

DEPUTY JUDGE ADVOCATE'S OFFICE  
7708 WAR CRIMES GROUP  
EUROPEAN COMMAND  
APO 207-1

8 August 1947

UNITED STATES

v.

Stefan FLEISCHER, et al.

Case No. 000-50-2-28

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried jointly at Dachau, Germany, on 10 December 1946, before an Intermediate Military Government Court.

II. CHARGES AND PARTICULARS:

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

PARTICULARS: In that Stefan FLEISCHER, Reinhold Berthold HEINRICH, Willy MACHOLD, Josef MARKER, Anton MARTIN, Jakob MAERZWEILER, Walter Otto MATERN, Johann MATZINGER, Mathias MITHEIS, Theodor MOELLER, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at, or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.

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

PARTICULARS: In that Stefan FLEISCHER, Reinhold Berthold HEINRICH, Willy MACHOLD, Josef MARKER, Anton MARTIN, Jakob MAERZWEILER, Walter Otto MATERN, Johann MATZINGER, Mathias MITHEIS, Theodor MOELLER, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: The prosecution's evidence, wholly documentary in character, establishes the existence of a mass atrocity operation at the Dachau Concentration Camp and certain of its outcamps, criminal in its nature and execution, and the connection of the accused therewith in varying capacities. Prosecution's P-Ex 1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp Case (U.S. v. Weiss et al., 000-50-2, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post; R 10).

IV. EVIDENCE AND RECOMMENDATIONS:

1. STEFAN FLEISCHER

Nationality:	Hungarian (Volkdeutscher)
Age:	37
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Private First Class
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	20 months, commencing 5 May 1945

Evidence for Prosecution: FLEISCHER entered the Waffen SS in October 1943 and was at once assigned as a guard at the Dachau Concentration Camp, where he served until 25 August 1944 (R 12; P-Ex 3).

Evidence for Defense: In an unsworn statement, FLEISCHER testified he was guard on a labor detail working out of Camp Dachau (R 20). The prisoners on this detail varied in numbers and did gardening work at a plantation about one to two kilometers from the camp (R 21, 22). These men appeared healthy and showed no evidence of mistreatment (R 23). After two requests for transfer, accused was sent to the front in Hungary in August 1944 (R 21). He wanted to be with his comrades who were then all going to the front (R 25). He was not connected with any movement of prisoners (R 12; P-Ex 3).

Sufficiency of Evidence: The evidence establishes accused's connection with Camp Dachau over a period of ten months. This was sufficient to put him on notice of the mass atrocity scheme in existence there and its criminal

6. JAKOB MAERZWEILER

Nationality:	Yugoslavian (Volksdeutscher)
Age:	38
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Private First Class
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	2 years, commencing 4 May 1945

Evidence for Prosecution: MAERZWEILER entered the Waffen SS on 4 November 1943 and served as a guard at Camp Dachau from that date until 26 April 1945 (R 16; P-Ex 8).

Evidence for Defense: MAERZWEILER did not take the stand or offer any evidence in defense. He had no connection with the movement of prisoners (R 16; P-Ex 8).

Sufficiency of Evidence: The evidence shows accused was identified with Camp Dachau for a period slightly in excess of one year and five months. This establishes his knowledge of and participation in the wrongful scheme existing there (R 10; P-Ex 1).

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

7. WALTER OTTO MATERN

Nationality:	German
Age:	51
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	20 months, commencing 4 May 1945

Evidence for Prosecution: MATERN's extenuating circumstances were questioned by the

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. REINHOLD BERTHOLD HEINRICH

This accused was acquitted (R 54).

3. WILLY MACHOLD

This accused was acquitted (R 54).

4. JOSEF MARKER

This accused was acquitted (R 54).

5. ANTON MARTIN

Nationality:	Yugoslavian (Volksdeutscher)
Age:	33
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	2 years, commencing 29 April 1946

Evidence for Prosecution: Accused entered the Waffen SS on 27 March 1942.

He became a guard at Camp Dachau on 10 March 1943 and served in that capacity until 26 April 1945 (R 15; P-Ex 7).

Evidence for Defense: MARTIN did not take the stand or offer any evidence in defense. At no time was he connected with the movement of prisoners (R 15; P-Ex 7).

Sufficiency of Evidence: Accused's connection with Camp Dachau as a guard for a period in excess of two years established, in the absence of any rebuttal evidence, his guilty knowledge of the atrocity scheme existing there, and his participation therein (R 10; P-Ex 1).

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

action with no connection with the movement of prisoners (R 17; P-Ex 10).

Sufficiency of Evidence: Although no individual acts of atrocity were proved, the evidence establishes that the accused served at Camp Dachau and aided in the operation for about five months (R 17; P-Ex 10). Hungary was a co-belligerent of Germany.

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

9. MATTHIAS MITHEIS

Nationality:	Czech (Volksdeutscher)
Age:	26
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Private First Class
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	2 years, commencing 1 May 1945

Evidence for Prosecution: Accused entered the Waffen SS on 28 January 1943. He served as a guard at Camp Dachau from 5 June 1943 to 26 April 1945. Of this period he spent eight months in the hospital. He was also a guard on the prisoner march from Camp Dachau to Wolfratshausen on 26 April 1945 (R 17; P-Ex 11).

Evidence for Defense: MITHEIS did not take the stand nor offer any evidence in defense.

Sufficiency of Evidence: The prosecution's evidence established that MITHEIS was on active duty for a period of approximately 14 months at Camp Dachau (R 10; P-Ex 1).

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

10. THEODOR MOELLER

Charges as to this accused were withdrawn during the course of the

he entered the Waffen SS on 1 September 1944. He served as a driver at outcamp Allach from that date until 4 May 1945 (R 16; P-Ex 9).

Evidence for Defense: The accused did not take the stand or offer any evidence in defense. He was not connected with any movement of prisoners (R 16; P-Ex 9).

Sufficiency of Evidence: Although the accused ostensibly participated, his participation may have been extremely remote and his duties as a driver, all performed at a point not only outside outcamp Allach but at a point far removed therefrom, with the results of his efforts merely indirectly aiding in the operation. Therefore, there is insufficient information to serve as a gauge for the Court in determining the appropriate sentence to be imposed.

The findings of guilty are not warranted by the evidence.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be disapproved.

8. JOHANN MATZINGER (The surname actually spelled METZINGER, R 17; P-Ex 10)

Nationality: Hungarian (Volksdeutscher)

Age: 30

Civilian Status: Unknown

Party Status: Unknown

Military Status: SS Private First Class

Plea: NG Charge I; NG Charge II

Findings: G Charge I; G Charge II

Sentence: 18 months, commencing 28 April 1945

Evidence for Prosecution: The accused entered the Waffen SS in April 1942 and on 15 March 1943 was assigned at Camp Dachau. He was employed there in the Canteen Administration Main Office as a clerk and sentry from 15 March 1943 to August 1943, at which time he was transferred to the Plansee (Tyrol) outcamp, where he served until April 1945. At this latter post he acted as a driver for supply and mail (R 17; P-Ex 10).

Evidence for Defense: Accused did not take the stand but offered a letter signed by one V. Bourget, which stated that METZINGER, over a period of about two years, had treated the internees at Plansee well and had also served as their

## V. QUESTIONS OF LAW:

Jurisdiction: A question not raised during the course of the trial merits discussion, viz., did the Court have jurisdiction of the persons of the accused who are allegedly nationals of other United Nations. Anton MARTIN and Jakob MAERZWEILER were nationals of Yugoslavia and Mathias MITHEIS was a national of Czechoslovakia. War criminals, brigands, and pirates are the common enemies of all mankind and all nations have an equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated in "Wheaton's International Law", Volume I, Sixth Edition, at page 269. that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed." Nationals of other United Nations were sentenced, which sentences have been approved and carried into execution, in the Mauthausen Concentration Camp case (United States v. Altfuldisch, et al., February 1947), and in the Belsen Concentration Camp case, British Army of the Rhine, December 1945. Apparently, all concerned with the reviews and approvals in those cases considered the universality of jurisdiction over war crimes to be so well recognized that discussion was not necessary. Military Government Courts have jurisdiction over the nationals of any country who are in the United States Zone of Occupation, except as to certain classes of American and other nationals, e.g., military personnel, which are not pertinent to the jurisdictional question here involved. Concerning jurisdiction over war crimes, no limitation is imposed (See Sections 5-300.2 and 5-300.3, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, US Forces, European Theater 30 November 1945).

Concerning the general question of universality of jurisdiction over war crimes see "Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pp 177-218.

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

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 it

icipants 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 # 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 the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceeding, 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.

As to accused MATERN, there is insufficient evidence to serve as a basis for imposing sentence. (See discussion under Sufficiency of Evidence, page 5, supra).

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

#### VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved except as to the accused Walter Otto MATERN, and that as to him the findings and sentence be disapproved.

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

/s/ ANTHONY J. ALBERT  
ANTHONY J. ALBERT  
Attorney  
Post Trial Branch

Having examined the record of trial, I concur, this 18th day of September 1947.

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