

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

5 November 1947

UNITED STATES)

v.)

Case No. 000-50-2-87

Nikolaus FIEDLER, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 22-23 May 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Nikolaus FIEDLER, Karl KIEFFER, Max LENGFELDER, Josef MUELLER, Kurt RAUCH acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) 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 Nikolaus FIEDLER, Karl KIEFFER, Max LENGFELDER, Josef MUELLER, Kurt RAUCH acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) 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.

(Surname of MUELLER actually spelled MÜLLER, R 10; P-Ex 6.)

III. SUMMARY OF EVIDENCE: During portions of the period alleged, all of the accused served as noncommissioned officers of the Waffen SS at Dachau Concentration Camp. All of them held relatively important assignments within the camp and individual atrocities were shown to have been committed by each. Prosecution's P-Ex 2 (R 8) is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp case (United States v. Weiss, et al., OOO-50-2, opinion DJAWC, March 1946, hereinafter referred to as the "Parent Case", see Section V, post).

Not much weight has been given to the testimony of Karl Kraemer.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Nikolaus FIEDLER

Nationality:	German
Age:	41
Civilian Status:	Tailor
Party Status:	NSDAP
Military Status:	Waffen SS, Master Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	5 years, commencing 12 July 1945

Evidence for Prosecution: The accused joined the Allgemeine SS in 1933 and transferred to the Waffen SS the same year and began a tour of duty at Dachau Concentration Camp which lasted until December 1942. From 1934 until November 1942 he was in charge of the supply room, and then served for about one month as a block leader (R 29, R 8; P-Ex 3A). Witness Finsterwalder, a former inmate, testified that in 1942 the accused severely beat a sick inmate who was slow in coming to attention and removing his hat when the accused entered the dispensary waiting room. Finsterwalder further testified that the accused took part in executions (R 29, 30). Witness Muth, a former inmate, testified that

the accused was known as a beater (R 87). The accused, in sworn testimony admitted his long period of service at Camp Dachau, and that he often 'fussed' at the inmates (R 89-94).

Witness Kraemer, a former inmate, testified that the accused reported inmates who thereafter received the "25 lashes" and that the accused received the war merit cross for participating in executions (R 33-35).

Evidence for Defense: Witness Schwenger, a former capo of barbers at Camp Dachau, testified that the accused was always correct and decent, and that he was considered one of the two best men in camp and that he frequently procured extra food for the inmates (R 44, 45). Anna Fiedler, wife of the accused, testified that the accused received the war merit cross from his former division and not from Camp Dachau (R 48). Witness Crewal, a former inmate, testified that the accused assisted inmates in obtaining food, clothing, and medical attention (R 60). In his testimony, the accused denied mistreating prisoners, or that he ever saw any atrocities committed at Camp Dachau (R 89-95).

Sufficiency of Evidence: 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. Karl KIEPFER

Nationality:	German
Age:	41
Civilian Status:	Unknown
Party Status:	NSDAP
Military Status:	Waffen SS, Master Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	3 years, commencing 7 May 1945

Evidence for Prosecution: The accused joined the Allgemeine SS in 1933 and transferred to the Waffen SS in 1938. In February 1939 he was assigned to Dachau Concentration Camp, where he served as a clerk and detail leader until May 1944 (R 9, P-Ex 4A). The accused, in his testimony, admitted his service at Camp Dachau and that he took part in one inmate transport (R 100-105).

Witness Kraemer, a former inmate, testified that in 1942 the accused reported prisoners who were later punished by being given "25 lashes", hung by the wrists from poles, or other cruel treatment; that he took part in executions; and that he received the war merit cross for his service at Camp Dachau (R 35).

Evidence for Defense: Witness Blum testified that he never saw the accused beat inmates and that the accused had nothing to do with Gestapo dogs (R 96, 97). The accused testified to the effect that he was only a guard at the rifle range, and denied that he ever came in contact with inmates at Camp Dachau. Although he admitted having been on an inmate transport he claimed that he rode in a separate car, that he had nothing to do with inmates, and that he never saw them mistreated (R 100-105).

Sufficiency of Evidence: 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.

3. Max LENGFELDER

Nationality:	German
Age:	34
Civilian Status:	Unknown
Party Status:	NSDAP since 1934
Military Status:	Waffen SS, Technical Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence :	6 years, commencing

Evidence for Prosecution: The accused joined the Allgemeine SS in January 1932 and the Waffen SS in October 1934. From September 1933 until February 1943 he was on duty with troops and served as a guard at the Dachau Concentration Camp (R 10, P-Ex 5A). The connection of the accused with Kick (sentenced to death in the Parent Case) was testified to by former inmate Weichhart (R 71-74). In his testimony the accused admitted his service at Camp Dachau and that he assisted in the loading of coffins after two executions in 1942 (R 106, 107).

Witness Kraemer, a former inmate, testified that at the beginning of 1942 the accused helped select inmates for transfer to extermination camps and that he beat and otherwise mistreated the inmates; that the accused attended executions; that the accused was an assistant to Kick, chief of the political department, and that the accused committed extreme cruelties against Russian, Polish and French inmates while working with Kick (R 36-39).

Evidence for Defense: Witness Weichhart, a former inmate, testified that the accused was one of the decent ones in camp (R 72). The accused testified that he never took part in the interrogation of inmates; that he never assisted in making up inmate transports; that he never did any shooting at executions and that the recreation trip he took to Italy was not a reward for taking part in executions (R 106-112).

Sufficiency of Evidence: 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.

4. Josef MULLER

Nationality:	German
Age:	39
Civilian Status:	Unknown

Party Status:	NSDAP
Military Status:	Waffen SS, Master Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	3 years, commencing 29 April 1945

Evidence for Prosecution: The accused stated in his extra-judicial sworn statement that he joined the Allgemeine SS in March 1932 and transferred to the Waffen SS in September 1933. In November 1934 he was assigned to the "technical branch" at Dachau Concentration Camp (R 10; P-Ex 6A). Witness Riener, a former inmate, testified that during executions in the spring of 1942 the prisoners were led from the security workshops (repair shops) into the main camp. The accused was chief of the security workshops (R 26). Witness Muth, a former inmate, testified that he heard that the accused was a beater (R 88). The accused testified that he served at Camp Dachau and that on three occasions he helped put bodies in coffins and load them on trucks after executions (R 116, 119).

Witness Kraemer, a former inmate, testified that the accused took part in the shootings of Russian prisoners of war and that he received the war merit cross (R 39).

Evidence for Defense: Witness Kiermaier, a former inmate, testified that the accused treated inmates decently and correctly, and that he gave them a free hand to do washing and cooking in the workshop (R 52). Witness Gottinger, a former inmate, testified that the accused always behaved correctly toward inmates and that he suppressed punishment reports (R 53, 54). The accused testified to the effect that he objected to taking any part in executions. He was told that those executed were partisans sentenced to death by the supreme Court of the Reich (R 116-119).

Sufficiency of Evidence: 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.

5. Kurt RAUCH

Nationality:	German
Age:	39
Civilian Status:	Unknown
Party Status:	NSDAP
Military Status:	Waffen SS, Technical Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	3 years, commencing 7 May 1945

Evidence for Prosecution: The accused joined the Allgemeine SS in 1932 and in 1933 transferred to the Waffen SS, being assigned to Dachau Concentration Camp at that time where he served as messenger, clerk, orderly, courier, and telephone operator until July 1938. In July 1938 he became a foreman in the security workshop and remained in that position until July 1943 (R 11; P-Ex 74). Witness Riemer, a former German inmate, testified that in 1942 he saw the accused severely beat four Jewish inmates (R 25). In his testimony, accused admitted his service at Camp Dachau (R 124).

Witness Kraemer, a former inmate, testified that in 1942 the accused took part in the shootings of Russians and that he also wore the meritorious service cross (R 39).

Evidence for Defense: Witness Riemer testified that the accused was a sick man from 1941 on, and that he spent very little time in the camp after that date (R 25, 26). Witness Kiermaier, a former inmate, testified that he never saw the accused mistreat anybody (R 52). Witness Gmehling, a former inmate, testified that in 1944 the accused arranged a secret meeting between the witness and the witness's wife, and that the accused sometimes

obtained additional food for the inmates (R 56,57). Witness Dora Rauch, wife of the accused, testified that the accused was bed-ridden for about one year beginning in December 1941 and that his physical condition had some effect on his nerves (R 62-65) (corroborated R 80, 81). The accused denied that he took part in shootings at the rifle range between the dates alleged, or that he ever received the war merit cross. He further denied beating prisoners or that he ever saw prisoners being beaten (R 124-126).

Sufficiency of Evidence: 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.

V. QUESTIONS OF LAW:

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

Absence of Accused RAUCH: The accused RAUCH was absent during part of the proceedings, not an entire day, (R 68-121). His counsel was present throughout the trial. No evidence was offered against him during his absence. Under these circumstances no injustice resulted to the accused.

Service of Charges on Accused KIEFFER: There is no certificate of service of charges on accused KIEFFER in the record, which absence may be assignable to a mere failure to incorporate the certificate in the record. Upon examination by the President of the Court, this accused stated that he had been served prior to trial (R 6). The defense counsel was appointed 7 May 1947 and the trial not begun until 22 May 1947, indicating ample time to prepare a defense to the charges. Neither the accused nor counsel asserted that additional time to prepare a defense was needed and this accused stated specifically that he was ready for the

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). The 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 not only participated to a substantial degree, but that the nature and extent of their participation were 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 the sentences be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

GEORGE M. LENTZ
Captain, JAGD
Post Trial Branch

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

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