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

27 February 1948

UNITED STATES)

v.)

Otto KRAUSE)

Case No. 000-Buchenwald-42

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, 20 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 Otto KRAUSE, a German national, did, at or in the vicinity of Weimar, Germany, in or about August 1944, wrongfully encourage, aid, abet and participate in the killing of an unknown non-German national, an inmate of Buchenwald Concentration Camp, who was then in the custody of the then German Reich.

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

Particulars: In that Otto KRAUSE, a German national, did, at or in the vicinity of Weimar, Germany, in or about June 1944, wrongfully encourage, aid, abet and participate in committing an assault upon approximately three unknown non-German nationals, inmates of Buchenwald Concentration Camp, who were then in the custody of the then German Reich.

(The particulars of Charge I were amended in Court to delete therefrom the words "the killing of" and to substitute therefor the words "committing an assault upon", R 5).

(The particulars of Charge II were amended in Court to delete therefrom the word "June" and to substitute therefor the word "September", R 2).

III. SUMMARY OF EVIDENCE: In August 1944, the accused who was an SS technical sergeant at Magdeburg, a subcamp of Buchenwald Concentration Camp, assaulted a Jewish inmate by beating him with his fist about the face. The Jewish inmate died and his body was taken to the bunker where bodies were piled up awaiting cremation.

In September 1944, the accused assaulted three Jewish inmates by beating two of them with his fists and kicking them and by employing a dog to injure the third.

IV. EVIDENCE AND RECOMMENDATIONS:

Otto KLAUSE

Nationality:	German
Age:	43
Civilian Status:	Bricklayer
Party Status:	Member of the Nazi Party
Military Status:	SS Sergeant
Flea:	G Charge I; G Charge II
Findings:	G Charge I; G Charge II
Sentence:	10 years, commencing 29 April 1945

Evidence for Prosecution: Glueck stated in a sworn extrajudicial statement in support of Charge I that at subcamp Magdeburg, which was located near Weimar, Germany, in August 1944, after the inmates had returned to the roll call square after work, they were ordered to remove and replace their caps repeatedly because they had not done it properly. An exhausted Jewish inmate who was standing in formation two rows ahead of the witness could not keep up with the other inmates. The accused saw him and beat him several times about the head with his fist. The inmate fell down and died. After roll call the body was taken to the bunker where bodies were piled awaiting cremation (A 9; P-Ex 6).

In support of Charge II Glueck stated that at subcamp Magdeburg in September 1944 a Jewish inmate left his place of work to pick up some apples from a nearby orchard. He did not return in time and was reported missing. About two hours later, while the inmates were in formation, the accused and two other SS non-commissioned officers brought the inmate back to camp. He was almost dragged by a dog, followed by the SS men. They placed the inmate on top of the bunker and set the dog on him for about a half hour. The inmate's clothing was torn to pieces, he was all covered with blood and screamed loudly with pain. The camp leader announced that everybody who tried to escape would receive the same treatment. The next day the accused was seen in the washroom by the witness pouring water from a hose on the same inmate. Shortly after the accused came out and when the witness entered the washroom, the inmate was lying

on the floor dead. Two prisoners carried the body to the morgue (R 9; P-Ex 6).

In connection with Charge II Herschkowitz stated in a sworn extrajudicial statement that one morning in August 1944, his friend, whose legs were badly swollen from malnutrition, appeared for roll call with his legs wrapped in pieces of blanket; and that the accused upon seeing this, yelled at him, "Damn you, you dirty Jew, you destroyed a blanket!". The accused then beat him with his fist several times and when he fell, kicked him a few times with his boots. The inmate bled from his nose and mouth and was taken to the dispensary. Three days later the witness was informed by the inmate doctor that the assaulted inmate had died. In September 1944, when the witness was in the dispensary, as a result of having stepped on a sharp piece of iron which injured his foot, the accused met him while he was on his way to the toilet. The accused called the inmate doctor and asked him why the witness was still in the dispensary. The doctor said he was unfit for work. The accused then hit the witness several times on the face with his fist, knocked out two of his teeth, and when he fell down, kicked him several times (R 10; P-Ex 7).

The accused entered a plea of guilty as to each of Charges I and II as amended (R 8).

Evidence for Defense: The prosecution, defense and accused stipulated to certain facts which were offered to the Court by the accused in mitigation (R 12).

It was stipulated that after being wounded in combat the accused was sent to Camp Buchenwald 23 January 1942 and served as a guard at subcamp Magdeburg. His duty included maintenance of discipline among the Hungarian Jews confined there, and he occasionally beat inmates to curtail stealing which might have resulted in the death by starvation or exposure of the weaker inmates. In September 1944, the accused aided the camp eldest, one Walter Duda, of subcamp Magdeburg to escape. He was arrested for that on 3 October 1944, tried by an SS and Police Court at Kassel and sentenced to serve seven years and two months at Dachau Concentration Camp, where he was held at the time of liberation of the camp by the Americans.

It was further stipulated that if former subcamp Magdeburg inmate Emil Ackermann were present he would testify that the accused always treated the inmates properly. He made it possible for them to have visits from relatives. If Fritz Bueschel, former civilian freight yard worker in the vicinity of Weimar were present, he would testify that he observed the accused with inmates at the freight yards and he always treated them in a decent manner. Several times the accused gave him money and food ration tickets to buy bread for the inmates, and he saw him distribute it to them (at 12, 13).

Sufficiency of Evidence: Sufficient evidence was adduced by the prosecution to substantiate the charges and to support the Court's acceptance of the accused's plea of guilty.

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:

Universality of War Crimes Jurisdiction: The particulars under Charges I and II, as amended, alleged that the accused participated in committing assaults upon non-German nationals. In so far as the evidence adduced is concerned it may be that they were nationals of countries which were co-belligerents of Germany, since it was only shown that they were Jewish and no nationality was indicated. Although not raised during the trial, the question arises as to whether the Court would have had jurisdiction if the victims were in fact nationals of a country which was at the time a co-belligerent of Germany.

International law is comprised of that body of rules and principles which govern the conduct of nations in their relations and intercourse with each other. The law of war constitutes a portion of that body of law. A violation of the law of war is a war crime. For an illegal act to be a war crime certain elements must be present, viz., (1) the act must be a

crime in violation of international law; (2) there must be disparity of nationality between the perpetrator and the victim; and (3) the criminal act must have been committed as an incident of war.

It is obvious that in view of the disparity of nationality of the accused and the victims, that an international crime was involved. Whether this violation of international law constitutes a war crime depends upon whether the crime was committed as an incident of war. The particular re allege that the victims were inmates of Buchenwald Concentration Camp, and the evidence establishes that as such they were being used as slave labor at subcamp Mauthausen in the operation of a plant engaged in the production of synthetic gasoline. It is clear that the slave labor program formed a part of the Nazi concept of waging total war, that the production of synthetic gasoline to be used in carrying on the war was an incident of war, and that the crime involved was an incident of war and, hence, a war crime ("International Military Tribunal, Nuremberg", Volume I, pages 232-236).

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 (S.S. 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 interested 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., Madamar 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., Flossen-burg Concentration Camp Case, opinion DJAWC, May 1947; United States v. Brust, opinion DJAWC, September 1947; and 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).

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

Amendment of Charges: Section 501, page 409, of the "Manual for Trial of War Crimes and Related Cases", 15 July 1946 and Section 5-330, Change I to Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947, provide in part as follows: "A Military Government Court may amend a charge at any time before finding, provided that an adjournment is granted if necessary, and that no injustice is done to the accused."

The amendments to the charges (A 5) were obviously advantageous to the accused and their acceptance resulted in no injustice to the accused. Counsel for the defense agreed to the proposed amendments prior to trial and informed the Court that no additional time by adjournment or otherwise

was needed by the defense to prepare its case to meet the charges as amended (a 11).

Plea of Guilty: The plea of guilty by the accused was properly accepted by the Court (a 11).

Section 501, "Manual for Trial of War Crimes and Related Cases," 15 July 1946, provides that the Court may impose a sentence on a plea of guilty without further proof. Similarly, Paragraph 88 (a), TM 27-255, "Military Justice Procedures," provides that an accused can be convicted on the basis of a plea of guilty without any evidence being presented.

Section 5-328, Change 1 to Title 5, "Legal and Penal Administration," of "Military Government Regulations," published by Office of Military Government for Germany (US), 27 March 1947, provides in part as follows:

"The procedure in Intermediate and General MG Courts shall be the same as that provided herein for Summary MG Courts except that:***

"c. A plea of guilty to an offense punishable by death may be accepted provided the court is satisfied from the nature of the case that the punishment of death would be clearly excessive and that a lesser punishment which it is within its power to impose would suffice."

Section 5-325, a, Title 5, supra, provides in part, with respect to the procedure in Summary MG Courts, as follows:

"Upon a plea of guilty of all offenses charged, a Summary Court will hear such statements for the prosecution and the defense and such evidence as it requires to enable it to determine the sentence to be imposed.***"

The Court complied with the above prescribed procedure in accepting the plea of guilty.

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.

E. LLOYD MEYER
Captain GMP
Post Trial Branch

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

C. W. PHIFER
Lieutenant Colonel, USAF
Chief, Post Trial Branch