

DEPUTY JUDGE ADVOCATE'S OFFICE
7706 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 407

23 January 1948

UNITED STATES)

v.)

Case No. 000-50-2-116

Ludwig SILBERMANN, et al.)

REVIEW AND RECOMMENDATIONS

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

II. CHARGES AND PARTICULARS

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

Particulars: In that Ludwig Silbermann, Ludwig Alberth, Johann Hinterseer, Johann Trummer, Robert Pahl, Josef Berger (and) Wilhelm Deeg acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals 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 then German Reich in exercise of belligerent control.

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

Particulars: In that Ludwig Silbermann, Ludwig Alberth, Johann Hinterseer, Johann Trummer, Robert Pahl, Josef Berger (and) Wilhelm Deeg acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals 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, starva-

and numbers of such prisoners of war being unknown, but aggregating many hundreds.

(On motion of the prosecution, the particulars under both charges were amended to show the correct spelling of the name of accused Ludwig ALBERT as being Ludwig ALBERTH, R 1.)

III. SUMMARY OF EVIDENCE: The accused were members of the SS at Muehldorf and its subcamps, commonly known as the "Muehldorf Ring", all of which were outcamps of Dachau Concentration Camp, for considerable periods of time between the dates alleged, and were shown to have participated in the Dachau Concentration Camp mass atrocity. This outcamp was operated from July 1944 until April 1945, and during that time 3,934 inmates were killed there or died from starvation, overwork and diseases. The inmates were political prisoners and slave laborers from France, Belgium, Luxembourg, Holland, Russia, Poland, Czechoslovakia, Romania, Hungary, Greece, Yugoslavia, Lithuania and Italy, and prisoners of war from Russia, Poland, France and Italy (R 13; P-Ex 7). Prosecution's Exhibit P-Ex 6 is a certified copy of the charges, particulars, findings, and sentences in the parent Dachau Concentration Camp case (United States v. Weiss, et al., OGC-50-2, opinion DJANG, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post; R 12).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Ludwig SILBERMANN

Nationality:	German
Age:	48
Civilian Status:	Unknown
Party Status:	Member of Nazi Party from 1935
Military Status:	Waffen SS Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	6 years, commencing 2 May 1945

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he was transferred from the German

army to the Waffen SS 30 June 1944 with the rank of sergeant and was sent to Camp Dachau. Around the middle of July 1944 he was sent to outcamp Muehldorf for guard duty. He was sent back to Camp Dachau for a few weeks and returned to outcamp Muehldorf, subcamp A-1 (Mettenheim), in October 1944 and served as a guard until the capitulation. He further stated that some of the inmates who were confined there looked good and some looked bad. The distance from subcamp A-1 to the construction site was about 25 to 30 minutes' walk, a distance of two to three kilometers, for the inmates who were under guard. While he was doing guard duty at the gate of the camp he saw the inmates return from work. Some of the inmates were carried back. He admitted beating inmates twice (R 19; P-SX 11).

One witness, a former inmate in outcamp Muehldorf and subcamp Mittegars from August 1944 to the liberation, testified that he / often saw the accused beat inmates with his rifle butt or kick them when they were returning from the construction site to outcamp Muehldorf. Later, on other occasions, he saw the accused throw stones at inmates in outcamp Muehldorf when women inmates (who apparently received better and more food than the men) attempted to pass left-over food to the male inmates through the fence which separated the women's camp from the men's barracks. Some were injured (R 22, 25, 26; corroborated R 57, 65). Another witness, a former inmate at subcamp Mettenheim, testified that the accused beat the inmates with his hands or with a stick at the gate of the camp for not removing their caps properly (R 44). He saw the accused throw stones at inmates who were standing by the fence separating the women's camp from the men's barracks. The women were passing left-over food to the men. One of the witness' comrades was hit on the head with a stone, breaking his head open and causing him to be hospitalized for a long time. This injured inmate has returned to Hungary totally disabled (R 45).

Evidence for Defense: The accused did not testify. In his extrajudicial sworn statement the accused stated that he never saw inmates beaten on the way back from the work site to the camp (R 19; P-Ex 11). In an unsworn statement to the Court, after findings, the accused stated that he was transferred into the SS involuntarily; that he never shot inmates nor hit anyone with the butt of his rifle; and that he never threw stones at anyone (R 93, 94). He further stated that he was never a detail leader and had nothing to do with parading nor with roll call, but that he merely stood at the gate and counted the inmates as they came in or went out (R 96).

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. Ludwig ALB. RTH

Nationality:	German
Age:	28
Civilian Status:	Unknown
Party Status:	Member of Hitler Youth
Military Status:	Waffen SS Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	10 years, commencing 2 May 1945

Evidence for Prosecution: One witness, a former inmate at outcamp Muehldorf, testified that he knew the accused as a guard on the potato peeling detail (R 23). While working on this detail, which was light work for inmates who were recuperating, the accused beat one inmate with a stick and kicked him until he fell. While the inmate was on the ground the accused beat him with a stick and kicked him for a long time. The victim was already weak

because he could not pick up and carry a full basket of potatoes. The inmate is now in a sanitarium as a result of this beating. The accused also beat other inmates on this detail the same day (R 24; corroborated R 30; P-Ex 12). Another witness, a Romanian national and former inmate at outcamp Muehldorf and subcamp Mittagars, identified the accused by his number in the dock, and not by name, and he testified that he knew the accused as the detail leader of the potato digging detail which consisted of 30 inmates. The witness was beaten by the accused with a rifle and had his head "stuck" into the earth for not picking up one potato which had been thrown by the accused and was not noticed by the witness (R 36, 37). The accused also beat other inmates on this detail with his rifle, causing them to bleed (R 37). These beatings occurred in the months of September, October and November 1944. The accused was an SS sergeant and worked as leader of the stove setting detail for 12 days at the end of October 1944 (R 39). Once the accused went to the camp senior (presumably Camp Commander) and reported that the men on this detail were not producing sufficient work and that they should be beaten. All 12 inmates were subsequently made to undress completely and lie on the ground while the camp senior beat them with a stick one after the other. One Hungarian inmate was beaten so severely that he died three days later. Every five weeks 600 to 700 sick inmates were sent away from outcamp Muehldorf and were never seen again (R 40). A third witness, a Lithuanian national and former inmate, testified that the accused was in charge of the potato detail and that he hit his uncle over the head twice with a spade because he was not physically able to do the work properly. He and two other inmates carried his uncle to the hospital. The doctor told the witness next morning that his uncle had died from a skull fracture (R 46). The witness saw the body of his uncle (R 47). He also saw the accused beat inmates constantly, and on one occasion the accused hit the witness's soup ladle so hard that it cut his lip (R 47). Both

male and female inmates worked on the potato detail and prosecution witness Kuritzka, women's camp eldest, testified that the accused beat both male and female inmates with shovels (R 58). This witness, upon being questioned by the Court, testified that the physical condition of the male inmates was very bad, and after the typhoid epidemic in the spring of 1945 it was much worse, most of them having dysentery. The accused beat the inmates terribly for leaving their work for a few minutes, accusing them of trying to avoid work. This witness saw female inmates beaten by the accused with spades causing them to cry out (R 61, 62).

Evidence for Defense: The accused did not testify. However, in an unsworn statement to the Court, after findings, the accused stated that he was transferred to the SS involuntarily and that he did not belong to the Nazi Party although he did belong to the Hitler Youth. He further stated that while he was the potato work detail leader, he did not carry a rifle, but he did carry a pistol; that he never touched a woman; that he could not have beaten inmates on the main construction site because he was too far away from them; and that he was twice relieved by the Camp Commander for helping inmates (R 98).

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

Petitions: No Petitions for Review were filed. A Petition for Clemency was filed by Margareta Alberth, 21 November 1947.

Recommendation: That the findings and sentence be approved.

3. Johann HINTERSEER

This accused was neither served nor tried.

4. Johann TRUMMER

This accused was neither served nor tried.

5. Robert PAHL

This accused was acquitted (R 90).

6. Josef BERGER

This accused was acquitted (R 90).

7. Wilhelm DEEG

Nationality: German
Age: 40
Civilian Status: Painter
Party Status: Unknown
Military Status: Waffen SS Sergeant
Plea: NG Charge I; NG Charge II
Findings: G Charge I; G Charge II
Sentence: 4 years, commencing 7 May 1945

Evidence for Prosecution: The accused was assigned to outcamp Muehldorf, subcamp Mittegars from November 1944 to 6 April 1945, at which time he was transferred to Forest Camp, a subcamp of ^{outcamp} Muehldorf (R 99, 100). One witness, a former inmate at outcamp Muehldorf from August through October 1944, and subcamp Mittegars from November 1944 until liberation, testified that he knew the accused and identified him by his number but he did not know his name (R 31, 32). The accused was a detail leader of the stove setting detail which consisted of 12 inmates. This detail was engaged in setting up stoves which required the inmates to carry bricks upon which to set the stove. The accused beat the inmates on this detail with a wooden slat when they could not carry eight bricks at a time. No reports for punishment at the camp were made by the accused as he meted out the punishment himself (R 34). Another witness, a former inmate from August 1944 to May 1945 at Forest Camps V and VI, subcamps of outcamp Muehldorf, testified that during the last two months before liberation he saw the accused and other guards beat sick inmates frequently with rifle butts and by kicking them while they were marching from the camp in order to get them to the main construction site faster (R 74). A third witness, in an extrajudicial sworn statement, stated that the accused was a guard at the main construction site in subcamp Mettenheim and that the accused beat inmates with his rifle when they were returning from work to the blocks in order make them walk

faster (R 78; P-Ex 13).

Evidence for Defense: The accused did not testify. However, in an unsworn statement to the Court, after findings, he stated that he was transferred to the SS from the Wehrmacht; that he was a painter and had nothing at all to do with the stove detail; that the testimony of one witness to the effect that he was working at the main construction site is not true; that he was in subcamp Mittegars from November 1944 to 6 April 1945 when he was transferred to the Forest subcamp; and that he did not beat inmates nor did he hit them with a rifle (R 99, 100).

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.

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 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.

Proof under Charge II: The evidence as to the participation of the accused relates only to acts at a subcamp where prisoners of war may not have been present during the periods of participation. The record of trial in the Parent Case demonstrates that the Dachau Concentration Camp operation included the subjection of prisoners of war to the illegal acts alleged. Regardless of whether the accused participated at the main camp or a subcamp, the participation in the common design is proved by evidence of participation at the main or at subcamps thereof within the allegations of the particulars under either Charge I or Charge II.

Charges I and II allege participation in the execution of one and the same common design and are identical, except that the particulars under Charge II allege that prisoners of war were subjected to illegal acts rather than civilians. The question arises as to whether adequate proof to support findings of guilty under one of the charges is necessarily adequate proof for findings of guilty under the other. The gravamen of the offense under both charges and the particulars thereunder in both this and the Parent Case is participation in the execution of the common design in any or all of its aspects. It is not the subjection of inmates of any category to illegal acts flowing immediately from the acts of the accused or other participants at the same location, e.g., concentration camp managerial personnel in the Himmler's Reich Security Head Office. Therefore, it is obvious that, inasmuch as it was satisfactorily proved that the accused participated in the execution of the common design, the Court did not err in its findings of guilty as to both charges.

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