

22 January 1948

UNITED STATES)

v.)

Wilhelm LOH, et al.)

Case No. 000-50-46-1

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 5-12 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 Heinrich KRAUSS, Gerhard KUSS, Wilhelm LOH, Edmund WISSMANN and Martin HUMM 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, Canacker 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: Accused LOH, an SS technical sergeant, was camp commander of subcamp Hainichen, a subcamp of Flossenburg Concentration Camp, from 28 August 1944 until the evacuation of the camp on about 24 April 1945. Accused WISSMANN, a criminal inmate, served as camp clerk and secretary of the work detail at subcamp Altenheimer from 27 December 1944 until its evacuation on 16 April 1945. WISSMANN also acted as a member of the camp police and as a guard on an inmate evacua-

CLASSIFICATION

By authority of JAG

tion march from Flossenburg Concentration Camp in April 1945. Accused HUMM, a criminal inmate, served as capo and block leader of several inmate blocks at Flossenburg Concentration Camp during part of the year 1943 and until August 1944. He was then transferred to subcamp Harsbruck, where he acted as camp eldest until the evacuation of the camp on about 16 April 1945. Individual atrocities were shown to have been committed by all of the convicted accused during the period alleged in the charge and particulars. Prosecution's P-Ex 6 (R 12) is a certified copy of the charge, particulars, findings, and sentences in the parent Flossenburg Concentration Camp case (United States v. BECKER, et al., opinion DJAWC, May 1947, hereinafter referred to as the "Parent Case"; see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Heinrich KRAUSS

This accused was not tried.

2. Gerhard KUSS

This accused was not tried.

3. Wilhelm LOH

Nationality:	German
Age:	55
Civilian Status:	Carpenter
Party Status:	None
Military Status:	Waffen SS Technical Sergeant
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused served as camp commander of Hainichen, a subcamp of Flossenburg Concentration Camp, from 28 August 1944 until the evacuation of the subcamp on about 24 April 1945. The subcamp was composed of approximately 500 women inmates who worked in a factory producing planes and guns (R 15, 16, 186, 199, 204).

Rivka Hochmann, an inmate of subcamp Hainichen for eight months

beginning August 1944 (R 15), testified that the accused was the camp commander and as such he inspected the work of the inmates. The accused visited the barracks of the inmates only during the day (R 16). She saw the accused beat Polish and Hungarian women inmates "maybe three times". She saw the accused beat a Polish Jewess, named Mrs. Fajnowa, in the barracks on two successive days two weeks before the camp was evacuated (R 18, 19, 23, 24). The victim had only one kidney (R 27) and was unable to work (R 18, 19). The accused brought her into the room where the other inmates slept and beat her with a belt buckle and his fists until she fell unconscious (R 20-22). After the victim became unconscious she was placed in a bunk, and the accused left. The next day the victim was again sent to work (R 22) and when she could not perform her work the accused beat her again (R 23). Mrs. Fajnowa was brought back to the barracks where she was again beaten by the accused until she fell unconscious. On the second day the woman supervisor, Becker, was also present and she too beat Mrs. Fajnowa with her fists (R 28). She was then taken to the dispensary (R 23, 24). Hochmann further testified that on the third day she saw the victim in the dispensary (R 24). On the next day she was told that Mrs. Fajnowa had died and was lying in the dispensary and was later buried in the cemetery (R 26).

Helena Hochmann, a former inmate of subcamp Hainichen (R 186) and sister of the preceding witness (R 188), testified that the accused often beat the inmates and that he killed inmate Mrs. Fajnowa by beating her (R 187). She testified that Mrs. Fajnowa had only one kidney, was always sick and unable to work. At the beginning of April 1945 the victim was in bed in the barracks when the accused entered. He ordered her to get out of bed and go to work and started to beat her. The victim fell unconscious. The accused continued to beat her accusing her of simulating sickness. The next day the accused sent Mrs. Fajnowa to the transport detail, the hardest work in the factory. When Mrs. Fajnowa was unable to work she was brought home, and the accused beat her again.

This happened two or three times, and after a few days, the victim died (R 187, 188). There was no woman supervisor present while the accused was beating. She was there the first day but not the second day, and she did not participate (R 189, 190). After the beatings, Mrs. Fajnowa died within a few days. She saw the body "because that was in the same building". She further testified that the accused often beat the inmates. (R 187).

Evidence for Defense: Pasalski, an inmate at subcamp Hainichen from August 1944 until the end of the war (R 202), testified that she know the accused as commander of the camp (R 199), and that his attitude toward the inmates of the camp was "not bad". She never saw the accused beat any of the inmates nor did she ever hear of any of the inmates dying as a result of a beating by the accused. She knew inmate Mrs. Fajnowa and testified that she died because she was very sick. She never heard that Mrs. Fajnowa had been beaten to death by the accused, but only that he had beaten her (R 200).

The accused testified that he became camp commander at subcamp Hainichen on 28 August 1944 and remained there until the end (R 204). He denied beating any woman to death, although he admitted having beaten one inmate in the barracks who had refused to work (R 204). He admitted having struck this inmate on her head with his hands about five times (R 205). The woman supervisor, Becker, was present (R 209). The victim did not become unconscious as a result of his beating (R 210). He did not recall the name of the inmate (R 205). He testified that the inmate doctor had classified the inmate as able to work. He denied that the transport detail was a very heavy one (R 205). He further testified that the camp consisted of 500 inmates of whom only five died during the existence of the camp. These inmates died of sickness and none ever died of a beating (R 204). He knew that three of the inmates died of tuberculosis and that the woman he had mistreated died of a sickness unknown to him (R 208). He did everything he could for the inmates. He sent some inmates outside of camp to a local doctor for examination

and always got the medicine prescribed immediately (R 211).

There is no evidence in the Parent Case of conditions existing at subcamp Hainichen or as to atrocities committed there.

Sufficiency of Evidence: The Court was warranted from the evidence as to the nature and extent of his participation, especially that concerning his position as commander of a subcamp and that concerning several severe beatings administered to a sick female inmate, in its finding of guilty. However, it is not satisfactorily established that deaths resulted from acts of the accused or from the acts of others at his direction. The sentence is excessive.

Petitions: No Petition for Review was filed. Petitions for Clemency were filed by Harold Gerhardt, German attorney, 11 December 1947; Josef Mille, 5 January 1947; Father Weber, 20 November 1947; Burgomeister Muller, 25 November 1947, containing the signatures of 650 of the inhabitants of the parish of Dutenhofen, fellow townsmen of the accused.

Recommendation: That the findings and sentence be approved, but that the sentence be commuted to imprisonment for life.

4. Edmund WISSMANN

Nationality:	German
Age:	29
Civilian Status:	Laborer
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he was an inmate of Flossenburg Concentration Camp from 5 April 1940 to the end of March 1943; that he was an inmate of subcamp Wuerzburg from March 1943 until October 1943; and that he was then sent back to Camp Flossenburg where he remained until 27 December 1944. From there he was sent to the subcamp Altenheimer where he remained until its evacuation on 16 April 1945. He was returned to Camp Flossenburg and after several days he part-

icipated in an inmate evacuation march from Flossenburg (R 212, 214, 217). During his stay at subcamp Altenheimer he was work detail clerk (R 212).

Margraff, a former inmate of Camp Flossenburg (R 34), testified that Altenheimer was a subcamp of Flossenburg Concentration Camp and was staffed with its own administrative personnel consisting of a camp commander, capos and clerks (R 65, 66). The nationalities of the inmates were 50 per cent Russian, 30 per cent Polish, and also included 50 Germans, 30 Frenchmen, 10 Greeks, a few Italians, and some Czechs (R 35, 36, 38). The total strength was between 580 and 630 (R 35). The accused was secretary of the work detail (R 64). He kept the reports of roll calls (R 36, 64), distributed the packages and letters of inmates (R 64), kept the records of new arrivals and departures (R 98), and was often in charge of the distribution of food (R 37, 93, 102, 111).

Margraff, Fischer and Bodenstein, all former inmates (R 34, 92, 108), testified that at subcamp Altenheimer the accused often beat inmates with a cudgel, scoop, or ladle during the distribution of food (R 35, 37, 93, 108, 111).

Margraff further testified that he saw the accused trample on a Polish or Russian inmate one evening and kick the victim on his back and kidneys (R 35). He saw the accused beating inmates with a rubber club at the latrine at 0300 hours on one occasion because these inmates were wearing extra shirts or shorts (R 36). He saw the accused place a Czech inmate under an icy shower and give him a terrific blow with a wooden stool (R 38). The outside temperature was below zero (apparently centigrade) at the time, and there was virtually no heat in the barracks (R 39).

Fischer testified that on each possible occasion the accused beat inmates until they bled (R 92). In January or February 1945 a Polish inmate dentist, although normal at first, was driven crazy by the daily beatings he received at the hands of the accused and others (R 94). Although the inmate was a Pole, the accused and others made believe he

was a Turk. The accused participated in frequent beatings of this inmate, beating him in the face until he bled, resulting in the inmate finally being taken to the hospital (R 93, 103) where he died (R 94). This incident was corroborated by Bodenstein who testified that the "Turk" (as this victim was called) was beaten by the accused until almost dead, taken to the dispensary, and he was told that he died there within three to four days (R 108, 109).

Fischer also testified that in February 1945, during a heavy frost, an Italian inmate who had no blanket and had reported that fact to the accused, was kicked and beaten by the accused. The Italian became ill, went to the hospital, and died there in about a week (R 95). Fischer further testified that in March 1945 the accused noticed a Polish inmate who was dirty. The accused beat the inmate severely and dragged him to the bathroom. There the accused poured cold water over the victim while two Russians scrubbed him. The victim became ill and was taken to the hospital. Shortly thereafter he was told that this inmate died of pneumonia (R 95, 96).

Bodenstein testified that at subcamp Altenheimer he saw the accused beat French, Hungarian, Polish, Russian, Italian, and Greek inmates with a club even after the victims had fallen to the ground (R 110).

Umhauer, an inmate of Camp Flossenbug from 28 June 1943 to 23 April 1945 (R 71), testified that he saw the accused at Flossenbug Concentration Camp during September and October 1944 (R 72). In particular he saw the accused throw a Russian inmate downstairs during a music concert at the camp one Sunday (R 73, 74, 89). The Russian lay unconscious at the foot of the stairs for more than two hours (R 74, 89). During the same period he saw the accused beat a Russian inmate with a stool at the canteen. The victim fell down and bled from a wound in his head. This beating continued for about four or five minutes (R 72, 73).

Goldstein testified that he saw the accused on an inmate evacuation march which left Camp Flossenbug in April 1945 (R 113, 114). The

column consisted of 200 Jews of Czech, Hungarian, and Polish nationalities with 40 to 50 guards (R 115, 117). The accused was a guard armed with a rifle (R 115, 119). During the march he saw the accused push one inmate with his rifle and shoot him in the back of the neck. The victim fell to the ground dead (R 116). Two to three minutes later he saw the accused kill two more inmates by shooting them in the back of the neck (R 117, 118). In all, he saw the accused commit 10 to 12 such atrocities during the march (R 118). All of them happened within one-half hour (R 119).

The accused testified that before the camp was evacuated he was made a member of the camp police, given a uniform, rifle, and ammunition. He accompanied an inmate evacuation march as a guard (R 216). He admitted that 200 to 300 inmates were shot to death on the march by a "finishing off" detail (R 216, 217). There were 1000 inmates on the evacuation march with 45 guards (R 218).

Evidence for Defense: The accused testified that at the end of January 1945 he was appointed work detail clerk at subcamp Altenheimer. While at Flossenburg he never held any position (R 212). He admitted beating inmates on three or four occasions but denied that he had ever beaten any inmate to death. He testified that the beatings which he did administer were given because the victims failed to keep themselves clean, and that there was a suspicion of typhus. He admitted participating in an inmate evacuation march as a guard but denied shooting or beating any inmates (R 213, 216, 217).

There is no evidence in the Parent Case of conditions existing at subcamp Altenheimer or as to atrocities committed there.

Sufficiency of Evidence: The Court was warranted from the evidence concerning the nature and extent of his participation, especially that as to a continuous course of extreme violence by way of beatings, etc., in its findings of guilty. However, the testimony as to the killings during the evacuation is very brief and not thoroughly convincing. The sentence is excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by the accused, 17 and 19 November 1947.

Recommendation: That the findings and sentence be approved, but that the sentence be commuted to imprisonment for life.

5. Martin HUMM

Nationality:	German
Age:	42
Civilian Status:	Cook
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he was an inmate at Flossenburg Concentration Camp from 18 May 1938 until 14 August 1942. He was then transferred to a subcamp but returned to the main camp on 6 April 1943. He remained at the main camp until August or September 1944 when he was transferred to subcamp Hersbruck, where he remained until it was evacuated in April 1945. During the period January-August 1944, he was capo and block eldest of blocks 22 and 23 and in charge of the weaving and cobbling details. At Hersbruck he acted as camp eldest. He wore a green triangle, symbol of a criminal inmate (R 230, 231, 242, 243).

Activities at Flossenburg: In 1944 blocks 22 and 23 at Flossenburg Concentration Camp were occupied by inmates who by reason of their physical condition were unable to perform normal work. They were employed in weaving and shoe repair (R 43, 80, 123, 154, 180, 182). Approximately 400-500 inmates of French, Russian, Polish, Czech, Lithuanian, Dutch, Belgian, Italian, Hungarian, Yugoslav, Greek and Turkish nationalities were quartered in the two blocks (R 46, 81, 126). From January until August 1944 the accused was the capo and block eldest and administered both blocks (R 43, 50, 52, 78, 86, 143, 154, 180).

Margraff testified that he observed the accused daily during the period 25 May - 5 June 1944 (R 43); that he saw him mistreat the inmates of his block at least 20 times during this period (R 44) at morning and evening roll calls in front of the blocks (R 52); and that the accused punched them, threw them to the ground, and trampled them (R 44). In particular Margraff described an incident when the accused caught an inmate picking up potato peelings in front of the kitchen. The accused threw the inmate to the ground and trampled him causing blood to run down the face of the victim (R 44). When the inmate tried to rise, the accused trampled him again on his head, stomach, and belly (R 45). On another occasion he saw the accused strike a French inmate in the face knocking him to the ground (R 48). The victim was beaten because his number was not sewn on properly (R 47, 48). This incident occurred in September 1944 (R 48) while the victim and the witness were quartered in block 7 (R 56). He also saw the accused strike other inmates in block 7 (R 51).

Umhauer testified that in July 1943 he saw the accused beat a French inmate in the weaving detail with his fists and a stool and kick him. The victim was struck so hard that he lost part of his mental faculties (R 78). About the same time he saw the accused strike a young Russian inmate who could not work. When the inmate could not get up, the accused struck him with his fists, kicked him, and pushed him to the ground. He then "finished him off" with his heel. The victim was taken to the crematory (R 79, 80). Umhauer further testified that the accused was responsible for making the inmates of his blocks stand outside in the snow for roll calls for long periods of time (R 81). The temperature was often 10° below zero (apparently centigrade) and at each roll call two to three inmates dropped to the ground because of the cold (R 80, 81).

Lefevre, a former inmate of Flossenburg Concentration Camp, testified that during June and July 1944 he saw the accused beat the inmates in the weaving detail every day, mostly with his hands (R 122). On one

occasion, in July 1944, two insane inmates, a Russian and a Pole, were assigned to the weaving detail. When the two inmates did not want to work, the accused became angry and pushed them into the latrine. They were forced to remain underneath the latrine all day while other inmates relieved themselves on the heads of the two victims. They were taken out in the evening, undressed, and washed with a hose. The accused gave them other clothes, took them back to the block and made them spend the night in a wooden box one meter square (R 123, 124). The next day the same procedure was repeated (R 124).

Legais, a former inmate of Flossenburg Concentration Camp (R 142), testified that he saw the accused beat the inmates at roll call in June and July 1944 (R 142-144). He saw the accused beat four or five inmates every day (R 146). On 15 or 16 June 1944 at the noon distribution of soup, he saw him beat two inmates very violently with a rubber cudgel. The accused threw the inmates to the ground and kicked them on the back and on the head with his feet and his heels. The victims remained unconscious and during the evening were taken to the crematory (R 144, 145, 150). The victims died as a result of the beating (R 152). He heard that the victims were probably Russians (R 146).

Skorodij, a former inmate of Flossenburg Concentration Camp (R 179), testified that in block 23 in April or May 1944 a Slovak inmate was caught smoking and was punished by the accused, who placed the victim over a table and beat him with a rubber hose (R 180, 184, 185). The inmate fell unconscious and was thrown on a pile of old shoes (R 180). The next morning the witness observed that the Slovak was dead (R 181). The victim was taken to the latrine and later removed to the crematory (R 181). On another occasion he saw the accused beat a Russian inmate with a rubber hose and kick him. This also took place in block 23 sometime in March or April 1944 (R 181, 182). During noon meal time, while distributing food, the accused very often beat the inmates with a ladle (R 182).

Neuner, a former inmate of subcamp Hersbruck (R 156), testified that

at the end of May 1944 he saw the accused beating the inmates of his block with a club (R 155, 157). A one-legged inmate came out of the latrine, and the accused started to yell at him and beat him. The accused took a crutch away from this inmate and beat him with it. The victim remained on the ground (R 157). He was taken to the latrine, undressed, and laid among the corpses. This victim was a Pole (R 158, 159).

In rebuttal, the extrajudicial sworn statement of accused, WISSMANN, indicated that the accused was known as quite brutal at Flossenburg and beat the inmates at all opportunities between 1940 and 1943. In the winter of 1941-1942 between Christmas and New Year's Day, he saw the accused beat inmates with abandon on the head and shoulders with a rubber hose. He also saw him beat during the lineups at roll call. He kicked and beat foreign inmates in 1942 and 1943 (R 259; P-Ex 9).

Activities at Subcamp Hersbruck: The work detail at subcamp Hersbruck was known as "death detail" because of the high mortality rate (R 12; P-Ex 6 p. 3; R 2262, Parent Case). It was commonly known that Hersbruck was an extermination camp (R 1812, Parent Case). The accused testified that he arrived at Hersbruck in the beginning of September 1944 and was camp eldest until the evacuation of the camp in April 1945 (R 231, 232).

Neuner, who had also testified concerning the activities of the accused at the main camp, further testified that the accused at first constantly mistreated the inmates at subcamp Hersbruck (R 159). One morning in October 1944 he saw the accused beat with a club two inmates of a group of five (R 159, 161). The accused forced the five inmates to stand for about five hours in front of the orderly room with their hands outstretched above their heads (R 160). The victims were five Poles, one of whom was a Polish Jew (R 159). The Jewish inmate collapsed and was sent to the dispensary. The victim was dead on arrival at the dispensary and the cause of death was stated to be "collapse" (R 160). Neuner further testified as to an incident in

October 1944 when a French inmate, under suspicion of attempting to escape, was brought to the orderly room. The accused hung the inmate up by his wrists with his hands tied behind his back. While the inmate was thus hanging, the accused beat him with a thick rubber club causing blood to run profusely from the victim's head and other parts of his body (R 161, 162, 178). At another time he saw the accused beat a French civilian with a stick in the dispensary after the Frenchman had refused to confess that he had aided an inmate to escape (R 163, 164). The accused carried out two executions by hanging in October 1944 (R 164, 165). However, the witness expressed the view without stating his reasons therefor, that the victims had been properly sentenced to death (R 165). The witness further testified that the accused personally administered 25 blows with a stick on his buttocks (R 167, 174).

Winkler, a former inmate of subcamp Hersbruck (R 128), testified that at the end of January 1945 he saw the accused kick a weak young Slavic inmate, either Russian or Polish, who was sitting on the ground against the barracks wall. The accused yelled at the inmate to get up and kept kicking him for about 15 minutes. The inmate was unable to get up. A short time later he observed that the victim was dead (R 129-131, 136).

Winkler testified that another incident took place on a Sunday in March 1945. A friend of his, a Hungarian Jewish inmate, was not able to march back from the place of work to the camp because of illness. An inmate doctor pronounced the inmate fit to work, whereupon the accused slapped the Hungarian, beat him with his hands, and kicked him. The victim fell to the ground. Several hours later the witness saw the dead body of his friend at the dispensary (R 131, 132, 137, 138).

Mazurek testified that at subcamp Hersbruck he saw the accused beat several Russian and Polish inmates with a stick (R 261, 263). In particular Mazurek described an incident in which a friend of his, a Polish inmate, was mistreated by the accused. The inmate being ill, was unable to work and remained in camp one day. The accused took this inmate into the orderly room and beat him with a stick. The victim was

taken to the dispensary. Mazurek testified that two days later he was told that this friend had died and he "never saw him again" (R 262, 263).

Evidence for Defense: The accused testified that he was an inmate at Flossenburg Concentration Camp from 18 May 1938 until 14 August 1942. After spending some time at a subcamp, he was returned to Flossenburg and remained in the main camp from 6 April 1943 until 14 August 1944. He was then transferred to subcamp Hersbruck where he remained until it was evacuated on 16 April 1945. From 1940 until 1944 he was a mere inmate. Thereafter he became foreman and block eldest until the middle of July 1944 (R 230, 231, 243). At Hersbruck he acted as camp eldest (R 232).

The accused denied beating any inmates with a stick or any other instrument while at Hersbruck. He admitted beating inmates by slapping them behind the ears but denied that he either kicked or beat any of them to death either in subcamp Hersbruck or in Flossenburg (R 237, 242).

Concerning his activities at Flossenburg, the accused denied the testimony of Margraff that he had beaten an inmate in front of the kitchen. He testified that it was impossible to see the kitchen from block 21 as the witness had testified (R 232). He denied that he was a capo or block eldest in 1943. He maintained that at that time he was a member of the penal company and was working in a forest detail. Blocks 22 and 23 were opened on 15 January 1944 and on 5 January 1944 he first became block eldest (R 233, 243). He testified further that the weaving shops were closed on 30 July 1944. All the healthy inmates were transferred to block 17 (R 236). The accused was a block eldest for a period of six months in block 23 and three months in block 17 (R 246). He denied that he ever distributed food while at block 23 (R 242) nor did he ever beat any inmates with a stick or rubber hose at meal time (R 237). He testified that it was forbidden to mistreat inmates. Furthermore, all of the inmates in his blocks were examined once or twice each week by the camp physician (R 237).

The accused denied that he had ever placed any insane inmates in the

latrine pits. In June 1944 he took care of a young inmate named "Mouse", who was suffering from a chronic intestinal ailment. He testified that he arranged a straw bed for this inmate with "a rubber" underneath it. He admitted giving the inmate a bath with a rubber hose and procuring new clothes for him. However, he denied that this inmate was ever made to stand in the latrine pit (R 234).

The accused denied ever punishing a Slovak inmate by administering the "25 lashes". He admitted slapping prosecution witness Skorodij and another inmate, a friend of the former. Skorodij was often punished for stealing bread and other things (R 241, 242). He admitted that there may have been a corpse in block 17 because three to five inmates died in that block each week (R 235). He denied beating to death any one-legged inmate. On the contrary, he testified that there was only one such inmate in Flossenburg, a capo in the web works named Franz Keil. That inmate is still alive (R 239, 240).

As to his activities in subcamp Hersbruck, the accused admitted slapping two malingering inmates. He denied that any incident occurred on a Sunday, as testified by Winkler, because at that time no work was being performed on Sunday (R 237). He denied ordering five inmates to stand in front of the orderly room with their arms upraised (R 241), and also denied hanging up a recaptured inmate in the orderly room (R 241). The accused testified further that two Frenchmen were executed by hanging at Hersbruck, but this execution was carried out by the Gestapo (R 241); that he had had difficulties with prosecution witness Neuner, because Neuner had been caught stealing gold fillings out of the mouths of dead inmates; and that Neuner was relieved and transferred back to Flossenburg (R 240).

In surrebuttal the accused testified that he never beat any inmate at subcamp Hersbruck with a stick; that the beating of inmates was forbidden; that he slapped inmates behind the ear whenever they did something deserving such punishment (R 266, 266a); and that in January 1945 he was suffering from tuberculosis, weighed only 112 pounds, and could

hardly walk (R 265, 266).

Voeglein stated in his extrajudicial sworn statement that he was an inmate of Flossenburg Concentration Camp with the accused; that the accused helped an inmate escape; and that he regarded the accused as unable to commit the acts with which he is charged (R 219, D-Ex 1A).

Hitthaler stated in an unsworn pretrial statement that he was an inmate of Flossenburg Concentration Camp; that he never heard that the accused mistreated or killed other inmates; and that for a long period of time he, the witness, was a male nurse in the inmates dispensary and would surely have known of any such atrocities (R 220; D-Ex 2A).

Schroeder (R 222), whose signature is illegible, stated in an extrajudicial sworn statement that he knew the accused in subcamp Hersbruck as a decent comrade; that the accused procured extra food on an evacuation march; and that from January to April 1945 the accused never beat an inmate so that he died (R 225; D-Ex 3A).

Michalski, a Polish former inmate, stated in an unsworn pretrial statement that he became acquainted with the accused in 1942; that the accused procured extra food for inmates; that he fully protected the inmates of block 23 as block eldest; and that he never heard of or saw the accused beat any inmates. The accused permitted the inmates to cook in the block. Block 23 was one of the cleanest and nicest in the camp. The accused worked the same as other inmates. If the accused had mistreated or killed an inmate, the witness would have known it. Subcamp Hersbruck had a bad reputation before the accused went there (R 226; D-Ex 4A).

Kilb, a former SS master sergeant at Flossenburg Concentration Camp, stated in his unsworn pretrial statement that he knew the accused as block eldest of block 23 at Flossenburg Concentration Camp, and that he never saw the accused do anything wrong, nor did he hear about it (R 228; D-Ex 6A, received as D-Ex 5A, R 227).

Ekrt stated in his unsworn pretrial statement that he served in a detail over which the accused was capo at Flossenburg Concentration

Camp; that the accused treated the inmates decently; that once he saw a sergeant slap the accused's face for being too lenient; and that the accused aided in getting the witness assigned to light duty (R 229: D-Ex 7A, received on R 228 as D-Ex 6A).

(The statement of Kilb, though marked D-Ex 6, was actually received as D-Ex 5, R 227. The statement of Ekrt, though marked as D-Ex 7, was actually received as D-Ex 6, R 228. The statement of Michl, received as D-Ex 7, R 229, is missing from the record of trial. The defense counsel indicated that this statement contained character evidence. R 229).

Sufficiency of Evidence: The Court was warranted from the evidence concerning the nature and extent of his participation, particularly that relative to many very severe beatings, in its findings of guilty. However, the evidence does not satisfactorily establish that acts of the accused resulted in deaths of the inmates. The sentence is excessive.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by accused, 19 November 1947; accused's mother, Katharina Humm, 25 November 1947; Parson Alexander Pelissier, 16 December 1947 and 4 January 1948; Theodor Heid, 13 January 1948; Albert Fiedler, 16 December 1947; Walter Neye, undated; Philip Muller, undated; Peter Bongartz, 31 December 1947; Dr. Gerhard Giesecke, 14 August 1947; Walter Heinrich Ott, 6 December 1947; Hans Joachim Geiger, 15 December 1947; Paul Torner, undated; Franz Keil, 7 January 1948; Friedrich Becker, 28 December 1947; and Georg Weilbach, 16 December 1947.

Recommendation: That the findings and sentence be approved, but that the sentence be commuted to imprisonment for life.

V. QUESTIONS OF LAW:

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

Application of Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Case, including the findings of the Court therein that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common

design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). All of the convicted accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceedings, in concluding as to them that they participated to a substantial degree. However, the nature and extent of their participation were not such as to warrant the sentences imposed as indicated by the recommendations as to each of these accused in Section IV, supra.

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 the sentences be approved, but that the sentences as to all accused be commuted to imprisonment for life.

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

EMANUEL LEWIS
Captain, Inf
Attorney
Post Trial Branch

Having examined the record of trial, I concur, this _____ day
of _____ 1946.

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

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EMANUEL LEWIS
Captain, Inf
Attorney
Post Trial Branch

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

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