

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

5 March 1946

UNITED STATES)
 v.) Case No. 000-50-46-5
Karl MAYER, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period, 10-28 November 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

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

Particulars: In that Karl MAYER, Kurt STELNER, Fritz SCHLUNDERMANN, Josef BERGMUELLER, Ferdinand JESS, Hermann KIRSAMMER and Karl HAENSEL 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, Wolkenburg, Ganacker and Leitmeritz, and with transports of prisoners evacuating said camps, all in German or German-controlled territory at various and sundry times, between the 1st of January 1942 and the 8th of May 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of Poles, Frenchmen, Yugoslavs, 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.

III. SUMMARY OF EVIDENCE: All of the convicted accused were either members of the SS at the Flossenburg Concentration Camp or were inmates holding official positions there for considerable periods of time between the dates alleged, and were shown to have participated in various capacities in the mass atrocity. Accused MAYER, an inmate, was camp eldest for approximately six months in 1943. Accused STELNER, an inmate, was a block eldest from the beginning of 1942 until May 1943.

Accused SCHLUNDERMANN, an SS private, was a clerk in the political department. Accused BERGMUELLER was an SS sergeant who served as a cook in the SS and the inmates' kitchen. Accused KIRSAMMER was an SS captain and administrative officer for the camp. Accused HAENSEL, an SS master sergeant, was mess sergeant of the SS kitchen.

Prosecution's P-Ex 6 is a certified copy of the charge, particulars, findings and sentences in the parent Flossenburg Concentration Camp case (United States v. BECKER, et al., 000-50-46, opinion DJAWC, May 1947, hereinafter referred to as the "Parent Case", see Section V, post; R 18).

Unless otherwise indicated, evidence in the form of extrajudicial sworn testimony will hereinafter be referred to as a Statement.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Karl MAYER

Nationality:	German
Age:	56
Civilian Status:	Engineer
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was transferred to the Flossenburg Concentration Camp as an inmate towards the end of 1942 or the beginning of 1943 (R 30, 93, 364, 446, 452, 465, 524, 601, 625, 683). He had been requested from Camp Dachau to be camp eldest of Camp Flossenburg, but was first detailed as a block eldest (R 31, 452, 633, 684). He was appointed camp eldest in the spring of 1943 (R 452, 465, 499, 525, 539, 601, 602, 625, 626, 684), and retained that position for approximately six months (R 499, 525, 539, 602, 625, 626, 633, 684). However, one witness testified that the accused became camp eldest in the middle of January 1943 (R 364).

One witness testified and a second witness stated in his Statement

that during the spring and summer of 1943, the accused, as camp eldest, mistreated inmates by beating them with a rubber truncheon, whip, or stick in order to hurry them to the roll call square (R 31, 396; P-Ex 21). A third witness testified that in 1943 those inmates who could barely walk were assembled after the morning roll call, taken to the orderly room and punished (R 297). The inmates, of whom there were between seven and nine of mixed nationalities including non-German, were laid across a table and were beaten by the accused with a stick or a whip (R 297-300).

A fourth witness, a former French inmate (R 303), testified that he was beaten and strangled by the accused the morning of 29 June 1943, receiving injuries that lasted for several days; and that the accused frequently beat inmates, ordinarily using a whip for the purpose (R 311).

A fifth witness testified and a six and seventh stated in their Statements that the accused beat inmates (R 328, 398, 399; P-Exs 22, 23). One defense witness testified that he had seen the accused beat inmates on several occasions (R 474), while another testified that the accused slapped inmates (R 501).

In May 1943 when a group of 20 inmates of various nationalities arrived at Flossenburg, the accused beat them with a wooden club to hurry them while they were bathing. He also appropriated articles from their luggage such as cigarette cases, soap and socks, putting them into his pockets (R 93-104).

The accused stole articles from food packages sent to inmates (R 32, 364, 365, 396, 398, 399; P-Exs 21, 22, 23). Some of these things, which consisted of food as well as other items, he converted to his own use (R 43, 398; P-Ex 22), while others he gave to a few young favored inmates (R 47, 396; P-Ex 21). He was seen to have in his possession delicacies such as anchovies, cheese, chocolate, and white bread which were never available as part of the regular rations (R 51).

As camp eldest, the accused participated in the public hanging of inmates at the roll call square (R 305, 324, 350, 351, 399; P-Ex 23). One witness testified that the accused participated in two hangings

(R 305-311). Two other witnesses testified that he participated in two or three hangings (R 327, 328, 399; P-Ex 23), and another that the accused participated in a "few" such hangings (R 350-354). At least two of the hangings were performed on a gallows (R 306, 307, 351), while others were performed on a pole at the roll call square (R 309, 310, 324, 325, 354). In two of the hangings the victims were known to be Russians (R 305, 306, 310), and in two others they were assumed to be Polish because they spoke that language (R 356-358). One witness testified that, as camp eldest, it was the accused's duty to arrange for the executions (R 351).

One of these witnesses, a French army reserve officer and former inmate, testified that in July 1943 he saw the accused, from a distance of 15 to 20 meters, hang a 17 year old Russian inmate. An SS man read the sentence which stated that the inmate was to die for attempting to escape (R 305, 306, 313). The accused first struck the victim on the buttocks 25 times. The victim was then led to the gallows on the roll call square where the accused put a noose around the Russian's neck and released the trap door. The victim was left hanging for 30 to 45 minutes and the witness saw members of the crematory work detail take away the corpse (R 306-308). This witness saw the accused hang another Russian inmate under similar circumstances approximately three weeks after the first hanging (R 309-311).

Evidence for Defense: The accused did not take the stand in his own defense (R 806), but relied on the testimony of witnesses who appeared for him. Defense witnesses testified that the accused was the best camp eldest they ever had in Flossenburg (R 526, 540); that he was pleasant and congenial (R 454); that he was not respected but not brutal (R 466); that he was harmless and weak (R 500); that inmates were satisfied with him (R 588); that he was decent (R 626); and that he had a very good reputation (R 686). Some witnesses testified that they had never seen or heard that the accused beat inmates (R 526, 540, 630, 634, 686).

When the accused became camp eldest he instituted a system of opening

to stop members of the SS from stealing part of the contents (R 453, 631). The accused never took any articles for himself (R 447), but did remove items when the packages were larger than regulations permitted (R 447). These items were put into a box and taken to the camp dispensary for use there (R 448). At times some inmates voluntarily gave the accused items from the packages they received (R 453, 526). These items he distributed to friends (R 453), or gave to the dispensary patients (R 526).

Defense witnesses also testified that no public hangings took place during the period the accused was camp eldest (R 525, 539, 590, 602, 626, 634, 660, 684), but they had taken place both before and afterwards (R 500, 525, 539, 634). The accused was never seen to participate in a public hanging (R 629), although the acting camp eldest who was appointed immediately after the accused left, did participate (R 525, 539, 540) as well as a special inmate hangman (R 684, 685). One witness testified that it was customary for the camp eldest to participate in hangings (R 469).

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

Petitions: A Petition for Review was filed by Major L. F. Benson, defense counsel, 3 December 1947. A Petition for Clemency was filed by Joseph Meyer, 17 February 1948.

Recommendation: That the findings and sentence be approved.

2. Karl STELZNER

Nationality:	German
Age:	50
Civilian Status:	Tavern Employee
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	20 years, commencing 19 November 1945.

Evidence for Prosecution: The accused, an inmate of the Flossenburg Concentration Camp, was used as an interpreter in the political department and was block eldest of the blocks housing Russian prisoners of war (R 33, 78, 108, 165, 201, 403; P-Ex 32) from 1 January 1942 until the time of his release to the Gestapo on 27 May 1943 (R 165, 403; P-Ex 32).

The accused was known as "Ivan" or "Ivan the Terrible" at Camp Flossenburg (R 33, 77, 108, 400; P-Ex 25). The accused constantly gave food due the inmates of his block to German friends who gathered in the evening (R 78, 79, 87).

One witness stated in his Statement that one night during January 1942 he heard screams, and realized that a body was dragged through the sleeping quarters. The next morning he saw a dead body in the washroom and was told by an inmate, whose bed was next to the victim's, that the accused who was then a room orderly, had beaten the victim to death with a bed board. The nationality of the victim was not specifically mentioned. He also stated that the accused frequently beat inmates of various nationalities with a club or a whip, often resulting in their bleeding (R 400; P-Ex 26). A second witness stated in his Statement that the accused frequently beat Russian, Polish and Czech inmates during interrogations (R 400; P-Ex 25). The accused, in his Statement, admitted beating inmates with sticks on two occasions, once on order of the Camp Commander, SS Captain Fritzsche, and again during an interrogation when he was forced to do the beating by SS Second Lieutenant Fassbender. He also admitted that frequently he slapped inmates, but stated he did this only when an inmate violated a camp rule (R 403; P-Ex 32).

Hearsay testimony was admitted relating to executions allegedly performed outside the camp during 1942. However, this testimony failed to establish the fact that any of the victims had been inmates of the camp (R 108, 109, 112, 114, 118, 166, 175, 201, 202, 204, 210, 211, 403; P-Ex 32).

Evidence for Defense: The accused testified that during his time as block eldest for the Russian inmates, their condition improved greatly

(R 644-646); that he beat a German inmate in 1943 on orders of SS Second Lieutenant Fassbender (R 659); and that with regard to the executions outside of camp referred to by prosecution witnesses, and which had not involved camp inmates, he had participated in them to the extent of erecting and dismantling the gallows used, but that he had tried unsuccessfully to avoid this duty for which he received no additional pay or gifts (R 652-655).

Defense witnesses testified and stated in their Statements that the accused was ordered to become a block eldest against his will because he spoke Russian (R 804), that he was popular with the inmates (R 542, 636; D-Ex 2), and that he looked after the Russians in his charge (R 587). The accused was placed in a punishment detail because he had given bread to an inmate (R 541). Some defense witnesses had never heard of the accused having beaten an inmate to death (R 530, 567, 587, 604). He was not known as a beater (R 542, 628, 636; D-Ex 2) and he had a good reputation (R 628).

The hangings that the accused participated in were those of foreign workers (R 505, 530, 578) who had committed crimes (R 505, 530, 541, 578) and had been sentenced to death by German courts or courts-martial (R 530, 541, 628). The persons hanged were not connected with the Flossenburg Concentration Camp (R 505, 542, 628).

Sufficiency of Evidence: The hangings in which the accused participated occurred outside the Flossenburg Concentration Camp. The prosecution did not establish that the victims were Camp Flossenburg inmates. The Statement which the prosecution introduced to show the killing of an inmate by the accused was based upon hearsay and failed to establish satisfactorily the nationality of the victim. Regarding the accused's defense of superior orders in connection with the beating of an inmate on orders of SS Captain Fritzh, the accused failed to prove the necessary elements required by pertinent authorities discussed in Section V, post. There is sufficient evidence of the accused's participation in the mass atrocity by beating and mistreating inmates to warrant the findings of guilty. The sentence

is excessive.

Petitions: A Petition for Review was filed by Major L. F. Benson, defense counsel, 3 December 1947. Petitions for Clemency were filed by the accused, 13 December 1947; and Ernst Baye and Fritz Becker, 22 December 1947.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for 10 years.

3. Fritz SCHLUNDERMANN

Nationality:	German
Age:	38
Civilian Status:	Office Manager
Party Status:	Member of Nazi Party from 1 May 1933
Military Status:	SS Private
Plea:	NG
Findings:	G
Sentence:	5 years, commencing 6 May 1945

Evidence for Prosecution: One witness stated in his Statement that, as an inmate, he worked as a clerk in the Political Department of Camp Flossenburg between the middle of 1942 and March 1943. The accused, an SS private, was an office clerk in the Political Department who processed newly arrived inmates. During interrogations, the accused beat inmates of all nationalities, mostly Russians and Poles, with a cowhide horsewhip and a ruler as well as with his hand. These beatings occurred from the middle of 1942 to March 1943 (R 401; F-Ex 27).

A second witness stated in his Statement that he worked as a gardener on the grounds outside the Political Department building; that from 1942 to 1944 he often heard the accused shout at inmates; that from 1942 to 1944 he often heard the accused beat inmates during interrogations; that he sometimes saw the accused beat many German and foreign inmates by looking through the window of the interrogation room; and that he saw bleeding inmates thrown out of the room (R 401; F-Ex 28).

Evidence for Defense: The accused did not take the stand in his

own behalf (R 806). Two defense witnesses, including accused STELZNER, testified that they did not see or hear of inmates having been beaten by the accused (R 412, 413, 661), while one testified that he did not see the accused beat inmates, but he had heard of such beatings (R 615).

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

Petitions: A Petition for Review was filed by Major L. F. Benson, defense counsel, 3 December 1947. A Petition for Clemency was filed by the accused, 20 January 1948.

Recommendation: That the findings and sentence be approved.

4. Josef BERGMUELLER

Nationality:	German
Age:	35
Civilian Status:	Farmer and Butcher
Party Status:	Member of Nazi Party from January 1938
Military Status:	SS Sergeant
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused, an SS Sergeant, was a cook in the SS kitchen of the Flossenburg Concentration Camp from September 1940 until December 1943. In January 1944 he was transferred to the inmates' kitchen and was in charge there until April 1945 (R 713-714, 744; P-Ex 34).

While in charge of the inmates kitchen, the accused was a brutal person who constantly beat inmates with weapons or with his fists, regardless of whether or not he had a reason (R 21, 26-28, 30, 164, 262, 319, 321, 392, 396, 402; P-Exs 8, 16, 19, 29). He frequently used a wooden club, broom handle, or rubber truncheon (R 28, 164, 253, 254, 263, 280), beating inmates so severely that it was necessary for them to be taken to the camp dispensary (R 23, 24, 254, 261, 395, 402; P-Exs 9, 10, 18, 29).

One witness testified that in about February 1944 the accused caught

a Russian inmate stealing potatoes and beat him so severely with a club that he fell down bleeding (R 253-254). The inmate was carried to the dispensary and not seen again (R 254). In another instance, which occurred in 1945 (R 273), one Russian inmate was unable to lift his side of a food kettle, causing it to fall over and spill. The accused kicked the Russian inmate and threw the kettle lid at him. The inmate was hit on the back with the lid and was unable to get up. Other inmates carried him to his block and from there he was taken to the dispensary. The victim was eventually placed in a convalescent block where only those unfit to work were kept (R 259-261). The kettle lid, which was iron, weighed approximately 30 pounds (R 271).

A second witness testified that while a work detail, consisting of 46 inmates, was unloading cans of meat the accused found 18 cans missing. Although the members of the detail thought SS men who were hauling the meat had taken the missing cans, all 46 inmates were marched to the orderly room and beaten. The accused stood outside the orderly room door and beat the inmates as they entered, while the roll call leader, an SS man, beat them inside the room. The accused, after finding a can of meat on one Polish inmate, mistreated him so severely that he had to be taken to the dispensary where his injury was diagnosed as a fractured skull. A few days later the witness was told that the Polish inmate had died (R 337-346).

In their Statements, six additional witnesses described numerous brutal beatings and other mistreatment administered to inmates of various non-German nationalities by the accused while he was in charge of the inmates' kitchen (R 21, 23, 24, 392, 395, 402; P-Exs 8, 9, 10, 16, 18, 29).

Evidence for Defense: The accused testified that he was sent to the Flossenburg Concentration Camp in September 1940 and was assigned to the troop kitchen where he remained until December 1943 (R 713-714). He had non-German inmates working for him there and was once reprimanded for treating them too well (R 714). On 1 January 1944 he was sent to the

inmates' kitchen as a specialist. He did not want to go because he did not want to have anything to do with the camp (R 715, 716).

The accused denied mistreating anyone (R 716) and gave various reasons why the stories of the prosecution witnesses were untrue (R 717-727, 734, 747). When a theft occurred, he slapped the face of the inmate concerned and reprimanded him, but he never made reports of these incidents (R 728, 729). In the case of a grave offense, he would request that the inmate be relieved from the kitchen detail (R 728). At one time he received orders to remove all Polish inmates from his kitchen detail because one of them had been caught stealing by an SS block leader. The accused did not do this but reported falsely that the order had been carried out (R 729, 730).

Witnesses for the defense testified either that they had not seen or heard that the accused beat inmates (R 411, 424, 457, 459, 482, 485, 662), or that he merely slapped the faces of inmates when they were caught stealing food (R 429, 449, 554, 618). A number of witnesses testified that the accused did not administer severe beatings (R 430, 517, 518, 582, 588, 686, 687). While the accused was strict in running his kitchen (R 412, 588), he also gave extra food to hungry inmates if asked in a decent manner (R 424, 429, 459, 516, 537, 553, 581, 610, 618) and was known to give them food from his own packages from home (R 430, 431, 556).

One of the above witnesses who was an inmate working in the dispensary testified that there were no patients in the dispensary who had been injured by the accused. The accused frequently visited sick inmates in the dispensary whom he knew (R 610).

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

Petitions: A Petition for Review was filed by Major L. F. Benson, defense counsel, 3 December 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

5. Ferdinand JESS

This accused was acquitted (R 812).

6. Hermann KIRSAMMER

Nationality: German
Age: 34
Civilian Status: Clerk
Party Status: Member of Nazi Party from 1934
Military Status: SS Captain
Plea: NG
Findings: G
Sentence: Life imprisonment

Evidence for Prosecution: The accused testified that he was chief administrative officer of the Flossenburg Concentration Camp from October 1943 until 20 April 1945, except for a period of three months; and that he was in charge of the various administrative departments including the rations, economic and clothing departments (R 753, 764).

Two witnesses testified and a third stated in his Statement that the accused was responsible for the food for the entire camp (R 58, 368, 402; F-Ex 30). The first witness testified that the accused ordered potatoes for the inmates to be cooked along with the peelings. The rotten parts of the potatoes were left in as well as many entirely rotten potatoes (R 59-61, 67). As a result, all of the food had a horrible odor (R 62). A fourth witness stated in his Statement that the odor was so bad that it caused the inmates to vomit when they attempted to eat (R 402; F-Ex 31). The first and second witnesses testified that the food for the inmates was better when the accused was away from the camp (R 62, 369, 370). The second witness also testified that the food at Flossenburg under the administration of the accused was much worse than in other camps (R 368).

A fifth witness, a former inmate who had been a clerk at subcamp Hersbruck, testified that in September 1944 the accused issued a secret order over his signature to serve food which had spoiled. Potatoes were to be cooked with their peelings, and turnips were to be cooked in a manner

(R 374-376). As a result of this order, the food became inedible, the potatoes in particular being rotten (R 375, 380). The third witness stated that he overheard the accused tell a detail leader to give the good vegetables from the garden to the SS kitchen and the over-ripe or inferior vegetables to the inmates' kitchen where they were put through a machine called a "wolf" to chop them and make them edible (R 402; P-Ex 30). The fourth witness stated that he overheard the accused tell a kitchen supervisor, who complained about spoiled potatoes, that pigs got fat from spoiled potatoes and that they were good enough for the crowd of pigs in the camp. He further stated that the accused did nothing for the inmates and that for eight days before the evacuation of the camp there was very little to eat. Also for three days during the evacuation march no rations were issued (R 402; P-Ex 31).

The fifth witness testified that the food policies of the accused caused an outbreak of dysentery and enterities. In subcamp Hersbruck, for which the accused was also responsible insofar as the procuring of food was concerned, inmate deaths were 30 to 40 a day due to dysentery and enteritis (R 376, 377). The third witness stated that hundreds of inmates died at Flossenburg due to the dysentery which broke out as a result of the accused's orders (R 402; P-Ex 30).

Accused JESS testified that he worked under the accused at Camp Flossenburg from about September 1943 until the end of the war; that he, the witness, was in a position to know facts regarding the procurement of food for Camp Flossenburg (R 695); that the accused was the administration leader at Camp Flossenburg who had charge of all administrative affairs including finance, billeting, provisions and clothing; that the accused had the authority to determine what amount of provisions and other items were to be requisitioned for the camp; and that the accused had control of the cooking of inmates' food (R 696, 697). Accused BERGMUELLER testified that the accused was in charge of the food ration section at Camp Flossenburg (R 741).

In the Parent Case, prosecution witnesses testified that the greatest causes of death in Flossenburg were starvation and diseases resulting therefrom (R 121). Camp rations for the inmates were always ins

Breakfast usually consisted of one cup of artificial coffee without sugar or milk. At noon the inmates received one liter of cabbage or potato soup with no fat or meat. Three times a week small amounts of meat were added to the soup. Supper consisted of a slice of black bread, a spoonful of margarine or a small slice of war sausage. Part of the ^{time} workers received an extra daily ration of two slices of bread with margarine. After the fall of 1944 rations became smaller (R 214, 215, 946, 2278). At one time Russian inmates received particularly bad food which stank and was inedible (R 1626). During the last 11 months before liberation, many inmates died as a result of eating raw and inedible food (R 4422). At the time of the evacuation of Flossenburg about 20 April 1945, little or no food was distributed among the inmates prior to departure (R 791, 806, 807, 930). After the evacuation, large stores of rice, oatmeal, potato flake, canned sausage, honey, sugar, margarine and fresh meat were found at Flossenburg (R 931). 7

Evidence for Defense: The accused testified that the rations available for the Flossenburg Concentration Camp were controlled by the Reich Food Office. Food was purchased locally only after requisitions were returned approved from this office (R 753, 754). While the food office ordered that potatoes be cooked with their peelings, the accused never ordered rotten potatoes to be served. The potatoes were washed and peeled by details of inmates who were supervised by a special man (R 756, 757). In January 1944 all concentration camp administrative officers were called to Berlin for the discussion of food problems where they were told that the food situation was difficult because of the war. Although the accused attempted to obtain more food for Flossenburg, he was unsuccessful in his attempt (R 757). Camp Flossenburg did not have a sufficient number of railroad box cars to haul potatoes because most of those in the Munich district were sent to Italy to transport troops. The camp had only ten box cars left and many potatoes were frozen and had to be thrown away (R 758).

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-14-
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Two defense witnesses testified that they never heard of the accused giving an order to cook rotten potatoes (R 413, 520). One of these witnesses said that potatoes were prepared for cooking by inmates who would not have permitted rotten potatoes to go into the food (R 520). However, on cross-examination the witness admitted that towards the end of the war the food served to inmates had a bad odor (R 523, 524). This witness and a third witness testified that at times the accused made arrangements for inmates to receive extra rations (R 519, 631, 632).

Accused JESS testified that he worked under the accused from September 1943 until the end of the war and that the amount of food the camp could purchase was determined by the food office according to a certain allotment per inmate (R 695, 696). He further testified that the order regarding the economical use of potatoes was a secret order which originated in Berlin (R 697, 698).

Defense witnesses in the Parent Case testified that there was not an acute food shortage in Flossenburg (R 3002, 3004, 3005, 3029, 3030). Very often the inmates dissipated food by stealing, spilling food kettles or by using ruses to obtain extra meals (R 3002, 3003, 3020). The camp physician or garrison doctor checked the food daily and never found it to be inedible (R 3069, 3617). It was always rated good or very good (R 3618). At subcamp Hersbruck, sick inmates and heavy workers received extra rations and the average inmate received a little less food than the average German civilian (R 6606, 6619, 6621).⁷

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is excessive.

Petitions: A Petition for Review was filed by Major L. F. Benson, defense counsel, 3 December 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for 25 years, commencing 28 November 1947.

7. Karl HAENSEL

Nationality: German

Age:	34
Civilian Status:	Stove and Tile Maker
Party Status:	Member of Nazi Party from May 1934
Military Status:	SS Master Sergeant
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused, an SS master sergeant, was assigned to the Flossen-burg Concentration Camp in 1938. He was in charge of the inmates' kitchen until the middle of February 1942 when he was transferred to the SS kitchen (R776). He was in charge of the latter kitchen from that time until February 1945 (R 54, 71, 157, 224; P-Ex 13).

The accused was known as a beater who constantly mistreated the inmates (R 74, 124, 161, 221; P-Ex 11). He beat German and non-German inmates indiscriminately, but was especially on the lookout for foreigners (R 125). Numerous instances of beatings by the accused were described by prosecution witnesses (R 54, 57, 73, 141, 142, 149, 158).

One witness testified that very weak inmates known as "Muselman" would loiter near the kitchen looking for food. They would be put to work carrying kettles, and the accused beat and kicked them when they did not work fast enough (R 73). A second witness testified that he had to shave the head of a Polish inmate who had a wound on the back of the head four centimeters long and one centimeter wide which the victim said was caused by the accused hitting him with a kitchen spoon (R 142). A third witness testified that he saw the accused hit an inmate over the head with a beer bottle in the SS kitchen and on a second occasion an inmate had his jaw fractured by the accused when caught in an attempt to steal meat (R 158-160).

A fourth and fifth witness testified and a sixth stated in his Statement that the accused took part in the execution by shooting of Polish and Russian inmates in 1942. They saw him walk toward the place of execution as a member of an execution detail. However, they only heard shots fired

shortly thereafter and did not see the actual shooting (R 120-122, 193, 197-198, 251; P-Ex 15). One of these witnesses testified that in one instance, which occurred just before dark, the victims were led out handcuffed and the execution detail of SS men marched out about the same time. The accused was a member of this detail (R 193-200). One of these witnesses stated in his Statement that he saw the accused march out on at least three execution details in 1942 (R 251; P-Ex 15). Later the accused, along with other members of the execution details, received a medal for his work which became known as the "Blood Order" (R 107, 108, 123, 200).

One defense witness testified that he knew the accused was on execution details (R 561), and another testified that the accused received the merit cross and it was generally known that those who received it participated in executions (R 607).

Evidence for Defense: The accused testified that at times he beat inmates with his hand for stealing but he never made a person unfit for work or caused injuries which resulted in bleeding (R 777). He never beat except with his open hand (R 784).

The accused denied all participation in executions and testified that they were formed from block leaders and detail leaders only (R 781-783); that all executions took place in 1941 under SS Captain Aumeyer and stopped when he was transferred at the beginning of 1942 (R 778-779); that he received the War Merit Cross II Class in May 1942 and also the Service Medal II Class; and that the former was for general service and the latter for serving eight years in the SS (R 783).

Defense witnesses testified that the accused was not known as a beater (R 449); and that when he did beat, it was only as punishment for stealing or breaking camp rules (R 449, 463, 488, 621). He slapped inmates only with his open hand and did not cause injuries or beat brutally (R 449, 463, 464, 488). Two witnesses testified that the execution details were formed with personnel from the protective custody camp and not from the camp administration to which the accused was assigned (R 493,

802). A former roll call leader of the camp testified that he took part in executions, but that the accused was not a member of the details (R 802, 803).

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

Petitions: A Petition for Review was filed by Major L. F. Benson, defense counsel, 3 December 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

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

Superior Orders: Accused STELZNER sought to justify some of his actions by offering evidence to show that he was acting in compliance with "superior orders". Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, opinion DJAWC, December 1945; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, February 1946; and French Republic v. Wagner, et al., Court of Appeals, (France) July 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior in fact, directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion.

Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European axis; FM 27-10, War Department, U. S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of our Enemies", found in footnote, page 53, "Military Occupation and the Rules of the Law", by Ernst Fraenkel; United States v. Bury, et al., opinion DJAWC, September 1945, United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWC, December 1946.)

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

Objection to Charge Sheet: The defense objected to the introduction

of Prosecution's P-Ex 2, the charge sheet upon which the accused were tried, on the ground that the charge was a general one based upon the Parent Case and that in the Parent Case the common design charge was withdrawn. Defense stated that the charge should be drawn as in the Parent Case (R 2). This objection was overruled by the Court (R 3). A perusal of the record of the Parent Case and of Prosecution's P-Ex 6, a certified copy of the charge and particulars, findings and sentences of the Parent Case, indicates that the charge and particulars in this subsequent proceedings are substantially the same as those in the Parent Case. The Review and Recommendations of the Parent Case by the Deputy Judge Advocate for War Crimes, May 1947, as approved by the Judge Advocate, European Command, does not show that the common design charge was withdrawn or disapproved in the Parent Case as contended by defense counsel. The Court acted properly in overruling the objection.

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

VI. CONCLUSIONS:

1. It is recommended that the findings and sentences be approved as to all the accused, but that the sentence as to accused STELZNER be reduced to imprisonment for 10 years, and that the sentence as to accused KIRSAMMER be reduced to imprisonment for 25 years.

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

JOHN H. POHLMAN
1st Lt, Inf
Attorney
Post Trial Branch

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

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