

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

23 September 1947

UNITED STATES )

v. )

Case No. 000-50-2-100

Wilhelm KEMM, et al. )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 23-24 July 1947 before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Wilhelm KEMM, Albert Rudolf MOERTEL, Wilhelm MORITZ, Hans MOSER, Julius TANITZ, Fritz SCHNEIDER, Hubert SCHUELTER, Hans Nikol. SENGENBERGER, Hans SITTE, Raymond Richard STRIXNER 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 Wilhelm KEMM, Albert Rudolf MOERTEL, Wilhelm MORITZ, Hans MOSER, Julius TANITZ, Fritz SCHNEIDER, Hubert SCHUELTER, Hans Nikol. SENGENBERGER, Hans SITTE, Raymond Richard STRIXNER 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.



III. SUMMARY OF EVIDENCE: The convicted accused were members of the SS at Camp Dachau or its outcamps for considerable periods of time between the dates alleged and with the exception of accused KEMM and PANITZ were shown to have participated substantially in the Dachau Concentration Camp mass atrocity. Prosecution's P-Ex 10 (R 18) is a certified copy of the charges, particulars, findings and sentences in the Parent Dachau Concentration Camp Case (United States v. Weiss, et al., CCC-50-2, opinion DJAWC, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post).

Not much weight was given to the testimony of witness Karl Kramer.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Wilhelm KEMM

Nationality:	German
Age:	48
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, rank unknown
Pleas:	NG Charge I; NG Charge II
Findings	G Charge I; G Charge II
Sentence:	6 years, commencing 6 May 1946

Evidence for Prosecution: Scholz, a former inmate of Camp Dachau, testified that the accused was the block leader, for an unstated period at an unstated time, of the punishment company where inmates who had violated camp rules were sent (R 50).

Kramer testified that he knew the accused as a block leader at Dachau Concentration Camp (R 19).

Evidence for Defense: No evidence was presented by the defense.

Sufficiency of Evidence: The evidence is unsatisfactory as to definiteness and quality, especially as to service at Camp Dachau within the dates alleged. The findings of guilty are not warranted by the evidence.

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by the accused's wife, Elsa Kemm, 11 August 1947;



the community of Russheim, 11 August 1947; and the community of Graben, 15 August 1947.

Recommendation: That the findings and sentence be disapproved.

2. Albert Rudolf MOERTEL

Nationality:	German
Age:	46
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Noncommissioned Officer
Pleas:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	11 years, commencing 18 April 1945.

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he served as a medical noncommissioned officer on the headquarters staff medical squad from February 1942 to 4 April 1945 (R 21, 36, 40; F-Ex 11, F.1). Schmidt, formerly an inmate of Camp Dachau, testified that he saw the accused driving a wagon that carried corpses from the dispensary to the crematory (R 31). He further testified that he "supposes" that the accused participated in executions, as it was "talked" in the camp that somebody from the medics attended executions (R 33).

In his extrajudicial sworn statement, the accused admitted that he attended public whippings at Camp Dachau and that on two occasions he accompanied the transport of dead bodies from the hospital to the crematory. He saw undernourished inmates at Camp Dachau in 1944 or 1945 (R 40; F-Ex 11). Anton, a German who was formerly an inmate at Camp Dachau, testified that the accused participated in beating him. The witness received 25 lashes with an oxtail on 6 November 1942, following which the accused personally administered eight strokes across his buttocks to demonstrate how the beating should be administered. Then the other beaters gave him more lashes (R 57, 53).

Kramer testified that he saw the accused mistreat inmates by beating



carried corpses from the dispensary to the crematory (R 21). Kramer further testified that when executions occurred one of the medical non-commissioned officers attended and that the accused wore a meritorious service cross. Therefore, he "assumes that the accused attended executions". Meritorious service crosses were issued to members of headquarters who participated in the execution of Russian prisoners of war (R 23).

Evidence for Defense: In his extrajudicial sworn statement, the accused stated that he did not know why he was required to attend public whippings. He examined the inmates' backs afterwards but did not know why. He applied iodine if there were open wounds. He denied that he ever attended executions and stated that there were no transports of dead bodies from the headquarters arrest building to the crematory. There was no gas chamber in the crematory. The accused denied any participation in the examinations of inmates for invalid transports, or that he knew about them (R 40; P-Ex 11). Anton, who testified that the accused beat him, testified that the accused later gave him some salve to ease the pain (R 58).

Sufficiency of Evidence: The accused admitted and the evidence satisfactorily establishes that he participated in beatings. However, it is not shown that they were extremely severe nor is the frequency thereof shown. The findings of guilty are warranted by the evidence. The sentence is excessive.

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

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to eight years.

3. Wilhelm MORITZ

This accused was acquitted (R 62).

4. Hans MOSER

Nationality:	German
Age:	45
Civilian Status:	Unknown



Party Status:	Unknown
Military Status:	Waffen SS, Master Sergeant
Pleas:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	15 years, commencing 3 May 1945

Evidence for Prosecution: Kirmaier, a former inmate of Camp Dachau, testified that the accused served for an unstated period of time as a master sergeant in charge of the canteen at the Dachau Concentration Camp. He saw the accused in the spring of 1943 in front of the administration building. The accused and other SS personnel got into a truck and proceeded toward the rifle range. All were equipped with steel helmets and most of them were carrying rifles (R 41). According to Franke, also a former inmate of Camp Dachau, he on many occasions beat inmates with oxtail whips or anything available (R 45, 47). Hoermann, another former inmate of Camp Dachau, testified that he saw the accused beat inmates and that he was on the list in 1943 of those receiving cigarettes and liquor for participating in executions. The witness worked in the canteen and the accused gave him the list of individuals to whom the witness was to issue the items (R 60, 61).

Kramer testified that he knew the accused as an SS master sergeant in charge of the canteen (R 24). In May and June 1944, the accused was assistant roll call leader (R 24, 28). He frequently participated in official beatings of inmates and frequently accompanied live inmates to the crematory and they were not seen again (R 24).

Evidence for Defense: No evidence was presented by the defense.

Sufficiency of Evidence: In addition to general participation, some beatings by the accused are established. The findings of guilty are warranted by the evidence. The sentence is excessive.

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

Recommendation: The the findings and sentence be approved, but that the sentence be reduced to 10 years.



5. Julius FANITZ

Nationality:	German
Age:	55
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, First Lieutenant
Pleas:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	15 years, commencing 7 May 1945

Evidence for Prosecution: Schmidt and Scholz testified that the accused served as a first lieutenant in charge of the guard company at Dachau Concentration Camp after serving for some time as a sergeant major (R 33, 51). Scholz testified that on one occasion he saw the accused beat two inmates in their faces with his fists because they failed to remove their caps when they passed him. He heard that the accused mistreated other inmates (R 51). He saw the accused march toward the rifle range with others at a time when executions took place. Scholz further testified that, "as far as I know", Belgians or Frenchmen were executed (R 52).

Kramer testified that he knew the accused as an SS first lieutenant in charge of the guard company, and in this capacity he always brought the troop on duty to the camp (R 24).

Evidence for Defense: No evidence was presented by the defense.

Sufficiency of Evidence: While there is evidence that the accused served at Dachau and mistreated the inmates thereof, there is an absence of evidence that the service and acts of cruelty were performed within the dates alleged. 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.

6. Fritz SCHNEIDER

Nationality:	German
Age:	45
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, First Lieutenant
Fleas:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	10 years, commencing 7 May 1945

Evidence for Prosecution: Scholz testified that the accused served at Dachau Concentration Camp as a first lieutenant. He saw him for the first time in 1944 and testified that the accused was present in March 1945 when inmate transports of Jews, Frenchmen, Belgians, and Russians were being loaded (R 53). One hundred inmates were put in coaches which had room for only twenty. They were beaten while being chased in, and the accused denied requests to leave the doors open. On one occasion the accused reported a female inmate for punishment, as the result of which she was forced to spend three days in the standing bunker and three days in the hospital (R 54). Scholz further testified that he saw the accused march toward the rifle range one day, and afterwards he heard that some Russian officers were executed (R 55).

Evidence for Defense: On cross-examination, the prosecution witness Scholz testified that the rifle range was also used for rifle practice (R 55).

Sufficiency of Evidence: The Court might well have concluded that the accused in his position as a Waffen SS officer participated for at least a period of several months. The findings of guilty are warranted by the evidence. The sentence is excessive.

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

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to five years.



7. Hubert SCHUELLER

Nationality:	German
Age:	59
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Technical Sergeant
Pleas:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	5 years, commencing 4 May 1946

Evidence for Prosecution: Schmidt identified the accused as a former block leader at Dachau Concentration Camp (R 30, 33). Krueger stated in an extrajudicial sworn statement that the accused inspected guards of labor details at Camp Dachau in 1942 and 1943 and often kicked foreign inmates (R 48; I-Ex 12).

Evidence for Defense: No evidence was presented by the defense.

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.

8. Hans Nikol. SENGENBERGER

Nationality:	German
Age:	56
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, rank unknown
Pleas:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	5 years, commencing 1 May 1946

Evidence for Prosecution: Schmidt testified that the accused served as a block leader at Dachau Concentration Camp (R 34). Eichler, formerly an inmate of Camp Dachau, testified that from January 1945 to the end of



the war the accused served as the Frezfix (small arms factory) work detail leader (R 37). Krueger stated in an extrajudicial sworn statement that in his capacity as labor detail leader, the accused was quite often guilty of "mistreatment, kicks with his feet, etc." (R 48; P-Ex 12).

Evidence for Defense: No evidence was presented by the defense.

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.

9. Hans SITTE

Nationality:	German
Age:	37
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Technical Sergeant
Pleas:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	5 years, commencing 29 April 1945

Evidence for Prosecution: Accused MOERTEL, who served at Camp Dachau from February 1942 until 4 April 1945, stated in his extrajudicial sworn statement that the accused was "The headquarters medic" at Dachau Concentration Camp (R 40; P-Ex 11, p. 3).

Kramer who claimed that he was an inmate at outcamp Allach from April 1943 to May 1944 testified that he saw the accused there (R 25) and on one occasion saw him help another medical noncommissioned officer put inmates out of the dispensary in such a manner that several of them bruised their shins. He saw the ~~convict~~<sup>accused</sup> mistreat sick inmates at both Camp Dachau and outcamp Allach by beating them with his hand. These inmates included Germans, Austrians, Poles, Czechs, French, Belgians, Yugoslavs and Dutch (R 26, 27). On one occasion the accused reported a Czech inmate who received 25 strokes with a stick as a result (R 25).



Evidence for Defense: No evidence was presented by the defense.

Sufficiency of Evidence: It is satisfactorily established that the accused participated in the Dachau Concentration Camp mass atrocity. However, the evidence as to individual acts of atrocity is not satisfactory. The findings of guilty are warranted by the evidence. The sentence is excessive.

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

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to three years.

10. Raymond Richard STRIXNER

This accused was neither served nor tried.

V. QUESTIONS OF LAW:

Jurisdiction: 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 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 1943, and the Parent Case). All of the convicted accused, except for KEMM and LABITE, 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 participated to a substantial degree.

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

CONCLUSIONS:

VI. 1. It is recommended that the findings be approved as to all the



accused, except that the findings as to KEMM and HANITZ be disapproved; and that the sentences as to KEMM and HANITZ be disapproved; that the sentences as to SCHUELTZ and SENGENBERGER be approved; that the sentence as to MOETTEL to imprisonment for 11 years be approved, but reduced to eight years; that the sentence as to MOSER to imprisonment for 15 years be approved, but reduced to 10 years; that the sentence as to SCHNEIDER to imprisonment for 10 years be approved, but reduced to 5 years; and that the sentence as to SITTE to imprisonment for five years be approved, but be reduced to three years.

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

WILLIAM C. CRAFT  
Attorney  
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