

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
AFO 178

26 June 1947

UNITED STATES)

v.)

Wilhelm EBERHARDT, et al.)

Case No. 000-50-2-31

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 13 - 16 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 Wilhelm EBERHARDT, Nikolaus HEIDECKER, Edmund KRIESE, Josef KRITZER, Rolf KURZ, Arno MEIER, Michael MITSCH, Rudolf MOHR, Ferdinand MUCK, Johann MUELLER, 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 Wilhelm EBERHARDT, Nikolaus HEIDECKER, Edmund KRIESE, Josef KRITZER, Rolf KURZ, Arno MEIER, Michael MITSCH, Rudolf MOHR, Ferdinand MUCK, Johann MUELLER, 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 convicted accused were, by their own admissions, members of the SS at Camp Dachau and/or its outcamps for considerable periods of time between the dates alleged, and were shown to have participated in the Dachau Concentration Camp mass atrocity. Prosecution's Exhibit 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., OOO-50-2, March 1946, hereinafter referred to as the "Parent Case"; see par. V, post; R 11).

IV. EVIDENCE AND RECOMMENDATIONS:

1. WILHELM EBERHARDT

This accused was acquitted (R 124).

2. NICOLAUS HEIDECKER

Nationality:	Roumanian (Volksdeutscher)
Age:	28
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Corporal
Plea:	NG first charge; NG second charge
Findings:	C first charge; C second charge
Sentence:	Confinement 21 months from 3 May 1945

Evidence for Prosecution: Accused was a guard at Camp Dachau from May 1942 to 2 February 1943 and at outdetail Feldafing February 1943 to 26 April 1945 (R 13; P-Ex 3). He admitted that he heard of punishment, saw some prisoners punished physically, and knew of the crematory at Camp Dachau (R 81). At outdetail Feldafing there were 100 to 110 prisoners under 11 guards constructing a school (R 53).

Evidence for Defense: HEIDECKER testified to the effect he did not participate in any beatings, executions or mistreatment of prisoners during his tour as guard at Camp Dachau or at outdetail Feldafing; that his duties as guard did not take him inside the prison confinement area. He joined the Waffen SS in order to play in the band, and did so until he was transferred to a hospital corps. Later, he was wounded and declared unfit for combat duty and sent to the concentration camp as guard. Being unfit for combat duty he was unsuccessful in an attempt to transfer out of concentration camp duty (R 75, 76). Defense witness Renlinger testified he was a guard at outdetail Feldafing at the time accused was there and that so far as he knew there was no mistreatment of prisoners at outdetail Feldafing by any guards, including HEIDECKER. Witness Gelse corroborated the testimony of Renlinger (R 52-55).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive. Rumania was an ally of Germany.

Petitions: Defense counsel Frank E. Morse, Captain, Inf., filed a Petition for Review on 24 December 1946. There are no Petitions for Clemency.

Recommendation: That the findings and sentence be approved.

3. EDMUND KRIESE

The name of this accused was apparently withdrawn from the charge sheet as it does not appear he was before the Court.

4. JOSEF BRITZER

This accused was acquitted (R 124).

5. ROLF LURZ

A nolle prosequi was entered in favor of this accused (R 21).

6. ARNO WEIER

Nationality:	German
Age:	39
Civilian Status:	Unknown
Party Status:	Allgemeine SS, 1933
Military Status:	Waffen SS, Corporal
Flea:	WG first charge; NG second charge
Findings:	G first charge; G second charge
Sentence:	Confinement 2 years from 5 May 1945

Evidence for Prosecution: Accused was a guard at Camp Dachau from 18 June 1941 to November 1942 and at outcamp Bayrisca Zell November 1942 to February 1943 (R 45; P-Ex 6). He testified his duties at Camp Dachau were those of detail guard of prisoners from the compound gate to the place of their work. The number of prisoners varied from eight to fifty. At outcamp Bayrisca Zell he was one of several SS corporals under a T/Sergeant detail leader (R 47, 48).

Evidence for Defense: WEIER testified he tried to get released from concentration camp duty for front line duty without success until January 1943, when he was transferred to Berlin (R 45). He denied ever beating or mistreating any prisoners (R 47). He also denied having seen mistreatment or executions at Camp Dachau or knowing about them (R 49). As a guard he never had an occasion to shoot a prisoner (R 51). Defense witness Panitz, guard company commander of the accused at Camp Dachau, testified WEIER never beat or mistreated any prisoners or participated in transport of prisoners (R 32, 33). Witness Schreiner testified to the effect that he and accused were in the same guard company at Camp Dachau and that he knew of no mistreatment of prisoners by WEIER. He saw WEIER in Berlin in February 1943 and at that time WEIER was with a motorized replacement battalion (R 42-44).

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

Petitions: Defense counsel Frank E. Morse, Captain, Inf., filed Petition for Review on 24 December 1946. There are no Petitions for leniency.

Recommendation: That the findings and sentence be approved.

7. MICHAEL WITSCHE

This accused was acquitted (R 124).

8. RUDOLF MOHR

This accused was acquitted (R 124).

9. FERDINAND MUCK

Nationality:	Czechoslovakian (Volksdeutscher)
Age:	39
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Pfc.
Plea:	NG first charge; NG second charge
Findings:	G first charge; G second charge
Sentence:	Confinement 21 months from 9 May 1945

Evidence for Prosecution: Accused was a guard at Camp Dachau from 28 January 1943 to 22 March 1944; at outcamp Friedrichshafen 22 March 1944 to 15 June 1944; and at Camp Dachau 13 June 1944 to 25 August 1944 (R 18; D-Ex 9). He testified to the effect he underwent three months' guard training upon arriving at Camp Dachau and when completed, served as an escort and tower guard on various details, including the plantation, the power house and the towers (R 111). He knew of the crematory and that it was used extensively (R 113). Cross examination of defense witness Tirschnel developed the fact that the guard details on which he and the accused had duty included the clothing factory, the power house and other details (R 65). Cross-examination of defense witness Boos brought out the fact Boos' men guarded all the details, including the plantation and the main gate where prisoners were selected for details (R 66).

Evidence for Defense: MUCK testified he had no other duties at Camp Dachau or Friedrienshafen than that of guard, and as guard he was never inside the prison compound (R 109). Once, in 1943, he requested a release from the Waffen SS in order to be discharged, but never received an answer. In 1944 he was sent to the front lines (R 110). While on tower guard duty he never heard any shooting in the compound or cries from prisoners in the power house (R 112). Defense witness Rabel testified he came to Camp Dachau with the accused and was a guard for a while. Later, he was a clerk in the office. He never saw MUCK mistreat any prisoners (R 60, 61). Witness Tirschnel testified that so far as he knew, accused was never inside the enclosure where prisoners were kept and never saw him mistreat any prisoner or heard that he did (R 63, 64). Witness Boos testified to the effect he was acting First Sergeant of MUCK's company and that he never heard anything bad about him; that he never knew or heard of MUCK mistreating prisoners. He would have heard of such action had it happened, as a report would have been made by the control. If MUCK had reported prisoners he would have known about it. No prisoners were beaten or mistreated by members of his company as long as he was acting First Sergeant, from 1941 to the capitulation (R 66-68).

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

Petitions: Defense counsel Frank E. Morse, Captain, Inf., filed a Petition for Review on 24 December 1946. There are no Petitions for Clemency.

Recommendation: That the findings and sentence be approved.

10. JOHANN MUELLER

This accused was acquitted (R 124).

V. QUESTIONS OF LAW:

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

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 proceeding, in concluding as to them that they not only participated to a substantial degree but that the nature and extent of their participation was such as to warrant the sentences imposed.

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

/s/ Louie T. Fischer
LOUIE T. FISCHER
Attorney
Post Trial Branch

Having examined the record of trial, I concur.

/s/ C. E. Straight
C. E. STRAIGHT

LEGAL FORM NO. 16
HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
26 Aug 1947

SUBJECT: Execution of Sentence in the Case of the United States vs.
Wilhelm EBERHARDT, et al. (Case No. 000-50-2-31).

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO,
subject: "Designation of Prisons for War Criminals," 26 February 1947
and to the inclosed copies of the Order on Review in the above entitled
case as to accused Arno MEIER.

Upon compliance with the Order on Review the certificate be-
low will be completed and returned to the Deputy Judge Advocate for
War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review
was carried into execution at War Criminal Prison No. 1, Landsberg,
Germany, on _____ 1947, at _____
(Date) (Hour)

Prisoner MEIER, Arno has been
released from confinement in
Landsberg War Crimes Prison
No. 1 on 4 May 1947 on ex-
piration of sentence.

/s/ George T. Lagish
(Signature and Rank)
GEORGE T. LAGISH, Maj. Inf.
Prison Officer

(Organization)