

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

16 February 1948

U N I T E D S T A T E S)

v.)

Johann KASTNER, et al.)

Case No. 000-50-2-102

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 4-9 September 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Oskar Allritz, Johann Kastner, Josef Gerhard Luetkenhorst, Johann Murlaschitz, Josef Sassert, Alfons Schoenwaelder (and) Robert Schwager 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 Oskar Allritz, Johann Kastner, Josef Gerhard Luetkenhorst, Johann Murlaschitz, Josef Sassert, Alfons Schoenwaelder (and) Robert Schwager 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 group of subcamps of the Dachau Concentration Camp located in the vicinity of Landsberg, Germany, were known as the "Kaufering Group". There were 11 subcamps in this group, the administrative headquarters of which was located at subcamp Kaufering I (Parent Case, R 349, 584). The bodies of 5,000 inmates were found buried in two mass graves upon capture of subcamp IV, which was known as the extermination camp (Parent Case, R 583). Subcamp Kaufering I was known as a work camp (Parent Case, R 670). Of the 1800 inmates interned there in July 1944, 600 survived (Parent Case, R 734). Subcamp Kaufering I used the same burial pits as subcamp IV (Parent Case, R 585).

Each of the convicted accused, except KASTNER, was an SS guard in this group of subcamps for considerable periods of time between the dates alleged and all, including accused KASTNER, were shown to have participated in the Dachau Concentration Camp mass atrocity. Accused KASTNER was captain of the guard company which furnished guards for several of the subcamps in this group. Prosecution's Exhibit P-Ex 2 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, opinion DJAWG, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Oskar ALLRITZ

This accused was served but not tried (R 1).

2. Johann KASTNER

Nationality:	German
Age:	50
Civilian Status:	Teacher
Party Status:	Member of Nazi Party from 1933
Military Status:	Captain Wehrmacht, assigned to Waffen SS
Plea:	NG Charge I; NG Charge II

Findings:

G Charge I; NG Charge II

Sentence:

Life imprisonment

Evidence for Prosecution: Kuczynski, who was an inmate of subcamp Kaufering IV from August 1944 to the capitulation, testified that the accused was troop leader of the guards at subcamp Kaufering IV and spent considerable time supervising the guards, and on occasions showing them how to beat the inmates. On one occasion, while the inmates were in formation, the accused (or a guard in the presence of the accused), kicked an Italian inmate in the testicles (apparently more than once), and within three minutes the inmate was dead. The witness saw the dead body (R 20, 25-27). The witness saw the accused demonstrate to a guard how to beat an inmate. The accused beat the inmate until he collapsed (R 26). He further testified that it was the custom of guards when returning to the camp with their details to report the number of inmates and also the number of wounded, injured, and dead. Once when the witness was standing in the front row of a formation he heard the accused, upon receiving a report from a guard on the number of dead say, "It's a pity -- too few of them" (R 27).

A second witness testified that he was an inmate of Kaufering IV following the fall of 1944; that the accused was in the position of camp commander of Kaufering IV, performing all the duties thereof as the camp commander never did anything; that the accused supervised the guards in the Moll details, using a motorcycle as a means of conveyance (R 54, 55, 57, 58, 62); that the number of dead or wounded brought back from work details varied from one to seven daily; that the reports of these dead and wounded were made to the accused daily; and that the witness heard at least some of these reports which were made to the accused (R 58). He further testified that on one occasion the foreman beat an inmate named Finkelstein to death with a shovel.

Immediately thereafter the accused came along on his motorcycle, looked at the bloody body of this inmate, and rode away without doing or saying anything to anyone. On another occasion the accused ordered sick inmates out of bed to go to work on a timber detail at the Moll firm. These inmates had no shoes (R 59-61, 64, 65). A third witness, Honigmann, testified that, while he was pushing a milk cart, he was beaten and kicked by a guard as the accused passed within eight to 10 meters on his motorcycle (R 67, 68, 69).

A fourth witness testified that the accused was camp commander of subcamp Rethschweige, containing about 600 inmates, for about a month or two in the summer of 1944 (R 89, 94). The accused testified that he wore the SS uniform and insignia on orders from Dachau in August 1944 (R 194). Witness Heinrich Witt, a former SS staff sergeant and transport leader of the evacuation march column of inmates from Kaufering III, and now serving a sentence of 11 years at War Criminal Prison No. 1, Landsberg, Germany, testified he received certain orders regarding the evacuation march from the accused who was a captain; that he could not tell whether the accused was in charge of all the marches from the various Kauf-ering camps or just a courier going from group to group, but that the accused gave him permission to dismiss 15 guards on the march (R 205-208).

Witness David Honigmann testified that when he signed a paper at the request of the wife of the accused the statement favorable to the accused appearing above his name (D-Ex 2) was not there; that the paper was blank; and that the wife of the accused, her daughter, and the wife of the witness were present (R 214). Witness Freundlich, her name at the time of the trial being Honigmann, and witness Schulman, who also signed the paper, testified that they signed the paper at the request of a woman, but that there was nothing written with a typewriter above their signatures at the time they signed (R 216, 222). Freundlich also testified that no one told

her there was to be anything written above her signature (R 216). It appears all three of these witnesses who signed the paper were in effect asked to sign the paper, if they could testify about the accused (R 213, 216, 219, 220). (While the evidence does not so show clearly, it appears that the paper was signed two years or more before the trial and was closely associated, at least in point of time, with a CIC matter in which the accused was concerned.)

Counsel for the prosecution stated to the Court that witnesses Honigmann, Schulman and two other witnesses, two for the prosecution and two for the defense, were summoned and that upon their arrival at Dachau they were detained in the "bunker" without his knowledge. The defense counsel agreed that the statement by the prosecution was correct (R 223, 224).

Evidence for Defense: A former inmate in the clothing room at subcamp Rothscheige, testified that while the accused was camp commander of that camp, inmates there were well treated (R 89, 90). All the inmates at this subcamp were Hungarian Jews and came from Auschwitz Concentration Camp (R 92, 95). He further testified that he never saw the accused mistreat any of these inmates, nor did he hear of any mistreatments by the accused (R 93); that subcamp Rothscheige was established 28 May 1944 and was operated until 1 August 1944, when the whole camp was moved to Karlsfeld (a few kilometers from Dachau). The accused was at subcamp Rothscheige from July and then moved with the camp to Karlsfeld as camp commander (R 94). This witness further testified that he was not Jewish but was sent to Rothscheige from Camp Dachau to help set up this Jewish camp (R 95, 96).

The wife of the accused testified to the effect that the accused was a first lieutenant in the infantry and served in Belgium, Russia and Germany; that he was declared unfit for front line duty and was transferred to the SS for concentration camp

duty. She further testified that she obtained the signatures of witness Honigmann and others on behalf of the accused on 23 December 1945 (R 104, 105). She told Honigmann who she was and why she wished their signatures (R 107). Defense Exhibit D-Ex 2, being a certificate on behalf of the accused, signed by witnesses Honigmann, Rosa Freundlich, his wife, and six others, was admitted into evidence (R 109). She further testified that the signatures were not obtained before the statement was written on the paper (R 110). She obtained all signatures, except the last one. The signatures were signed thereon after the statement was written on 23 December 1945. No one signed when it was a blank piece of paper. She never had any arguments or disagreements with witness Honigmann (R 109-112). When the witness Honigmann signed the certificate, Honigmann's wife and the witness' daughter were present. His wife signed at the same time. When the witness Schulman signed it, another man named Monck signed also (R 116).

Witness Deffner, a former detail leader at subcamp Kaufering I, testified that the accused had trouble with Camp Commander Fuerchner because the accused would not wear the SS rank insignia as he was ordered there by the Wehrmacht (R 117, 118). The witness further testified that he did not see any inmate mistreated on the evacuation transport from Kaufering to Dachau. A bus followed the march to pick up inmates who couldn't walk any more (R 118, 119, 123).

Witness Leuchinger testified that in December 1945 he was an official in the administration of the town of Olching; that he certified to the signature of prosecution's witness Honigmann on a paper at the request of the wife of the accused; and that Honigmann was not present when he certified it, although Honigmann told the witness he had signed the paper (R 125-130). He further testified that although this procedure did not follow the German law and that no record of the transaction was kept, as was required

by German law, such was the approved procedure at the time inasmuch as there was no officially recognized office (R 134, 135, 136). The witness further testified that some signatures may have been added after he made the certificate (R 128, 129). Witness Frederick testified that he was a former concentration camp inmate; that in the fall of 1945 he was assistant to the town official Leuchinger as a police official; that he knew the accused and witness Honigmann; that when the accused was arrested in 1945, in his presence at the office of Leuchinger, Honigmann appeared on behalf of the accused saying he could not say anything to the disadvantage of the accused (R 226-229). Thereupon the CIC at Meisach ordered the release of the accused (R 231). The witness testified that Honigmann was under oath when he made the statement and later that he was not under oath (R 230).

The accused testified that he served in World War I and that he was drafted into military service in 1940 as a master sergeant from the home guard (R 163). After service in Belgium, Holland and Russia in the infantry, he was promoted to captain of the reserves in October 1944 (R 163-165). In June 1944 he was assigned to concentration camp duty and after a brief orientation was sent to subcamp Rothschweige in July. Upon the closing of that camp he went to subcamp Karlsfeld Allach, and worked under camp leader Jarolin (R 165) (SS First Lieutenant Jarolin sentenced to death in the Parent Case, R 1982). There were 500 inmates at subcamp Rothschweige and 800 inmates at Karlsfeld (R 166).

The accused further testified that in September 1944 he was sent to subcamp Kaufering IV as company commander of the guard (R 167). When he took over the guard work at subcamp Kaufering IV he gave the guards such instructions as were written in the guard book, by which it was strictly forbidden to beat or mistreat inmates and which required that such incidents be reported to camp officials (R 169). He also testified that reports of misconduct of inmates turned into the camp were given to the camp commander

"What a shame -- it is only a few" (R 171). He further testified that guards in his company never beat inmates; that he never saw one of his men beat an inmate; and that the accusation of witness Kuczynski was an invented charge (R 172). He denied emphatically that any guard under him ever kicked anyone in the testicles, or that he knew anything about any such incident. Camp Commander Morgenstern also rode a motorcycle at Kaufering IV (R 173). He further testified that his camp commander, SS Major Firschner (Otto Foerschner, sentenced to death in the Parent Case, R 1984) gave him orders to dissolve the guard on 23 April 1945 and that on 24 April 1945 he received an order to go to Dachau to make a report. The use of an officer for this duty was not extraordinary in the German army. SS Major Firschner and Schoettel (Vincenz Schoettl, sentenced to death in the Parent Case, R 1987), his assistant, supervised the evacuation march from the Kaufering camps. The accused went along on the march, not as a duty assignment, but because he was requested to do so by various transport leaders (R 174, 175). He further testified that it was never necessary to punish a guard for beating inmates as none of them ever beat an inmate (R 188). He did not see any dead bodies along the route of the evacuation marches (R 198).

Heinrich Witt, a transport leader on the evacuation march from Kaufering, testified that no inmates died on his march, which started 23 April 1945, and that there were no prisoners of war at subcamp Kaufering III (R 205, 208, 209).

Sufficiency of Evidence: The evidence establishes that the accused was assigned and assumed important responsibility at Dachau subcamps; that he participated in evacuation marches; and that inmates were very severely beaten by him and at his direction. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed 25 September 1947 by Donald J. Ross, defense counsel. A Petition for Clemency, at-

Steiner, a German attorney.

Recommendation: That the findings and the sentence be approved.

3. Josef Gerhard LUETKENHORST

Nationality:	German
Age:	54
Civilian Status:	Unknown
Party Status:	Member of Nazi Party since 1933
Military Status:	Waffen SS Corporal
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	3 years, commencing 3 August 1945

Evidence for Prosecution: One witness, a former inmate of subcamp Kaufering I, testified that, in the fall of 1944, he saw the accused hit a Lithuanian inmate three times with his rifle butt, disabling the inmate so that it was necessary to carry him. The accused was a guard on the Moll work detail. In addition to this, the witness saw the accused beat many inmates, but could not give their names (R 45, 46, 52).

Evidence for Defense: The accused testified that he was drafted into military service 15 February 1944 and was sent to subcamp Landsberg (subcamp Kaufering I) in August 1944 as a guard; and that he was guard in the camp, on the towers, the Moll detail and various other details (R 138, 139). He further testified that he never had any trouble with any of the inmates and denied that he struck an inmate with his rifle butt on one of his details (R 139). He did not see any inmates brought back dead from the details (R 142). There was an epidemic at subcamp Kaufering I and inmates died, but he did not know where they were buried (R 143). He knew of mistreatments at the camp, but never heard of anyone being beaten to death (R 145). He further testified that there was another person in another camp with a name similar to his.

The only explanation he offered as to why the witness accused him was mistaken identity (R 145, 146).

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

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by Mrs. Luetkenhorst, wife of the accused, 27 November 1947; and by accused, 7 December 1947.

Recommendation: That the findings and the sentence be approved.

4. Johann MURLASCHITZ

Nationality:	Austrian
Age:	32
Civilian Status:	Barber
Party Status:	Unknown
Military Status:	Waffen SS Corporal
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	10 years, commencing 30 April 1945

Evidence for Prosecution: A former inmate testified that he was interned in subcamp Kaufering IV from August 1944 to the capitulation. This subcamp became a sick camp in January 1945. The healthy inmates were not removed when it became a sick camp. He worked on the Moll and Holzmann construction details (R 20, 21). He further testified that he knew the accused from August 1944 to the end of the war; that the accused was an SS guard on the Moll detail; and that in October or November 1944 on this detail, he saw the accused hit a Polish inmate marching in the file ahead of him, in the eye with a rifle butt with such force that the victim lost consciousness and had to be carried to the train. The witness heard from the room eldest the next day that the injured inmate had died in the hospital and he was never seen again. The accused was known as a beater in the camp (R 22-24). On cross-

way back to camp and became unconscious while screaming (R 31). Another witness knew the accused at subcamp Kaufering I as a perpetual beater and saw him several times beat inmates with his cane (R 47, 48).

Evidence for Defense: Witness Karl Natkin, a former inmate at subcamp Kaufering I, testified that he was at that camp from July 1944 until the capitulation. He knew the accused as a guard who 10 or 15 times accompanied on foot, a small detail known as the Electro detail outside the Moll detail. The accused had full use of his legs and marched in step with the inmates (R 98). He did not observe that the accused carried a cane. The accused never beat or mistreated inmates in the detail (R 99). The accused and the witness accompanied an evacuation transport from Kaufering to Dachau just prior to the capitulation. The witness did not see the accused mistreat any inmates thereon (R 100). Upon being questioned by the Court, the witness admitted that he had seen inmates mistreated while he was in camp and that he was mistreated himself (R 103).

The accused testified to the effect that he was drafted into the Wehrmacht; that he served in France and Russia and was wounded in the left arm in Russia in February 1943; that after treatment for one year he was sent to subcamp Kaufering in August 1944 (R 148, 149); that at that time he was taken into the SS and served as a guard at Kaufering I until the capitulation. He further testified that he was never at subcamp Kaufering IV. He never had any duty involving marching with inmates from Kaufering IV or loading them on trains (R 149). He also testified that he never had a leg injury; that he had no occasion to carry a cane to assist him in walking (R 150); and that he never carried a rifle because he could not raise it with his left arm which was partially paralyzed. The distance from Kaufering I to the Moll detail was between one half to three quarters of an hour by foot

and the details always marched. His detail never marched to take a train. He denied he ever struck an inmate in the eye with a rifle or any other weapon (R 151, 152). Witness Kuczynski, who testified he struck the Polish inmate, referred to him first as a lieutenant and then as a sergeant, when in fact, he was only a corporal and never held any other rank (R 153). He further testified he heard of beatings inside the camp, but that the roll call leader and the block leader did it. The escort guards had nothing to do with the inmates inside the camp. He never saw any inmates brought back from the details dead. He never wore an SS uniform nor the death head insignia (R 159, 160). Accused KASTNER testified that it was impossible for the accused to have marched inmates back to Kaufering IV or to trains en route to Kaufering IV (R 168).

Sufficiency of Evidence: Austria was a co-belligerent of Germany. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed 25 September 1947 by Donald J. Ross, defense counsel. Petitions for Clemency were filed by Albert Schall, 5 October 1947; Klaus Franzen, 5 October 1947; and by one Wiesenberger, 14 October 1947.

Recommendation: That the findings and the sentence be approved.

5. Josef SASSERT

This accused was served but not tried (R 1).

6. Alfons SCHOENWAELDER

This accused was served but not tried (R 1).

7. Robert SCHWAGER

This accused was served but not tried (R 1).

V. QUESTIONS OF LAW:

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

Appointment of Court: The record of trial indicates that the Court was appointed by Special Orders No. 144, paragraph 23, 5 August 1947, Headquarters, European Command, as amended by certain described orders including Special Orders No. 165, paragraph 6, 26 August 1947, and recites the names of the officers as including Colonel William W. Robertson. However, Special Orders No. 165, paragraph 6, added an officer of the same rank and last name but with another Christian name, middle initial, serial number and branch of service. Attached to and bound with the record, together with the basic and amending orders is Special Orders No. 181, 11 September 1947, which by paragraph 17 amends paragraph 6, Special Orders No. 165, amending it with respect to Colonel Robertson to read: "Col William W. Robertson 014827 Inf". To the reviewer's personal knowledge, Colonel William W Robertson, 014827 Inf., was assigned for duty on war crimes tribunals at Dachau during the period in which this case was tried, and no other officers of any grade by the name of Robertson were assigned for such duty during the period in question. Regardless of the legal significance of this inaccuracy as to Colonel Robertson, the Reviewing Authority is empowered to ratify and adopt the action of the Court as thus constituted (United States v. Mueller, opinion DJAWC, July 1946).

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-AGC, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). 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 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 sentences be approved.

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

LOUIE T. FISCHER
Attorney
Post Trial Branch

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

C. W. PHIPPS
Lieutenant Colonel, USAF
Acting Deputy Judge Advocate
for War Crimes