defense witnesses (R 3005, D-Ex 21.A, R 5999, D-Ex 22.A, R 5103, D-Ex 23.A). One of the defense witnesses testified that the accused made every effort to help all prisoners (R 3153—3155).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation in its findings of guilty. The evidence on behalf of the accused relative to superior orders fails to establish either that orders were issued to him by a superior or that, even though such orders had been issued to him, immediate compulsion existed to a substantial degree within the rule set forth in Section VI, E, supra. The sentence is not excessive.

*Sentence:* Life imprisonment.

*Petitions:* Petitions for Clemency were filed by defense counsel, Mr. Russell S. McKay, 27 January 1947, and by the accused's wife, Valeska Mathoi 20 July 1946.

*Recommendation:* Approval of findings and sentence.

26. GUSTAV MATZKE

Nationality: German  
Age: 42

Connection with Flossenburg:

a. Period: 1944 — April 1945

b. Status: Inmate

c. Position: Block leader and group leader in Messerschmitt factory.

*Evidence:* One witness testified that in January 1945 the accused forced three Polish Jewish inmates to lie down unclothed in an unheated wash room for one-half hour while cold water flowed over them. The victims reported to the hospital the following day and did not return to the barracks (R 1731, 1732, 1737—1738). Another witness testified that in March 1945 the accused beat a Polish Jew with the leg of a stool until he bled from the mouth because the victim complained about the lack of food. The victim went to the hospital two days later and thereafter was reported to be dead (R 1759, 1760A, 1761).

One defense witness testified that the accused was never known to have killed prisoners (R 2730) and, second, that he did not mistreat prisoners (R 2824). Three more testified that the accused was in very ill health during December 1944 and January 1945 (R 3597, 3598, 3773, 3774, 5003, 5004, 525).

*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:* Ten (10) years imprisonment, commencing 7 December 1945.

*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

27. RAYMOND MAURER

Nationality: German

Age: 37

Connection with Flossenburg:

a. Period: 26 April 1942 — April 1945

b. Status: Inmate (criminal)

c. Position: Assistant capo, capo and assistant eldest, block 5.

*Evidence:* The accused was called "The Tiger" because of his bad conduct and reputation (R 414, 666, 796). A former French inmate testified that the accused often awakened inmates by beating them with a rubber hose. On other occasions, he often beat prisoners with a rubber hose, kicked them, and hit them on the head with a large spoon (R 415, 416). The accused was chief capo of all transportation commandoes, Commando 2004 (Messerschmitt factory), where many inmates died because of excessive work and ill-treatment (R 417).

A second witness, a former inmate and French army captain, testified that the accused hit him with his fist during the summer of 1944 (R 666, 679). The accused very often beat prisoners with a rubber hose (R 666). He beat a sick Russian inmate with a stool, causing his face to bleed. During the time that the accused was chief of the transportation detail (R 667) he gave this witness "some blows on the face" (R 669). He beat a night guard and a Frenchman by giving each 25 blows with a rubber hose (R 669, 681). The accused hit this witness and another inmate on the head with a large spoon because they complained about soup distribution (R 684).

A third witness testified that he saw the accused hit an inmate with a ladle while distributing soup (R 788). Sometimes he beat other prisoners with a piece of rubber hose 60 to 70 centimeters long (R 789) or with other instruments (R 790). A fourth witness testified that while the accused was capo of the transportation detail in the Messerschmitt factory, many injured inmates were taken to the hospital and, upon being questioned by this witness, they often answered that the accused beat them (R 903).

A fifth witness testified that, while the accused was transportation detail capo, he beat a Polish prisoner to the ground and kicked him so severely that he remained lying there (R 1258). A sixth witness testified that the accused's transportation detail in the Messerschmitt factory was a hard work punishment detail (R 2670, 2673, 2746, 2747). The accused sometimes slapped prisoners with his open hand (R 2752). A seventh witness testified that this accused slapped a prisoner for going through the food line twice and compelled him to stand on a chair for two days (R 4685). On one occasion, he threw soap in prisoners' faces for raiding the pot (R 3686). On another occasion, he struck a prisoner with a stick because he did not get up for roll call and because he relieved himself in bed (R 3693).

The accused testified that he was assigned to the transportation detail and later was made assistant capo against his wishes (R 4829, 4830). He denied that the transportation detail was a punishment detail (R 4831). He denied beating and kicking a Pyle while he was transportation detail capo (R 4856). He admitted beating inmates in the factory several times with a rubber hose, but never so seriously that they fell to the ground (R 4862, 4865, 4866). He further testified that he left the transportation detail in April 1944; that the testimony that prisoners came to the hospital from the transportation detail in July 1944 stating that they had been beaten by him was false; and that the witness who gave the testimony last mentioned had been reprimanded by accused (R 4854, 4855). He denied beating prisoners in his block with a rubber hose (R 4862) and further denied beating them with a soup ladle (R 4838, 4841). The accused testified that he had had altercations with two of the witnesses who testified against him and he pointed out that no one from his block nor from his work detail had testified that he had beaten anyone to death (R 4865, 4866, 4901).

One defense witness testified that the transportation detail was used for punishment, but that it was not the worst detail (R 2862); another, that this accused had charge of the punishment detail in 1942 (R 2948); and a third and fourth, that he did not mistreat prisoners (R 2869, 3294). The transportation detail consisted of 40 to 50 inmates (R 3311).

*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:* Thirty (30) years imprisonment, commencing 9 July 1945.

*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

#### 28. CHRISTIAN MOHR

Nationality: German

Age: 55

Connection with Flossenbürg:

a. Period: 29 November 1939—1944

b. Status: Waffen SS (24 November 1939) Unterscharführer (Sgt)

c. Position: Work detail leader (water construction detail and Messerschmitt factory) and guard in charge of the arrest building.

*Evidence:* A witness testified that, in the summer and autumn of 1942, the accused was in charge of 70 to 80 prisoners, a water construction work detail whose capes repeatedly beat inmate workers of Roumanian, Polish, Russian and Czech nationalities. These beatings were administered by hitting the prisoners on the head with sticks and resulted in many injuries. On two occasions, the victims were taken to the hospital (R 1040—1042, 1080, 1083). The accused personally inflicted some of these beatings (R 1084). A second witness, although he did not positively identify the accused in the courtroom, testified that the accused as leader of the water works detail incited capos to beat prisoners. Near the end of 1942 a Polish inmate was so severely beaten that he fell to the ground and had to be carried in at night (R 1577).

A third witness testified that in the spring of 1944 the accused actively participated in executions of Polish and Russian nationals by hanging and shooting. He was seen at these executions shooting victims in the back of the neck with his carbine and was also seen placing a noose around their necks during hangings. Female prisoners were forced to undress; themselves prior to being hanged (R 1194, 1195). A fourth witness testified that the accused shot and killed prisoners on the coalpile in the yard of the camp prison on several occasions in the late spring of 1944 (R 1644—1646, P-Ex 33, R 1658—1661). The witness estimated that "he must have executed two hundred," Russians (R 1652).

Accused No. 21 said in his Statement that a Scharführer (Sgt) MOHR was one of the persons in charge of the camp prison (P-Ex 63a, R 2234).

In his Statement, the accused admitted that he executed about seven prisoners in the camp prison by shooting them during the early part of 1944. He admitted therein that he assisted at hanging executions by bringing the prisoners out. The sentences were read to most prisoners in what he assumed to be the Russian or Polish languages (P-Ex 51a, R 2234).

A defense witness testified that the accused was the only SS man who had a heart and soul (R 2711). Another testified that accused was a guard (R 3438) in charge of the camp prison during the summer of 1943, and a third, that he was transferred to the armament factory 2004 (Messerschmitt factory) in June 1944 (R 3707). On cross-examination, the third witness testified that the accused received cigarettes and liquor for carrying out executions (R 3714 J, 3714 K). A fourth defense witness testified that the accused was leader of the water works construction detail from 26 August 1943 to 8 December 1943 (R 8054, 8055), in charge of approximately 110 prisoners and 16 to 20 guards (R 8056). He treated inmates well, and never beat them (R 8056, 8057).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, particularly that involving him in several executions, in its findings of guilty. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* Petitions for Clemency were filed by the accused's wife, Anna Mohr, 14 March 1947, a parson, Konrad Zausch, 17 April 1947, and accused's brother, George Mohr, 9 May 1947.

*Recommendation:* Approval of findings and sentence.

#### 29. ERICH MUSSFELDT

Nationality: German

Age: 33

Connection with Flossenbürg:

a. Period: April 1945

b. Status: SS Oberscharführer (T/Sgt)

c. Position: Roll call leader and burial detail leader on evacuation march.

*Evidence:* One witness testified that in 1945 he saw the accused beat one Polish and two Russian inmates with his fists or a leather whip (R 1258). A second witness testified that the accused was in charge of the burial detail on the prisoner evacuation march from Flossenbürg in April 1945; that he carried a machine pistol; and that he killed a number of prisoners, some of whom were Poles too ill to continue marching (R 1909—1911, 1916, 1918—1920). Specifically, the witness heard him shoot on 10 or 12 occasions and he saw them bury the dead (R 1910, 1911). He observed 200 to 300 corpses along the road (R 1911), some of which could have been from the preceding column (R 1917). Accused

No. 33 testified that this accused was with a burying detail assigned to his prisoner evacuation column (R 4106).

Two defense witnesses testified that accused did not beat or mistreat prisoners (R 2752, 2763, 4790), and a third defense witness testified that the accused was missing for one or two days during the evacuation march and, on his return, said that he could not work on the burial detail any longer (R 3241, 6242). The first defense witness testified that the accused was one of the SS men who accompanied the Camp Commandant through the Messerschmitt factory and that he was one who did not beat prisoners (R 2753).

*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.

*Petitions:* Life imprisonment.

*Recommendation:* None.

*Recommendation:* Approval of findings and sentence.

### 30. WALTER PAUL ADOLF NEYE

Nationality: German

Age: 36

Connection with Flossenbürg:

- a. Period: 5 September 1942 — April 1945
- b. Status: Inmate (political)
- c. Position: Block orderly at Flossenbürg, block oldest at out-camps Ganacker and Landau.

*Evidence:* A former French inmate testified that in early 1945 the accused beat him on the head with a "ladle" while soup was being distributed. As a result, this witness lost consciousness (R 445, 446). He often beat other prisoners at reveille while they were going in and out of the barracks (R 446).

A second witness testified that the accused "conducted himself very badly towards prisoners" (R 1990) and at out-camp Ganacker, in the spring of 1945 (R 1995, 1988), he beat a Polish Jew so severely with a spade-handle that the victim died the next morning (R 1990, 1991, 1999—2001). The accused struck prisoners on a number of occasions (R 2000, 2002).

A Belgian army intelligence officer, formerly an inmate of Ganacker and Flossenbürg, testified that the accused beat a prisoner in the face and abdomen at Ganacker on 26 or 27 April 1945, and that the victim's corpse was carried from the hospital the next morning (R 8642, 8643).

The accused testified that he was at Flossenbürg from 5 September 1942 to August 1943 and from July 1944 to March 1945; and that he was at out-camp Krzindorf in Czechoslovakia from August 1943 to July 1944 (R 3987). He did not hold any kind of position at either camp (R 3988). In November 1944 and later, the accused was in charge of the distri-

bution of food to about 800 prisoners in block 7 at Flossenbürg (R 3390). It was necessary to beat some of these inmates who stole food from the sick and weak (R 3390—3392, 3399). The accused was at Landau for 10 days beginning 12 April 1945 (R 3400), where he beat the second prosecution witness (a Polish Jew, R 1987) because he stole food from the sick on several occasions (R 3401, 3402, 3506—3509). The accused further testified that he never beat a prisoner so severely that he died (R 3405, 3406), and that he had "one little run-in" with the first prosecution witness, but he denied hurting him (R 3506).

Accused No. 21 testified that this accused had a good reputation in block 7 (R 401, 402). One defense witness testified that there was no talk around the camp that the accused harmed prisoners (R 2697, 2698) and that he was not known to have killed inmates (R 2730). A second defense witness testified that the accused was block eldest of block 1 at out-camp Landau in April 1945 (R 3359, 3340) and that he protected weak inmates during food distribution (R 3343, 3344). A third defense witness testified that the accused was a block helper at Flossenbürg from 1942 to the end of 1945 (R 3359, 3360).

*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:* Fifteen (15) years imprisonment, commencing 7 May 1945.  
*Petitions:* A Petition for Clemency was filed by the accused's mother, Marta Neye, 11 April 1947.

*Recommendation:* Approval of findings and sentence.

### 31. WILUF OLSCHESKI

Nationality: Dutch

Age: 43

Connection with Flossenbürg:

- a. Period: 1 January 1942 — April 1945
- b. Status: Inmate
- c. Position: Capo of the road building and quarry details.

*Evidence:* Eight prosecution witnesses testified that the accused beat prisoners unmercifully (R 421, 446, 556, 557, 860—862, 867—869, 888—891, 893, 1051, 1730, 1736, 1783, 1784, 1789, 1790). As a result of beatings by the accused, one inmate died in September 1944 (R 556). According to three of these witnesses, three or four victims of beatings, at least one of whom was a Pole, were admitted to the convalescent block or hospital where they died (R 860—862, 888, 1784, 1785, 1788). In February 1944, the accused beat an inmate with a spade and dragged him into some bushes. He never returned to his block (R 1730). A Russian prisoner died a few days after telling one of the witnesses that "he had been worn out by being beaten" by accused (R 557). A road constructed under the supervision of the accused was commonly known

as "The Devil's Road" because prisoners assigned to work there "didn't live long" (R 450). One of the witnesses testified that accused was responsible for many murders (R 555) and another testified that the accused told him that "I have killed quite a few, and will kill many more" (R 471).

Two defense witnesses testified that in the fall of 1944 there were no beatings or disturbances among a group of 10 to 25 men on a road work detail supervised by the accused. These witnesses observed the group for several weeks and one of them testified that the accused procured food from civilians for the prisoners (R 2903-2905, 2908-2913). A third defense witness testified that the accused treated prisoners well on his quarry detail (R 3118).

*Sufficiency of Evidence:* The Court was varranted from the evidence concerning the extent and nature of his participation, especially that connecting him with killings, in its findings of guilty. The accused could not have successfully challenged the jurisdiction of the Court on the ground that he was a national of the Netherlands for the reason indicated by the authorities discussed in Section VI A, supra. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* A Petition for Clemency was filed by defense counsel, Mr. Russel S. McKay, 27 January 1947.

*Recommendation:* Approval of findings and sentence.

### 32. JOSEF OSWALT

A nolle prosequi was entered in favor of this accused on 17 December 1946 (R 8258, 8259, P-Ex 93, R 8257).

### 33. HERMANN PACHIN

Nationality: German

Age: 50

Connection with Flossenburg:

- a. Period: 14 April 1945 — 29 April 1945
- b. Status: Waffen SS (January 1940 Obersturmfuehrer (1st Lt))
- c. Position: Prisoner evacuation march leader.

*Evidence:* A former Waffen SS sergeant testified that the accused was in command of the second column of the prisoner evacuation march which left Flossenburg for Dachau on 20 April 1945. There were approximately 2,500 to 3,000 prisoners on this march (R 1908, 1909, 1914, 1917). Germans, Poles, Czechs, Hollanders, and nationals of nearly all other countries of Europe were included (R 1911). Accused No. 29 and his burial detail were assigned to and marched at the rear of this accused's column (R 1909). The witness was present when No. 29 shot 10 to 12 times with his machine pistol, but the witness stated, "When

I saw that it would happen, I looked the other way. I did not want to have the view of this" (R 1910, 1916, 1918, 1919). The prisoners who were the object of this shooting were buried. This witness saw between 200 and 300 corpses alongside the road from Flossenburg to Dachau. The burying detail was from 500 meters to 10 or 20 kilometers behind the column depending on the number of corpses that were found (R 1911, 1917). The witness further testified that he saw the accused when they left Flossenburg and two or three times during the march (R 1914).

In his Statement, accused No. 46 said that this accused was appointed leader of one of the prisoner evacuation columns (P-Ex 51a, R 2234). Accused No. 5; a former SS guard in the second column of the evacuation march (R 8245), testified that the Camp Commandant announced to guards, camp police, noncommissioned and commissioned officers that prisoners who were escaping were to be shot immediately without warning, and that no prisoners would be allowed to fall into the hands of the enemy alive (R 8227, 8228). During the march, on 23 April 1945, the Camp Adjutant ordered a special detail of guards to shoot prisoners who fell out (R 8231).

In his Statement, this accused admitted that he was a leader of 3,000 prisoners on the evacuation march and that 76 guards and a burying detail of four men were under his supervision. He said therein that he received an order "that prisoners had to be shot not . . . into the head but into the heart" and he relayed the order to his guard leader. He admitted that he saw about 10 to 15 dead bodies lying beside the road during the march. He arrived at Dachau on 29 April 1945 with 2654 of his prisoners (P-Ex 59a, R 2234).

The accused testified that he joined the Nazi party and the Allgemeine SS in 1930 (R 6182), was drafted in 1933, and transferred to the Waffen SS in January 1940 (R 6186). He arrived at Flossenburg on 14 April 1945 (R 6190). He objected to being a leader of an evacuation march column, but was told that he could be shot if he refused (the order did not direct an illegal act) (R 6193). He further testified that he was given 3,000 prisoners (R 6195); that accused No. 29 with a burial detail was assigned to him (R 6195); but that there were no orders given concerning the shooting of inmates (R 6194). He arrived at Dachau with 2654 prisoners, leaving 346 prisoners in villages along the way (R 6197). He received an order from the Commandant that there were to be no more head shots, only heart shots (R 3214), but denied giving this order to his guards (R 6234).

The one defense witness testified that he was with the accused's column (R 6194, 6165); that prisoners were fed and were in good condition; that he did not see any prisoners lying in the road (R 6166, 6167); that he heard no shots (R 6163); that he did not see any prisoners die; and that he did not see any prisoners who were unable to keep up with the column (R 6170).

*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:* Life imprisonment.

*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

#### 34. OTTO PAWLICZEK

Nationality: German

Age: 32

Connection with Flossenbürg:

- a. Period: 1941 — 3 October 1942
- b. Status: Waffen SS (1 April 1939) Oberscharführer (T/Sgt)
- c. Position: Block leader of blocks 1 and 8, work detail leader, and member of an execution detail.

*Evidence:* A former Polish inmate testified that the accused ill-treated inmates, often beating them with a stick and hitting them in the face and stomach with his fists (R 2169, 2170). He ticked this witness a few times (R 2170). On one occasion in early 1942, after an order was read stating that 40 Polish inmates were to be shot (R 2160), the accused and others marched them in the direction of the crematorium. Shots were heard from that direction and these 40 inmates were never seen again (R 2155, 2162). A second witness testified that the accused treated prisoners "very badly" and that he very often beat them (R 2173). In October 1942 at the railroad station he severely beat a Polish inmate with a shovel handle until he bled and became unconscious. This witness later heard that the victim died (R 2174, 2175). A third witness testified that this accused was one of the group classed as the "worst beaters" (R 2813).

Accused No. 15 said in his statement that a man named "PAVLICZEK" was a member of a firing squad that participated in the shooting of 30 Russian soldiers in January 1942 (P-Ex 58a, R 2234). Accused No. 21 said in his Statement that a "Scharführer (Sgt.) PAVLICZEK" shot an inmate without justification and that he beat prisoners with a cudgel, struck them with his fists, and kicked them. He was known in the camp as the "Poles' threat" (P-Ex 63a, R 2234).

The accused testified that he was in charge of a work detail of 46 to 56 prisoners at the railroad station at Flossenbürg in 1942 (R 2729, 5730, 5764). He denied beating a Polish inmate or this detail and stated that the prosecution witness who testified as to this incident was never with his detail (R 5730, 5815). The accused was transferred to the front on 3 October 1942 and did not perform any duties at Flossenbürg after 21 September 1942 (R 5731). He was sick in a Berlin hospital from December 1941 until about May 1942 (R 5732, 5733). He denied taking

part in any executions (R 5732—5735, 5801) and especially denied marching to the crematory with 40 Polish inmates (R 5735). He admitted beating prisoners as punishment for stealing and testified that he did not report these things to headquarters because, if he had, at least 50 inmates would have been hanged daily (R 5736, 5754). He further admitted that he beat prisoners "around 40 to 50 times" with his open hand during 1942 (R 5741, 5788) but, as far as he knew, he never killed an inmate at Flossenbürg after January 1943 (R 5760, 5763). He also denied the accusations made by accused No. 21 in his Statement (R 5803).

Two defense witnesses testified that the accused treated prisoners well and that no one was mistreated or beaten to death while the accused was in charge of work details at the railroad station in the fall of 1942 (R 4794—4795, 5830). Two additional witnesses testified that he was sick in the hospital from December 1941 (R 5855) until about May 1942 (R 5902, 5917); and, a fifth, that he was transferred to the front about 3 October 1942 (R 5693, 5923). One of these defense witnesses testified that, on two or three occasions (R 5851), "around 1942", the accused and other SS men walked to the "shooting range" near the crematory with their carabines (R 5839—5841, 5843, 5847, 5852, 5853, 5856) following prisoners who came out of the camp prison (R 5839—5841, 5856). Shots were heard (R 5863), and these prisoners were never seen again (R 5854).

Accused No. 52 testified that the second prosecution witness offered to appear as a favorable eyewitness for accused No. 52, if No. 52 would give him a ring he was wearing (R 6884—6889).

*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:* Life imprisonment.

*Petitions:* Petitions for Review were filed by German defense counsel, Dr. Richard Wacker, 25 January 1947 and 12 April 1947.

*Recommendation:* Approval of findings and sentence.

#### 35. ERICH PENZ

Nationality: Yugoslav

Age: 22

Connection with Flossenbürg:

- a. Period: 10 August 1944 — April 1945
- b. Status: SS (1 February 1943) Stummamm (Pfc.)
- c. Position: Guard, dog handler and guard on evacuator march.

*Evidence:* One witness testified that, as a guard on the prisoner evacuation march from Flossenbürg to Dachau, the accused ill-treated prisoners, shooting anyone who left the column to find food (R 2371, 2383). The witness personally saw a number of French, Russian and Polish

inmates shot to death by the accused (R 2375, 2389—2431). The witness further testified that this accused shot many more than three or four inmates (R 2392, 2395) and that he was shouting all the time (R 2393). Accused No. 36 testified that on the same march the camp Adjutant ordered him and this accused to shoot all prisoners who remained behind. The two accused were threatened by the Adjutant with a pistol and he directed a sergeant to enforce compliance with his order. Accused No. 36 also testified that, to avoid complying with the order, he and this accused planned to escape during the night following the issuance of the order, but that they overslept (R 5136—5139).

Accused No. 36 said in his Statement that a man named PENZ was with the prisoner evacuation march; that orders were given to shoot "people who remained behind"; that he did not know how many inmates were killed by PENZ, probably three or four; and that, during the time he was with the column, he saw 60 to 80 stragglers shot (P-Ex 65a, R 2393). This accused admitted in his Statement that on a prisoner march in April (1945) he shot five Russian or Polish inmates in compliance with orders (P-Ex 48a, R 2234, 247—250).

The accused testified that he was drafted into the SS on 1 February 1943 (R 8224) and was sent to Flossenbürg on 10 August 1944 as a dog tender. During the prisoner evacuation march on 23 April 1945, the Camp Adjutant ordered the accused to shoot through the head prisoners who fell behind (R 8231) and he directed a sergeant to enforce compliance with his order (R 8233). He admitted that on the next day he shot five prisoners who had fallen to the ground and he assumed that the victims were Poles or Russians (R 8234—8236, 8246). That afternoon he escaped (R 8236).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation in its findings of guilty. The evidence on behalf of the accused relative to superior orders fails to establish immediate compulsion to a substantial degree, if any, with regard to each killing admitted by the accused, as required by the authorities discussed in Section VI, E, supra. The Court might well have considered it inappropriate to give much credit to the testimony concerning superior orders because of the absence of a showing that a superior was present at each killing and because of a showing that the accused had opportunities of escape. However, the Court may not have imposed the death penalty because it was of the view that a slight element of immediate compulsion may have been present. The accused could not have successfully challenged the jurisdiction of the Court on the ground that he was a Yugoslav national for the reasons indicated by the authorities discussed in Section VI, A, supra. The sentence is not excessive.

*Sentence:* Life imprisonment.

*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

### 36. JOSEF PINTER

Nationality: Yugoslav

Age: 21

Connection with Flossenbürg:

a. Period: August 1943 — April 1945

b. Status: Waffen SS (July 1941) Fottenführer (Cpl)

c. Position: Guard, dog handler and guard on evacuation march.

*Evidence:* A witness testified that, in April 1945 on the prisoner evacuation march from Flossenbürg to Dachau, he saw three or four Polish and Russian prisoners shot to death by the accused (R 274, 2375, 2378, 2379, 2389—2393). Accused No. 35 testified that a man named PINTER, without specifically identifying this accused, was a guard during the prisoner evacuation march on 23 April 1945 when the Camp Adjutant ordered them to shoot through the head prisoners who fell behind (R 8231) and that he placed them under a sergeant who was directed to enforce compliance with his order (R 8233). Pursuant to the order, prisoners who fell behind during the march were shot (R 8235). That afternoon PINTER and accused No. 35 escaped (R 8236). This accused admitted in his Statements that, on the prisoner evacuation march, he shot three inmates assumed to be either Poles or Russians (P-Ex 49a, R 2234, P-Ex 65a, R 2393).

The accused testified that he was drafted into the Waffen SS at the age of 16 (R 5131). He came to Flossenbürg in August 1943 and was assigned as a dog leader (R 5132). During the prisoner evacuation march on 23 April 1945, the Camp Adjutant ordered him to shoot all prisoners who remained behind (R 5136, 5141); that he threatened him with a pistol; and that he placed him under a sergeant who was directed to enforce compliance with his order. He also testified that, to avoid complying with the order, he and accused No. 36 planned to escape during the night following the issuance of the order, but they overslept (R 5136—5139). He admitted shooting three prisoners and stated that he and accused No. 35 escaped from the column on 24 April 1945 (R 5137—5141, 5146, 5147).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation in its findings of guilty. The evidence on behalf of the accused relative to superior orders fails to establish immediate compulsion to a substantial degree, if any, with regard to each killing admitted by the accused, as required by the authorities discussed in Section VI, E, supra. The Court might well have considered it inappropriate to give much credit to the testimony concerning superior orders because of the absence of a showing that a superior was present at each killing and because of the evidence showing that the accused had opportunities of escape. However, the Court may not have imposed the death penalty because it was of the view that a slight element of immediate compulsion may have been



present. The accused could not have successfully challenged the jurisdiction of the Court on the ground that he was a Yugoslav national for the reasons indicated by the authorities discussed in Section VI, A, supra. The sentence is not excessive.

*Sentence:* Life imprisonment.

*Petitions:* A Petition for Clemency was filed by Hans Schenk, 21 April 1947.

*Recommendation:* Approval of findings and sentence.

### 37. THEODOR REITZLAFF

This accused was found not guilty (R 9459).

### 38. WALTER REUPSCH

Nationality: German

Age: 41

Connection with Flossenburg:

- a. Period: 30 January 1941 — June 1942, May 1943 — April 1944
- b. Status: SS Unterscharfuehrer (Sgt)
- c. Position: Chief pharmacist

*Evidence:* Three witnesses testified that the accused as chief pharmacist failed or refused to furnish proper medical supplies for inmates, although such supplies were available. One of the witnesses testified that when the accused was asked why he refused to issue the medicines he replied "They should die". Two of these witnesses charged misuse of these supplies by accused. One of he two testified that he traded rare medical supplies for butter and eggs and prepared alcoholic drinks for himself and two camp doctors with glucose which was intended for inmates (R 126, 1485-1487, 8628, 8633, 8634). However, one of these witnesses, accused No. 40, a doctor, testified that undoubtedly the accused acted under orders from the garrison doctor (R 8635, 8637).

The accused testified that he kept proper records (R 7246-7249); that he did not determine what medicines were to be used (R 7263); and that he did not misappropriate such supplies (R 7396-7370). One witness corroborated the accused's testimony concerning procedures in the pharmacy and testified that spot checks were made (R 7306-7310). The garrison doctor (R 9043) testified that if the accused refused to fill prescriptions, it was because certain supplies were scarce (R 9044 to 9046).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, including that relating to his being the pharmacist in the camp administration, in its findings of guilty. The sentence is not excessive.

*Sentence:* Twenty (20) years imprisonment, commencing 9 May 1945.

*Petitions:* Two Petitions for Review were filed by German defense counsel, Dr. Richard Wacker, 25 January 1947 and 12 April 1947. A Petition for Clemency was filed by Mrs. Anna Reupsch, wife of the accused, 10 March 1947.

*Recommendation:* Approval of findings and sentence.

### 39. ALBERT ROLLER

Nationality: German

Age: 37

Connection with Flossenburg:

- a. Period: 25 September 1944 — April 1945
- b. Status: SS (September 1944) Sturnscharfuehrer (N/Sgt)
- c. Position: Commandant of out-camp Eugendorf.

*Evidence:* One witness testified that in April 1945 the accused was in charge of a prisoner evacuation march from out-camps Lenggenfeld and Zwickau to Johanngeorgenstadt. Prisoners who were on this march told the witness that the transport leader had given orders to leave the weak prisoners behind and shoot them and that at least 90 prisoners were shot. After arrival at Johanngeorgenstadt, the accused was seen in the factory courtyard about 50 meters from the place where guards shot at least five sick prisoners (R 1317, 1320, 1321, 1328, 1329).

A second witness testified that in April 1945 the accused and a sergeant were in charge of the prisoner evacuation march from out-camp Lenggenfeld (R 2015, 2024). Seven Polish inmates, who had been wounded during an air attack, were shot to death by the accused. The witness further testified that later two Yugoslav prisoners whose legs were in bad condition from marching were shot in the back of the neck (R 2013, 2014, 2019, 2020, 2024-2026). A Sergeant Muench issued the order directing that these two prisoners be shot (R 2014, 2017, 2022, 2025). Over 600 prisoners left Lenggenfeld on this march and 200 of these were shot to death (R 2015, 2021, 2022).

The accused testified that in September 1944 he was drafted into the SS (R 5243) and that he was the senior SS man at out-camp Lenggenfeld (R 5259, 5264). About 600 prisoners left Lenggenfeld 13 April 1945 on the evacuation march (R 5251, 5265). The next day he turned over his column to SS Sergeant Muench (R 5251) who later ordered that no prisoners were to fall into enemy hands (R 5251, 5252) and that every prisoner who could not keep up with the column would be shot to death (R 5232). He denied being present in the factory courtyard at Johanngeorgenstadt when several prisoners were allegedly shot (R 5252, 5253). He admitted shooting two prisoners who were severely wounded in an air attack and were almost dead (R 5255, 5256, 5276). There were Poles, Russians, Czechs and Jews among the estimated 800 prisoners at Lenggenfeld (R 5266). From 12 October 1944 to 3 April 1945 (R 5290) when he was in command of this out-camp, approximately 120 to 150 prisoners died there. He denied that he gave guards instruc-

riums as to treatment of prisoners prior to leaving on the march (R 5268—5270).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, particularly that connecting him with the killings on the evacuation march, in its findings of guilty. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* A Petition for Clemency was filed by accused's wife, Dora Koller, 20 April 1947.

*Recommendation:* Approval of findings and sentence

#### 40. HEINRICH SCHMITZ.

A noble prosecutor was entered in favor of this accused on 17 December 1946 (R 8258, 8259, P-Ex 93, R 8257).

#### 41. KURT ERICH SCHREIBER

Nationality: German

Age: 35

Connection with Flossenburg:

a. Period: 1941—February 1945

b. Status: SS Hauptscharführer (1st Sgt)

c. Position: Leader of work commitment office, work detail leader, member of an execution detail and trainer of recruits.

*Evidence:* A former Czech inmate testified that the accused was greatly feared by the prisoners of Flossenburg. In the fall of 1942 the accused hit the witness several times in the stomach (R 1065). Another witness testified that the accused was present at executions of Polish and Russian prisoners during April and May 1944 (R 1192—1194). A third witness testified that in early 1943 the accused beat Czech, Polish and Russian prisoners almost daily using a leather whip (R 1259).

A fourth witness testified that in 1942 the accused was a member of the staff of the commander's office and that he was a member of an SS execution detail which was formed mostly from members of the staff. Polish prisoners, dressed in their underwear, were frequently brought from the camp prison to a firing range near the crematory. On such occasions, this detail of armed SS men proceeded in the same direction as the prisoners and shortly thereafter shots were heard (R 910—912).

A fifth witness testified that the accused kicked capos and beat them with a dog whip (R 2751). One victim was a Pole (R 2770). A sixth witness testified that on 17 or 18 February 1942 the accused was a member of a 10 man execution detail which marched with four Russian prisoners to the shooting range where they were presumably shot to death. Immediately thereafter, 10 to 12 additional groups of four Russian prisoners were successively taken to the same place and pre-

sumably shot to death. The execution detail returned shortly after the last shots were heard (R 8720—8722, 8734, 8744).

Accused No. 13 said in his Statement that a man named SCHREIBER was a member of a firing squad which participated in an execution of 30 Russian soldiers in January 1942 (P-Ex 58a, R 2234). Accused No. 49 said in his Statement that a man named SCHREIBER participated in an execution of some prisoners by shooting (P-Ex 60a, R 2234). Accused No. 2 said in his Statement that in 1942 a Hauptscharführer SCHREIBER was a member of a shooting execution detail which killed 45 inmates. He further stated that the rapportführer and labor service leader SCHREIBER kicked prisoners, hit them with his fists, and struck them with a stick. Any inmate who did not take off his cap for him was slapped or knocked down (P-Ex 63a, R 2234).

A defense witness testified that the accused was leader of the work commitment office between 1 January 1942 and 3 October 1942 and that he was "well loved" by the prisoners (R 5398, 5699). Three other witnesses testified that the accused was not at Flossenburg from about August 1941 to April 1942 (R 3123, 3124, 7165, 7174, 7175, 7175). The accused's wife testified that he was at the radiator bath in Oberschlehma from 6 February 1942 to 15 March 1942 (R 8996, 8998, D-Exs 72 and 73, R 8999—9001, 9008).

Three additional defense witnesses testified that the accused was sent to Neurollan as a detail leader in November 1942 and that he returned to Flossenburg in February 1943 where he trained recruits until June or July 1943 (R 7150, 7151, 7158—7160, 7179). One of these witnesses and an additional witness testified that the accused was stationed at out-camp Nurnberg from June 1943 to about March 1944 (R 7181, 7196) and at out-camp Leitmeritz from March 1944 to June or July 1944 (R 7181, 7197). He then went to out-camp Zwedau (R 7182, 7198).

*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:* Twenty (20) years imprisonment, commencing 5 July 1945.

*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

#### 42. CORNELIUS SCHWANNER

Nationality: Austrian

Age: 62

Connection with Flossenburg:

a. Period: 1 September 1939—April 1945

b. Status: Waffen SS (September 1939) Hauptscharführer (1st Sgt)

c. Position: Guard, trainer of recruits and work detail leader at Flossenburg; Commander and work detail leader at out-camps Johannegeorgenstadt and Obertraubling.

*Evidence:* A witness testified that, as commander, he accused actively participated in the hanging of a recaptured Russian prisoner at out-camp Johanngeorgenstadt in September 1944. During the first attempt to hang this inmate, the rope broke and the victim fell to the ground. He then began to address his comrades and the accused drew his pistol and said "Shot your trap, you dog." The Russian was then hanged (R 1314, 1315). Another witness testified that in March 1945 at out-camp Obertraubling the accused killed a Polish prisoner, who was too weak to stand at attention during the evening formation, by beating him with his pistol and kicking him in the stomach (R 2087—2089, 2096, 2097, 2100). There was no hospital at Obertraubling and the one prisoner doctor had no medicine (R 2091, 2092). III prisoners were beaten with rifle butts and those without strength to work were beaten to death (R 2093).

The accused said in his Statement that from November 1943 until February 1945 he had charge of 450 to 1,000 prisoners in out-camp Johanngeorgenstadt. After being temporarily transferred to Flossen-burg in February 1944, he was present at two executions. He supervised 600 men at out-camp Obertraubling from the latter part of February 1945 until the evacuation. Two hundred fifty of these 600 prisoners died during an epidemic that started on the fourth day after he arrived (P-Ex 62a, R 2234).

The accused testified that he had nothing to do with the execution of the recaptured Russian in September 1944. This execution was carried out under the supervision of accused No. 4 who arrived in camp with proper execution orders (R 7051—7054, 7121, 7122, 7155). The accused denied that he either beat with a pistol or kicked a prisoner at Obertraubling (R 7060). He testified that beatings were forbidden in out-camp Obertraubling; that he personally made a check to insure compliance with the order (R 7083—7085, 7114); and that so one was mistreated there (R 7129). He did everything in his power to curb epidemics, even to the extent of purchasing medicine with his own funds (R 7070, 7072, 7076, 7081, 7085, 7111—7113).

Two defense witnesses testified that accused did not wear a pistol at roll call and never beat a man to death at roll call (R 6992, 6993, 7022, 7024). These two witnesses and a third witness testified that he made every effort to curb the epidemic at Obertraubling (R 6934, 6990, 6991, 6994, 7026) and one of them testified that beatings were forbidden at Obertraubling (R 7025, 7036).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, especially with respect to his position as commander of the out-camps, in its findings of guilty. The jurisdiction of the Court is not subject to challenge because of the nationality of the accused Austria was a co-belligerent of Germany. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* A Petition for Clemency was filed by the accused's wife, Anna Schwamer, 20 February 1947.

*Recommendation:* Approval of findings and sentence.

#### 43. LUDWIG SCHWARZ

Nationality: German

Age: 47

Connection with Flossenburg:

a. Period: 12 December 1944 — April 1945.

b. Status: Wehrmacht Captain

c. Position: Commandant of out-camp Fersbruck and a prisoner evacuation march commander.

*Evidence:* The accused was Commandant of out-camp Hersbruck (D-Ex 70a, R 8221, 8223, 1700, 1806, 1951, 6273, 6494, 6667). A witness testified that he heard that the accused sentenced a Russian to death in April 1945 as punishment for eating a human arm that dropped into camp Hersbruck during a bombing raid (R 1383, 1698, 1700—1702). A second witness testified that prisoners at that out-camp were subjected to many forms of brutal and inhuman treatment while the accused was Commandant (R 1957, 1960, 1966, 1967, 1975, 1980—1983, 1988); that one French and six or seven Russian inmates who attempted to escape were publicly executed by hanging (R 1962); and that an Italian prisoner was beaten so severely that he died (R 1974, 1975). A third witness testified that it was common knowledge that Hersbruck was an extermination camp (R 1812).

Two witnesses testified that the accused ordered SS men to shoot all prisoners who became too weak to continue on the evacuation march in April 1945 and that the order was carried out. One of these witnesses testified that more than one-half of the 600 prisoners who left on the march were shot (R 1805—1807, 1814, 8347, 8349, 8356—8367, 8369 to 8371, 8379, 8383).

The accused testified that out-camp Hersbruck was in a pitiful condition when he assumed command in December 1944, that he took all possible steps to improve living conditions and prevent illness (R 6786, 6790—6792, 6800—6809, 6814, 6846, 6847, 6855); that he issued unconditional orders prohibiting beatings and made checks to assure compliance (R 6792—6794, 6796, 6821, 6837, 6839); that he had nothing to do with ordering executions (R 6815, 6816); that when the camp was evacuated, sick prisoners were sent by rail to Dachau and those who became ill enroute were transported by vehicle (R 6819, 6820, 6845); and that he was not aware that any prisoners were shot on the march (R 6880).

Eight defense witnesses corroborated the accused's testimony concerning his improvements of living conditions at Hersbruck (R 6391—6401, 6406, 6410—6412, 6447, 6463, 6512, 6523, 6526, 6527, 6528, 6530, 6561, 6569, 6624, 6631, 6658, 6667, 6472, D-Ex 70a, R 8221, 8222).

Six of these and one additional witness corroborated the accused's testimony that he prohibited beatings (R 6407, 6421, 6422, 6443, 6447, 6448, 6468—6470, 6471, 6481, 6512—6516, 6540, 6632, 6777, 6804, 6935). Eight of the preceding and twelve additional witnesses corroborated his testimony concerning conditions prevailing on the evacuation march and added that accused did not give orders to shoot prisoners who were too weak to continue marching, that no prisoners were beaten or shot, and further that food was provided throughout the march (R 6285, 6336, 6337, 6339, 6341, 6342, 6348, 6347, 6359, 6365—6367, 6378, 6384, 6385, 6387, 6388, 6390, 6418, 6416, 6442, 6452—6455, 6470, 6471, 6494, 6495, 6536—6538, 6606, 6626—6628, 6667—6669, 6684, 6686, 6688, 6691, 6696—6698, 9069—9074, 9078—9080, 9084, 9089, 9090, 9093, 9094, 9097, 9101 9103—9105, D-Ex 70a, R 8221, 8222). Some of the preceding witnesses testified that the accused never beat a prisoner (R 6477, 6447); that prisoners who attempted to escape were sent to Flossenburg when recaptured (R 6427); that a Russian prisoner who ate a human hand left Hersbruck on the evacuation march (R 6450); and that the accused never participated in executions (R 6440, 6534). However, according to two of these witnesses, some executions did take place while the accused was Commandant (R 6410, 6531).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, *e. g.*, that relative to executions and killings at his out-camp and during the evacuation while he was Commandant, in its findings of guilty. The Court was justified in giving little value to the cumulative testimony of the numerous witnesses on behalf of the accused, virtually all of whom participated to some extent in the operation of out-camp Hersbruck. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* Two Petitions for Review were filed by German defense counsel, Dr. Richard Wacker, 25 January 1947 and 12 April 1947. Petitions for Clemency were filed by Father Karl M. Stumpf, 14 May 1947, and A. Albert, 15 April 1947.

*Recommendation:* Approval of findings and sentence.

#### 44. ALOIS SCHUBERT

Nationality: German

Age: 34

Connection with Flossenburg:

a. Period: January 1942—1945

b. Status: SS Obersturmfuehrer (1st Lt)

c. Position: Work director of quarry and Messerschmitt factory.

*Evidence:* The accused was administrator of the stone quarry where many French, Polish, Russian, Austrian and Czech inmates were forced

to do hard labor while being beaten very frequently with rubber hoses. An average of 20 to 30 exhausted inmates, some of whom later died, were dragged into camp each night. The accused was the superior of the quarry deal leader. Many were shot after running into the wire fence out of desperation (R 1043—1045). A second witness testified that in the spring of 1944 near the quarry warehouse, the accused beat a Russian prisoner to the ground and kicked him (R 1260). Or cross-examination, the date was given as March or April 1945 (R 1285). A third witness testified that near the end of 1944, the accused transmitted a report to a superior concerning a young Russian inmate who was making cigarette holders out of scrap metal. The prisoner was hanged 10 to 12 days later (R 1573). A fourth witness testified that the accused was the work manager of the armament works (Messerschmitt factory) (R 3273, 3275, 3276), and four additional witnesses that he was manager of the Flossenburg quarry (R 2822, 2800, 2945, 3161).

Four witnesses and accused No. 20 testified that this accused never mistreated prisoners (R 2822, 2870, 3287, 4549, 6923) and one of them and two additional witnesses testified that he had no disciplinary power over prisoners (R 3162, 3164, 3176, 3178, 3275, 3288, 4786, 4788). One of these witnesses testified that he was a civilian work director for the German Earth and Stone Works in the quarry prior to induction into the SS (R 316), 3161, 3163). One of them testified that once he caused a capo to be relieved from his duties because he mistreated prisoners (R 6958). A witness and accused No. 20 testified that this accused had a good reputation among the inmates and was liked by them (R 4549, 4786). One of the witnesses asserted that the accused had no supervision over guards or capo who chased prisoners into the wire (R 6952, 6959).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, particularly that pertaining to his being manager of a large operation and the tortures and cruelties committed in his quarry, in its findings of guilty. However, it is not believed that the nature and extent of his participation in the common design warrant the death penalty.

*Sentence:* Death by hanging.

*Petitions:* Petitions for Clemency were filed by defense counsel, Mr. Charles E. O'Connor, 27 January 1947, a Lutheran parson from Flossenburg, 5 February 1947, and by Herbert Schubert and Rudi Grimme, 13 May 1947.

*Recommendation:* Approval of findings and sentence, but that the sentence be commuted to life imprisonment.

#### 45. STEPAN SCZETYNSKYI

The charges against this accused were withdrawn (R 50)

46. BRUNO SKIERKA

Nationality: German  
Age: 49

Connection: with Flossenbürg:

- a. Period: September 1944 — April 1945
- b. Status: Waffen SS Untersturmfuehrer (2nd Lt)
- c. Position: Guard company commander and commander of a prisoner evacuation march.

*Evidence:* One witness testified that the accused was a guard company commander (R 7993) and a second and third that he was commander of the first column of a prisoner evacuation march which left Flossenbürg 20 April 1945 (R 8035, 8036, 8049, 8025, 8941). Accused No. 35 testified that this accused was present on 20 April 1945 when the Camp Commandant announced that prisoners escaping during the march were to be shot immediately without warning and that none should fall into enemy hands alive (R 8227, 8228, 8245). Two additional witnesses testified that, on 20 April 1945 when Flossenbürg was evacuated, the accused gave an order to shoot any prisoners who could not keep pace with the march or who fell out of the column (R 1626, 1629, 1630, 2105). One of these and a sixth witness testified that the accused carried a machine pistol in addition to his regular pistol (R 2105, 8048). Two of the witnesses testified that, in conformity with the above mentioned order, many prisoners of all nationalities were shot. One of them saw 350 prisoners who had been shot in one day (R 1631, 2106, 2124).

In his statement, the accused admitted that he was one of the leaders of the first column during the prisoner evacuation march and supervised four section leaders, about 200 guards, and 2,800 to 3,000 prisoners. He forbade unnecessary shooting, but transmitted an order to his section leaders to shoot fleeing prisoners in the heart instead of the head. He saw many dead bodies alongside the road and doubted the justification of the shootings. He denied receiving or issuing an order to shoot prisoners who could no longer walk (P-Ex 6(a), R 2234).

The accused testified that his duty on the evacuation march was to indicate the route to his column and to designate places of rest in the absence of the Camp Commandant (R 8131, 8156, 8202); that his column contained about 2,400 prisoners and 160 to 200 guards (R 8132); that the Camp Commandant was with the column every day and gave orders; and that he, the accused, had no power of command over prisoners or guards and issued no orders (R 8133, 8139, 8156, 8193, 8215). He usually lead the way on his bicycle (R 8132, 8133, 8136, 8137, 8142, 8195). He further testified that he noticed 20 to 30 corpses lying along the road (R 8137, 8179); that weak prisoners were marched slowly at the rear by SS men (R 8138); that he didn't issue an order to shoot prisoners who fell out (R 8153, 8155); and that he never saw anyone shot to death on the march (R 8203).

A defense witness testified that on the march guards were to shoot only when an inmate attempted to escape (R 8036, 8042) and that 40 to 50 dead prisoners were seen along the road (R 8042, 8043). This witness and a second one testified that the accused did not issue orders to shoot prisoners who could not march any farther (R 7630, 8041, 8043). However, one testified that a guard did shoot a weak prisoner (R 8043). Both testified that a detail at the rear of the column marched at a slower pace with the sick and weak (R 8051, 8042, 7831) and one that an order was issued that prisoners who could no longer walk were to be carried out of sight into the forest (R 8052).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, particularly that relative to the killing of prisoners in his evacuation march column, in its findings of guilty. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* Petitions for Clemency were filed by the accused's mother, Franciska Skierka, 6 May 1947, his wife, Else Skierka, 28 February 1947, his sisters, Sophie Striég, 6 March 1947, Elfriede Striég, 5 March 1947, and Hedwig Teske, 10 February 1947, and by his nephew, Siegfried Teske, 6 March 1947.

*Recommendation:* Approval of findings and sentence.

47. HERMANN SOMMERFELD

Nationality: German  
Age: 54

Connection with Flossenbürg:

- a. Period: April 1945
- b. Status: SS (January 1945) Obersturmfuehrer (1st Lt)
- c. Position: Prisoner evacuation march commander.

*Evidence:* This accused, three witnesses, and accused No. 3 and No. 16 testified to the effect that this accused was a principal leader of a Flossenbürg prisoner evacuation in April 1945 which consisted of about 1,100 inmates and 400 to 250 guards (R 7739, 1550, 1892, 5500, 5501, 5542, 7630, 7694, 7962, 7963). A seventh witness testified that the accused shot two Polish Jewish prisoners at Floss while they were attempting to secure some potatoes at the outset of the evacuation (R 1887, 1888, 1902, 1903). According to one of the preceding witnesses, the accused was placed in charge of the column at Schwarzenfeld, a town en route where the evacuation movement was changed from rail to foot (R 7962, 7963), and, according to another, he issued orders to SS personnel directing the shooting of all prisoners unable to march (R 1550). Another one of the witnesses asserted that while the prisoners were waiting in the cars at Schwarzenfeld, the accused issued an order directing the shooting

of all prisoners who left the rail road cars. About 50 Polish Jewish prisoners were shot and killed shortly thereafter by SS men when the prisoners left their cars to seek shelter during an air attack (R 1889—1892).

Several of the preceding and an eighth witness testified that many prisoners were shot during the march in conformity with orders issued by the accused (R 1550, 1551, 1562, 1892, 1893, 1894, 1895, 1901, 8504—8506, 8512, 8527—8529, 8531). According to one of the witnesses, only 95 out of a group of 200 prisoners arrived at Starnieel, many being shot along the road (R 1550, 1551). The victims of this march were prisoners of various nationalities, including Poles (R 1894, 8505, 8599), Hungarians, Greeks (R 1551), and Jews (R 8528, 8529). One of the witnesses testified that near Nurnberg on 22 April 1945 the accused ordered 10 sick Polish Jews separated from the other prisoners; that guards took them into the forest; that shots were heard a few minutes later; and that these prisoners were not seen again (R 1892, 1893, 1899—1901).

The accused testified that he was drafted into the SS January 1945 and reported at Flossenbug on 15 April 1945 to take part in a prisoner transport to Dachau (R 7679). He denied shooting two prisoners at Floss (R 7683, 7685). He was put in charge of the prisoner march at Schwarzenfeld (R 7687, 7690). He ordered that no prisoners were to be shot, that mistreatment would be avoided, and that those who could not continue to march would be turned over to burgermeisters (R 7692, 7744). He issued this order in writing and read it to his guards (R 7693). He denied that 50 prisoners were shot by the SS during an air raid (R 7765); that he gave orders to shoot those unable to continue marching; and also denied that 10 prisoners were shot in the forest on 22 April 1945 (R 7768, 7769).

Accused No. 3 testified that he placed the accused in charge of the prisoner evacuation march at Schwarzenfeld; that he issued orders to him not to mistreat inmates; and that he forbade the shooting of escapees (R 7962, 7963). A defense witness testified that he did not hear this accused issue orders to shoot prisoners (R 5761). Another witness testified that the accused gave an order in Schwarzenfeld that prisoners were to be taken to Dachau unarmed and that anyone who became ill was to be taken to the next village by car (R 7624).

*Sufficiency of Evidence.* It is clear that the extent and nature of his participation were such that the Court was warranted in its findings of guilt. The sentence is not excessive.

*Sentence.* Fifteen (15) years imprisonment, commencing 18 April 1945.

*Petitions.* Petitions for Review were filed by German defense counsel, Dr. Richard Wacker, 25 January 1947 and 12 April 1947. Petitions for Clemency were filed by the accused's sister, Frida Matz, 8 May 1947 and his wife, Ida Sammerfeld, 4 May 1947.

*Recommendation.* Approval of findings and sentence.

#### 48. GEORG WEILBACH

Nationality: German

Age: 47

Connection: with Flossenbug:

a. Period: 15 May 1938 — April 1945

b. Status: Inmate (criminal)

c. Position: Quarry capo, second camp eldest, chief camp capo, capo at out-camp Muelsee and capo at out-camp Holleischen.

*Evidence:* According to the testimony of three witnesses, the accused was unmercifully brutal in his treatment of prisoners (R 130, 1038—1040, 1574, 1575). A fourth witness testified that the accused boasted about shooting prisoners at out-camp Muelsee (R 136). One of the preceding witnesses testified that in the summer of 1942 the accused was seen standing beside a pile of bodies. When one of the men in the pile moved slightly, the accused beat him to death (R 1575). Another witness testified that, upon orders from the Camp Commandant in the summer of 1944, the accused helped select about 75 Russian inmates who were later executed without trial (R 133, 134).

A fifth witness testified that in the spring of 1942 the accused kicked a sick Polish prisoner in the stomach, causing his death (R 134, 1375). A sixth witness testified that, in late 1942 or early 1943, the accused participated in the execution of a Polish and a Russian inmate (R 1073, 1074). Two additional witnesses testified that some Russian inmates revolted in out-camp Muelsee because of treatment by the accused (R 590, 596, 600, 3714B, 3714G). One of these witnesses testified that the accused was present at the execution of 53 Russians (R 3714, 3714G, 3714I, 3714M, 6909). A ninth witness testified that on 24 December 1944 the accused suspended a Russian inmate by the head for 30 minutes on a Christmas tree, the rope being so knotted that the victim was not choked. The accused beat him while a Czech orchestra played nearby. It was rumored that the victim died (R 652, 653). The accused ordered the hanging of another Russian at out-camp Holleischen (R 653, 654, 662).

The accused denied in his testimony that he was responsible for the mutiny at Muelsee (R 4742—4746) and that he assisted in the selection of the Russians for execution. He declared that he was in out-camp Holleischen when the Russians were executed (R 4768, 4769). He denied the hanging of a Russian at Holleischen, but stated that the Russian hanged himself (R 4757). He also denied the Christmas tree episode (R 4756). He was relieved from duty in the stone quarry and as second camp eldest because of his kindness toward prisoners (R 4730—4734). Accused No. 1 testified that the mutiny at Muelsee in May 1944 was brought about by Russian prisoners who wanted to sabotage the armament works (R 8263—8268). A defense witness testified that in January 1943 the accused was present but did not participate in the execution of a Pole and a Russian (R 7346). Four additional witnesses testified

that he treated the prisoners well and decently (R 3633, 3084, 3085, 3775, 3860, 3861, 3865, 3867) and a sixth, that he was not present during the executions of the 33 Russians who participated in the Mauthausen mutiny (R 6909).

*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:* Life imprisonment.

*Petitions:* None.

*Recommendation:* Approval of findings and sentence.

#### 49. LUDWIG WINKLER

A noble prosequi was entered in favor of this accused on 17 December 1946 (R 8258, 8259, P-Ex 93, R 8357).

#### 50. WENZEL WODAY

A noble prosequi was entered in favor of this accused on 17 December 1946 (R 8258, 8259, P-Ex 93, R 8357).

#### 51. ERHARD WOLF

Nationality: German

Age: 47

Connection with Flossenburg:

a. Period: 7 October 1943 — April 1945

b. Status: Waffen SS (4 October 1943) (Pvt)

c. Position: Guard, block leader, work detail leader, chief of camp prison, and an execution detail leader.

*Evidence:* One witness testified that on many occasions the accused participated in shooting executions of Czech, Russian and Polish inmates in the camp prison courtyard (R 1653—1646, P-Ex 33, R 1658—1661). Among his victims were men, women, and children (R 1654). In October 1944, three groups of six prisoners each, including Czechs and Russians, were executed by this accused (R 1654). On another occasion, the accused assisted in the hanging execution of a female Polish inmate who was nine months pregnant (R 1655, 1656). The accused participated in the hanging of an American second lieutenant in April 1945 (R 1652, 1663). A second witness testified that 17 Russian prisoners were shot through the neck. The accused shot and killed one of them who was still alive (R 3699, 3714C). This accused received cigarettes and liquor as compensation for carrying out executions (R 3714J, 3714K).

The accused admitted in his Statement that he personally participated in the shooting and hanging executions of approximately 160 to 200 prisoners in the latter half of 1944. He further admitted that he participated by shooting, putting ropes around the necks of victims, and by pulling ladders from beneath the victim. He assisted in bringing approximately 20 prisoners, who were believed to be Russians, to the place of execution

in March 1945. He further stated that he was ordered to take over the general duties in the operation of the camp prison, including functions connected with executions (P-Ex 54a, 57a, R 2934).

The accused testified that he often tried to get released from the duties required of him in operating the camp prison and that he was told by the Camp Commandant that further requests for release would be considered refusal to obey orders (R 6893 6915, 6920). He testified that he acted under orders in effecting a mercy killing of an execution victim who had not died immediately (R 6899). He further testified that he received five cigarettes for every execution and was sometimes given rum (3 6919). The accused admitted that he performed 80 executions by machine and 10 or 15 by hangings (R 6912, 6913). He insisted that his refusal to participate in these executions would have resulted in his own death and would not have prevented the executions (R 6920). Two defense witnesses testified that the accused was a decent man who was well liked by the prisoners because he was good to them (R 3600, 3302).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, especially that involving him in many executions, in its findings of guilty. It appears that the only orders received by the accused relative to executions were general in nature and that the evidence offered on his behalf to establish that he participated in the executions pursuant to superior orders fails to prove that he acted under immediate compulsion to any material degree as required by the authorities discussed in Section VI, E, supra. The Court was warranted in disregarding the alleged element of superior orders as a mitigating circumstance. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* Two Petitions for Review were filed by German defense counsel, Dr Richard Wacker, 25 January 1947 and 12 April 1947.

*Recommendation:* Approval of findings and sentence.

#### 52. JOSEPH WURST

Nationality: German

Age: 26

Connection with Flossenburg:

a. Period: May 1944 — April 1945

b. Status: Waffen SS (1 September 1944) Rottenfuehrer (Cpl)

c. Position: Guard at out-camp Leitmeritz and guard on prisoner evacuation march.

*Evidence:* One witness testified that, during the evacuation march from Flossenburg in the afternoon of 23 April 1945, 60 to 65 Polish prisoners were ordered to sit down in a forest near Stamroid. The accused and another person shot into the group from close range, killing all but seven (R 1793, 1794, 1801).

A second witness testified that the accused and two other SS soldiers ordered him and 50 Polish Jewish evacuees on the march to lie down

in a "pile" in the woods between Stainreid and Cham. The accused said that they were to be shot because they were Jews (R 8418, 8420, 8425). Then the accused and another SS soldier shot into the "pile" of prisoners with machine guns from a distance of five to six meters (R 8417-8420, 8423-8426, 8431, 8435-8438, 8441, 1797). The witness feigned death. He later managed to get to a farmhouse and the following day was taken to a hospital for treatment of his wounds. He heard that only three of the groups survived (R 8423, 8428). After the accused was apprehended by the Americans, he "admitted everything" to a CIC officer and pointed out to him, in the presence of this witness, where this shooting occurred (R 1800, 1801).

The accused admitted in his Statement that, on or about 22 April 1945 during the prisoner evacuation march, he and others searched the woods for escaped prisoners "in order to shoot them" and that he shot and killed four of a group of about 18. During the shooting he was threatened with a pistol by an unknown Unterscharfuhrer (Sgt) (P-E: 55a, R 2234).

The accused testified that an unknown Unterscharfuhrer (Sgt) threatened him with a pistol on about 24 April 1945 and thus forced him to fire four shots at 16 to 18 prisoners who had looted civilian homes during the prisoner evacuation march (R 6873-6875). He denied that he revivited the scene of a crime as testified by a witness (R 6877).

*Sufficiency of Evidence:* The Court was warranted from the evidence concerning the extent and nature of his participation, particularly that involving him in killings of prisoners, in its findings of guilty. Except as to one of the shooting incidents, the accused did not contend that he acted pursuant to superior orders. As to the single incident the Court might well have concluded that his uncorroborated testimony was not persuasive and that he did not meet the burden of proof imposed upon him by the authorities discussed in Section VI, E, supra. The sentence is not excessive.

*Sentence:* Death by hanging.

*Petitions:* Two Petitions for Review were filed by German defense counsel, Dr. Richard Wicker, 25 January 1947 and 12 April 1947.

*Recommendation:* Approval of findings and sentence.

#### VIII. CONCLUSIONS:

An examination of the entire record of trial fails to disclose any error or omission 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 be approved as to all the accused and that the sentences to death by hanging as to accused BLOMBERG, BRUSCH, EISBUSCH, GINSCHEL, HAUSER, MOHR, OLSCHESKI, ROLLER, SCHWANNER, SCHWARZ, SKIERKA, WOLF and WURST be approved and ordered executed; that the sentences to death by hanging as to accused KELLING and SCHUBERT be approved, but commuted to imprisonment for life and as commuted ordered executed; that the sentences to life imprison-

ment as to the accused BUDENSIEG, GEISBERGER, GELHARDT, JAKUBITH, MATHOI, MUSSFELDT, FACHEN, PAWLICZEK, PENZ, PINTER and WEILBACH be approved and ordered executed; that the sentence to imprisonment for thirty (30) years as to accused MAURER be approved and ordered executed; that the sentences to imprisonment for twenty (20) years as to accused HAUBOLD, LOSCH, REUPSCH and SCHREIBER be approved and ordered executed; that the sentences to imprisonment for fifteen (15) years as to accused BONGARZ, FAHRNBAUER, NEYE and SOMMERFELD be approved and ordered executed; that the sentence to imprisonment for ten (10) years as to accused GRAEBER, IPINSKI and MATZKE be approved and ordered executed; that the sentence to imprisonment for three and one-half (3½) years as to accused BERGER be approved and ordered executed; and that the sentence to imprisonment for one (1) years as to accused Joseph BECKER be approved and ordered executed.


Legal Forms Nos. 13 and 16 to accomplish these results are attached hereto should it meet with approval.

  
HERBERT E. MUELLER,  
Captain, AC

  
PAUL J. COODE

Attorneys  
Post Trial Branch

Having examined the record of trial, I concur.

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

#### ACTION BY APPROVING AUTHORITY

All sentences were approved by the approving authority, except that the death sentences of Wilhelm BRUSCH, Karl KELLING and Alois SCHUBERT were commuted to imprisonment for life.