

2 July 1947

UNITED STATES)

v.)

Josef DEINER.)

Case No. 000-50-2-73

REVIEW AND RECOMMENDATIONS

I. FACTS: The accused was tried at Dachau, Germany, during the period 4 - 6 March 1947 before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

PARTICULARS: In that Josef DEINER, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual (A) aiding in 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, willfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, 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 German Reich in exercise of belligerent control.

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

PARTICULARS: In that Josef DEINER, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual (A) aiding in 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, willfully, deliberately and wrongfully encourage, aid, abet and 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, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: Accused DEINER was sent to Dachau Concentration Camp from headquarters in Berlin in 1933, when the first prisoners came to Camp Dachau. During the period January 1942 to May 1945 he was in SS First Lieutenant in charge of the carpenter shop, the machine shop and lumber yard of the DAW (German Equipment Works), where several hundred inmates of various nationalities worked. He was an habitual beater and was directly responsible for the death of one Polish youth and two Polish workers who were accused of sabotage in the plant, in addition to other tortures and beatings resulting in permanent injuries to inmates as a result of punishment reports turned in against them for minor infractions. He escaped from Camp Dachau just before its capitulation, did not report himself to American authorities as directed, and was apprehended and interned 6 January 1947. Prosecution's P-Ex 1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp Case (United States v. Weiss et al., 000-50-2, March 1946, hereinafter referred to as the "Parent Case"; R 96).

IV. EVIDENCE AND RECOMMENDATIONS:

JOSEF DEINER

Nationality:	German
Age:	62
Civilian Status:	Unknown
Party Status:	NSDAP, 1931; Allgemeine SS, 1934
Military Status:	SS First Lieutenant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	Death by hanging

Evidence for Prosecution: Accused DEINER, SS First Lieutenant, was manager of the carpenter shop of the DAW (German Equipment Works) during the period January 1942 until the capitulation. There were a few hundred prisoners of various nationalities working there (R III; P-Ex 2, pp 1, 2). He, as manager of the carpenter shop, wrote punishment reports on prisoners when instructed to do so by the

factory manager, Schulz, Otto (sentenced to death in the Parent Case and commuted to 20 years imprisonment), and also on his own initiative. Prisoners worked ten hours a day and sometimes on Sundays. Extra rations were taken away from the prisoners whose work was not satisfactory to the shop foreman and to DEINER (R 111; P-Ex 2, p 9). The carpenter shop made 300 to 400 coffins in 1942 and 20 to 40 were kept on hand for use as the occasion arose (R 111; P-Ex 2, p 8). The prosecution called 13 witnesses against DEINER who testified in effect as follows: He hit one prisoner in the face three or four times with a pair of shoes which the prisoner was repairing for DEINER's wife, because they had not been cleaned (R 6-8). DEINER slapped prisoners in the face and kicked them in the stomach and, on two occasions, beat one prisoner into unconsciousness. All reports for punishment were made out by the SS men and went through DEINER's hands as shop manager. Punishments meted out by DEINER consisted of hanging for an hour on the beam with the prisoner's hands tied to his back; 25 blows or up to 42 days in the bunker. Food while in the bunker consisted of one-third of a loaf of German bread per day and one warm meal every fourth day (R 13-15). A Polish officer was beaten in the latrine by DEINER for smoking. Later, the officer was put on a transport to another camp, possibly Lublin, and from prisoners who came to Camp Dachau from there it was learned the officer had died (R 22, 23). DEINER poured cold water on one prisoner from the skylight of the latrine, then came down and beat the prisoner into unconsciousness. Upon requesting permission to go to the dispensary for treatment, he was refused and beaten again by DEINER (R 28). The brother of one witness was kicked and punished by DEINER and is now 90 percent disabled as a result, having spent six months in a hospital, receiving three blood transfusions (R 44). DEINER was known by the prisoners as the "raw blood". Hardly a day passed that beatings and injuries did not take place (R 54). DEINER hit a Pole over the head with a board, and three days

received thereby (R 62-64). On one occasion DEINER threw 23 punishment reports on the desk of his clerk in one day. Punishment reports were sent in on prisoners for short stoppages of work by prisoners, resulting in their receiving 25 blows across the wooden horse. Whenever these blows were given higher than the buttocks, in the region of the kidneys, the body would swell and three or four days later the prisoner died. The report of death of a prisoner came back from the labor commitment leader for the clerk's file (R 70). In October or November 1942 two Poles were hanged for sabotage because they stopped their machines which broke down (R 71). DEINER threw food on the floor which the prisoners cooked on the stove, and if anyone was near he hit them with a wooden plank (R 94)

Evidence for Defense: Accused DEINER testified to the effect he had an average of 200 prisoners working in the carpenter shop and that these prisoners spoiled considerable work intentionally and through carelessness (R 100). Permission was granted for food to be cooked on the glue ovens by he had ordered it to be done in a certain manner. This rule was violated and eight to ten men would gather around the stoves, causing the work to slow down and resulted in trouble with the work management. DEINER went there and beat them away, occasionally spilling one of the buckets. It would have been impossible to write 23 punishment reports in one day (R 101, 102). In addition to carelessness and sabotage, there was always trouble between the criminal prisoners and the political prisoners, each spoiling the work of the other in order to make it appear the latter was guilty (R 103). DEINER testified he had trouble with one prisoner, prosecution witness Slawinski, because of his lies and overbearing conduct. Slawinski wanted to tell the foreman what to do. DEINER admitted hitting him with his hands one time but denied kicking him (R 105). At a confrontation of one prosecution witness with DEINER, the witness admitted sabotaging his machine, yet DEINER did not report him for sabotage (R 105). While accused was an officer of the SS, he was a technical leader employed by the DAW Works and

nothing to do with the Dachau Concentration Camp and its operation except to use the workers sent him by the camp administration. He could not refuse to take these workers but could ask the work management for an exchange. He never exercised this right (A. 107-109). He had no authority to send any prisoners on a transport as that was done by the works manager (A. 116). It was stipulated between the prosecution and the defense that if one Ewart Tunig were present he would testify to the effect that to his knowledge any punishment inflicted by DEINER did not cause obvious or permanent injury to any prisoner, and that to his knowledge DEINER made few reports; and that if one Joseph Mayer, a former political prisoner now in Austria, were present he would testify to the effect he served under DEINER as clerk in the office, 1939 to 1944, that DEINER treated him well, that he obtained extra food rations for the carpenter shop, that there was considerable spoilage of lumber caused by carelessness and intentional sabotage, and that DEINER suppressed many reports he could have made as a result, and that on occasions when DEINER struck prisoners a report could have been made instead, and that to his knowledge no serious injury resulted to any prisoners (A. 127, 128).

Sufficiency of Evidence: The evidence against DEINER clearly indicates that his sadism, coupled with brutality, was an outstanding example of the motivating force in the common design to subject prisoners to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities at Dachau Concentration Camp.

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

Petitions: A Petition for review dated 12 March 1947 was filed by Donald J. Ross, defense attorney. There are no Petitions for Clemency.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the person 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, beating, tortures, ect., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases," 14 October 1946, and the Parent Case). The accused was shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or this subsequent proceeding, in concluding that he not only participated to a substantial degree but that the nature and extent of his participation was such as to warrant the sentence 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 the sentence 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
/t/ LOUIE T. FISCHER
Attorney
Post Trial Branch

Having examined the record of trial, I concur.

/s/ C.E. Straight
/t/ C.E. STRAIGHT
Lieutenant Colonel, JAGD (12 Sept 1947)
Deputy Judge Advocate