

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

30 January 1948

UNITED STATES)
))
 v.)
Wladislaus DOPIERALA)

Case No. 000-50-5-47

REVIEW AND RECOMMENDATIONS

- I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 23-26 October 1947, before a General Military Government Court.
- II. CHARGES AND PARTICULARS:

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

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

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

Particulars: In that Wladislaus DOPIERALA, a German national, did, at or in the vicinity of Gusen, Austria, in or about August 1940, wrongfully encourage, aid, abet and participate in the killing of approximately 120 non-German nationals, inmates of the Gusen I Concentration Camp, who were then in the custody of the then German Reich, the exact names and numbers of such persons being unknown.

(Before arraignment, the prosecution moved to amend the charges by striking Charge I and the particulars there-under. The defense consented to the amendment and the Court granted the motion (R 3).)

III. SUMMARY OF EVIDENCE: In August 1940 the accused was a guard at Gusen I Concentration Camp near Gusen, Austria. On 13 August 1940, as the result of the escape of a Polish inmate, all Polish inmates of Gusen I Concentration Camp were compelled to stand on roll call square for three successive nights. During this period the inmates were beaten by SS men with extail whips. All inmates fainted or collapsed and many were beaten to death. The accused, using an extail whip, actively participated in beating to death approximately 400 Polish inmates. The accused admitted that inmates stood on roll call square one night and that many were beaten and collapsed, but he denied that any were killed or that "he did the least thing to anybody".

IV. EVIDENCE AND RECOMMENDATIONS:

Wladislaus DOPIERALA

Nationality:	German
Age:	58
Civilian Status:	Minor
Party Status:	None
Military Status:	SS Corporal
Floor:	NO Charge II
Findings:	G Charge II
Sentence:	Death by hanging

Evidence for Prosecution: The accused was an SS corporal assigned as a guard at Gusen I Concentration Camp, near Gusen, Austria, from May 1940 to October 1940 (R 11, 14, 15, 29). Sometime in July or August 1940, a Polish inmate named Nowak escaped from Gusen I Concentration Camp (R 8, 18, 29, 39; P-Ex 6A) and the Camp Commander compelled all Polish inmates to stand on the roll call square for three nights until the escaped inmate was found (R 8, 20, 29, 36, 40, 41, 60, 61). The inmates were lined up on roll call square by blocks (R 9, 20, 25) and forced to make knee bends (R 21, 61). The inmates, Polish nationals, were mostly clergymen, doctors, lawyers, and soldiers (R 18, 49).

Early the first morning the Camp Commander, together with the accused and another SS man, walked through the lines of the Polish inmates stand-

ing on roll call square (R 9, 10, 30, 44). The accused pulled inmates out of ranks (R 20, 22, 30, 44) and beat them with an oxtail whip (R 10, 17, 18, 30, 36; P-Ex 6A). The accused beat inmates while they were standing in ranks (R 20, 36, 44) and also beat them after they were placed on racks (R 16, 17, 20, 30, 31, 36, 44). The accused was present and beat inmates during the three days they stood on roll call square (R 20, 44).

No reasons for beating the inmates were given, but they were told, "all have to die" (R 21, 31). The Camp Commander and his men were drinking during the first morning (R 18, 48; P-Exs 6, 6A), and the Camp Commander was drunk (R 9, 44).

The first morning approximately 140 bodies of dead Polish inmates were piled up on roll call square (R 11, 20, 21, 33, 45). At the end of three days, the bodies were taken to Mauthausen Concentration Camp (R 12, 24, 33). At that time there was no crematory at Gusen I Concentration Camp (R 25, 33, 45). During the three days, 400 Polish priests were killed at the racks as a result of beatings administered with oxtails by the accused and other SS men (R 22, 31).

Lobos, a former inmate of Gusen I Concentration Camp, testified that at the end of July 1940 a Polish inmate named Kowek escaped from camp. On 13 August 1940 all the inmates were forced to stand on roll call square for three days and nights because the escaped inmate could not be found. The inmates were lined up according to blocks in ranks of ten (R 7-9). On the first morning, the protective custody camp leader and all his noncommissioned and commissioned officers came into camp drunk. The camp leader shouted "Get out those Polish pigs. I will show them how to run away". The block leaders and block elders then indiscriminately pulled inmates out of line and beat them. Inmates were brought between blocks 3 and 4, where wooden horses had been placed, and beaten (R 9, 10, 18). The witness saw the accused beating inmates with an oxtail (R 10). After the first night he saw from 120 to 140 corpses laying about four to five meters from the place where the last block stood on roll call square. He also saw inmates lying on the ground, but could

not state whether these inmates were dead (R 11). The corpses were taken by the block eldests to the inmates' hospital. He later saw a vehicle going to Mauthausen Concentration Camp with the corpses. About 130 to 140 inmates were beaten on the racks by the accused (R 12, 16, 17). The inmates were put over the racks where they were beaten until they could not move. The witness could not give the exact number of inmates he saw the accused beat the first night, but these inmates who were brought to the racks and beaten were the ones who died (R 16, 17).

Urbaniak, a former inmate of Gusen I Concentration Camp, testified that when the inmates lined up on roll call square, racks were put up and between 20 and 30 SS men beat the inmates with an oxtail. The accused was one of these SS men. After the first morning he saw over 100 dead bodies laying about five or six meters from where the inmates were standing on roll call square. He saw the accused pull priests out of ranks, ^{were} who/taken to the racks to be beaten. During these three days 400 priests were killed (R 19-23). When the inmates were ordered to stand on roll call square for three days, they were told "You pigs, all have to die". The inmates were forced to make knee bonds and lie down and the accused, at this time, beat them with an oxtail (R 21, 22). The witness was seven to nine meters from the racks when he saw some inmates receive 25 to 70 strokes. All inmates fainted from this beating (R 25, 26). After the inmates were beaten they were hanged up by their wrists on hooks and 15 to 20 minutes later, blood came from their nose and mouth (R 24). The accused spoke Polish and said "Where are those Polish pigs, they all should die" (R 23).

Kovalsky, a former inmate of Gusen I Concentration Camp, testified that during the first night of the Nowek incident, the Camp Commander gave the order for all priests to fall out. The priests were required to bend over a rack where they received a beating with an oxtail whip from camp personnel, including the accused. The first night approximately 68 to 78 priests died. When the accused first arrived, he pulled out five or six inmates from the witnesses' block and beat them with an oxtail. After the victims fell to the ground, the accused kicked them

and yelled "You Polish swine, you should not think Poland will ever rise again". The first night approximately 130 inmates were killed. The area was well illuminated at night and the witness was seven to eight meters away when he saw the accused beat the priests on the racks. During the three nights, 400 priests, members of the Polish intelligensia, were killed. No reasons were given for beating the priests (A 28-33). The witness saw the corpses after the beatings and recognized one as an inmate from his block who had been pulled out of ranks by the accused (A 32). The accused beat more inmates in Gusen I than other SS men (A 29).

Palewske, a former inmate of Gusen I Concentration Camp, testified that he knew the accused for one month and saw him almost every day and recognized him (A 41, 42); that during the Nowak incident he saw the accused beat inmates, who were standing on roll call square, with an extail whip; that he saw the accused beat inmates on the racks; that the victims were mostly Polish clergymen; that he saw, from a distance of seven to ten meters (A 39), one of these clergymen collapse after the accused administered several strokes; and that this clergyman was brought to the block next to the witness' block, and the clerk wrote the victim's number on his chest. This procedure was followed when inmates died. After the first morning the witness saw about 30 dead inmates on roll call square (A 35-38). These 30 inmates died as a result of the beatings they received, and their bodies were taken to Mauthausen Concentration Camp. Nowak escaped on 13 August 1940 and when he was captured, two or three days later, the SS men killed him (A 39, 40).

Odrobny, a former inmate of Gusen I Concentration Camp, testified that during the Nowak incident he saw the accused pull inmates out of the blocks and beat them; that he saw the accused beat inmates on the rack; that one of these inmates, a teacher, Sigmund Lomandowski, died the next day; and that he did not see the teacher's corpse but saw his death report in the clerk's office (A 43, 44, 48). The first night approximately 120 to 140 Polish inmates died from beatings. The bodies were sent to Steyr to be cremated. The first night he witnessed the beatings of the inmates on the racks from a distance of 20 meters. The second night he saw the beatings

this witness also stated in his extrajudicial sworn statement, concerning the Nowak incident, that the accused beat many inmates with an oxtail, and within the next days 120 to 140 inmates of all nationalities died from the injuries (A 16; P-Ex 6).

Defense witness Rinker, a former German inmate of Gusen I Concentration Camp, testified that when Nowak escaped all inmates participated in searching for him. At 2300 hours all German inmates were permitted to go to bed. Nowak being a Pole, all Polish inmates had to stand all night on roll call square. He saw the inmates badly beaten and mistreated while he was on roll call square. He did not see any killings before he went to bed but the next day the inmates talked about killings and deaths (A 60, 61).

Evidence for Defense: The accused testified that he was a disabled miner since 1939 and was still sick (A 53, 55); that the inmate Nowak escaped (A 54); that he searched for the escaped inmate until 2300 hours the first night; that when he returned from the search, he saw the inmates standing on the roll call square (A 54); and that the inmates were treated so strictly because at least 100 men had been involved in the escape (A 54). After returning from the search, the accused went to bed at midnight (A 56). The accused heard that the inmates stood on roll call square until 0430 hours the following morning and that some inmates collapsed (A 54), but he denied that any inmates were standing on roll call square the second and third nights (A 55). The accused further testified that he did not see any dead inmates on roll call square the next or following days (A 54); that he heard that inmates were beaten on racks with oxtails by two block leaders and two capos whose names he did not know (A 54, 55, 56); that he was an SS corporal and never drank with the Camp Commander who was an SS first lieutenant; that he drank wine and beer but was never drunk during August 1940 (A 55), and that the Camp Commander was drunk on several occasions, but he could not state whether the Camp Commander was drunk on the first night when the inmates were beaten (A 56). The accused denied that he beat or killed any inmates (A 56, 59) and testified that "As long as I was in camp I never did the least thing to anybody. I did not slap them in the face or hit them at all" (A 59).

The accused further testified that German inmates also had to stand on the roll call square because German inmates helped Nowak escape; that most of the inmates were Polish (R 57); that Nowak was captured on the evening of the third day (R 54); and that the witnesses were accusing him because they, together with other inmates, smuggled and he had punished seven of them with 25 blows pursuant to orders (R 53, 54).

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

Petitions: No Petitions for Review were filed. A Petition for Clemency was filed by the accused's wife, Marianne Dopierala, 6 November 1947.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

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

A validly constituted court of an independent state derives its power from the state. A state is independent of all other states in the exercise of its judicial power, except where restricted by the law of nations (3. 3. Lotus, France v. Turkey, 2 Hudson World Court Reports 23). Concerning punishment for a crime of the type involved in the instant case, it has been stated that the sovereign power of a state extends "to the punishment of piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed" (Wheaton's "International Law", Sixth Edition, Volume I, page 269). Recognition of this sovereign power is contained in the provision of the Constitution of the United States which confers upon Congress power "to define and punish offenses against the law of nations" (Winthrop, "Military Laws and Precedents", Second Edition, Reprint 1920, page 831).

Any violation of the law of nations encroaches upon and injures the interests of all sovereign states. Whether the power to punish for such crimes will be exercised in a particular case is a matter resting within the discretion of a state. However, it is axiomatic that a state, adhering to the law of war which forms a part of the law of nations, is inter-

ested in the preservation and the enforcement thereof. This is true, irrespective of when or where the crime was committed, the belligerency status of the punishing power, or the nationality of the victims ("Universality of Jurisdiction Over War Crimes," by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pages 177-218; "Law Reports of Trials of War Criminals," by United Nations War Crimes Commission, 1947, hereinafter referred to as "Law Reports," Volume I, pages 41, 42, 43, 103; United States v. Klein, et al., Hadamar Murder Factory Case, opinion DJAWC, February 1946; United States v. Weiss, et al., Dachau Concentration Camp Case, opinion DJAWC, March 1946; United States v. Becker, et al., Flossenburg Concentration Camp Case, opinion DJAWC, May 1947; United States v. Brust, opinion DJAWC, September 1947; and the United States v. Otto, opinion DJAWC, July 1947). A British court sitting in Singapore tried Tomono Shimio of the Japanese army and sentenced him to death by hanging for illegally killing American prisoners of war at Saigon, French Indo-China (Law Reports, Volume II, page 128).

Legal Sufficiency of Charges and Particulars: A question not raised during the course of the trial, but which merits discussion, is whether Charge II and the particulars thereunder are legally sufficient.

Paragraph b, Section 5-323, Title 5, "Legal and Penal Administration" of "Military Government Regulations," published by Office of Military Government for Germany (US), 27 March 1947, requires that each charge disclose one offense only. Charge II in the instant case alleges violation of the laws and usages of war. Regardless of the expression "laws and usages" of war, only one offense is alleged, i.e., a violation of the "law" of war. In the case of *In re Yamashita*, 66 Supreme Court Reporter 340, the charge alleged violation of the "laws of war," yet Mr. Chief Justice Stone, in referring to the charge, used the expression that it alleged "a violation of the law of war" (underscoring supplied). Thus it is clear that the more appropriate expression is "a violation of the law of war."

As to the question of whether Charge II and the particulars thereunder allege more than one offense, inasmuch as more than one illegal act is involved, the following language in the *Yamashita* case, supra, is pertinent:

The Charge. Neither Congressional action nor the military orders constituting the commission authorized it to place petitioner on trial unless the charge preferred against him is of a violation of the law of war. The charge, so far as now relevant, is that petitioner, between October 9, 1944 and September 2, 1945, in the Philippine Islands, while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines; and he . . . thereby violated the laws of war.' "Bills of particulars, filed by the prosecution by order of the commission, allege a series of acts, one hundred and twenty-three in number, committed by members of the forces under petitioner's command during the period mentioned. The first item specifies the execution of 'a deliberate plan and purpose to massacre and exterminate a large part of the civilian population of Batangas Province, and to devastate and destroy public, private and religious property therein, as a result of which more than 25,000 men, women and children, all unarmed noncombatant civilians, were brutally mistreated and killed, without cause or trial, and entire settlements were devastated and destroyed wantonly and without military necessity.' Other items specify acts of violence, cruelty and homicide inflicted upon the civilian population and prisoners of war, acts of wholesale pillage and the wanton destruction of religious monuments."

Another aspect of the question as to legal sufficiency of Charge II and the particulars not raised during the trial is whether the charge and the particulars thereunder are stated with sufficient particularity and definiteness. In the Yamashita case, supra, with respect to the broad allegations involving numerous criminal acts, the Supreme Court stated:

"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, supra, 420. But we conclude that the allegations of the charge, tested by any reasonable standard, adequately alleges a violation of the law of war and that the commission had authority to try and decide the issue which it raised. Cf. Deely v. United States, 152 U. S. 539; Williamson v. United States, 207 U. S. 425, 447; Glasser v. United States, 315 U. S. 60, 66, and cases cited."

It is apparent that the allegations in the instant case specify the criminal acts and identify the time, the place, and the

victims thereof with considerably more particularity than did the allegations in the Yamashita case.

Order Appointing Court.

The Court was appointed by paragraph 5, Special Orders No. 208, 8 October 1947, Headquarters, European Command, as amended by paragraph 7, Special Orders No. 213, 13 October 1947, same headquarters, as shown by copies of the orders bound with the record of trial. However, the record of trial recites that these orders were issued by Headquarters, 7708 War Crimes Group (R 1). It is obvious that the discrepancy is the result of a typographical error.

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

VI. CONCLUSIONS:

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

RICHARD C. HAGAN
Major JAGD
Post Trial Branch

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

G. E. STEWIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes