

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 207-1

30 June 1947

UNITED STATES)

v.)

Josef PFALLER, et al.)

Case No. 000-50-2-30

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, 11 December 1946, before an Intermediate Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Josef Pfaller, Johann Philipp, Adolf Pickenmann, Michael Pitter, Alfred Josef Platenik, Johannes Frosswimmer, Paul Alfred Fundrich, Erwin Alfred Schulz, Jose Sturm, Alois Josef Nossek, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding 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, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, 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 Josef Pfaller, Johann Philipp, Adolf Pickenmann, Michael Pitter, Alfred Josef Platenik, Johannes Frosswimmer, Paul Alfred Fundrich, Erwin Alfred Schulz, Jose Sturm, Alois Josef Nossek, 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 did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberate and wrongfully 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, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: During the period 1 January 1942 to 29 April 1945 the accused served for different periods of time as members of the Waffen SS at Dachau Concentration Camp and/or one or more of its subsidiary camps. With the exception of accused FICKENHAIN, who was a mail clerk, all of the accused performed guard duty at various times. Prosecution's exhibit P-Ex 1 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, March 1946, hereinafter referred to as the "Parent Case"; R 7).

V. EVIDENCE AND RECOMMENDATIONS:

1. JOSEF PFALLER

Nationality:	German
Age:	43
Civilian Status:	Unknown
Party Status:	None
Military Status:	SS Corporal
Plea:	NG First Charge; NG Second Charge
Findings:	G First Charge; G Second Charge
Sentence:	Twenty-one months confinement from 2 May 1945

Evidence for Prosecution: PFALLER was transferred from the Luftwaffe to the Waffen SS 1 September 1944, having been assigned to outcamp Allach of the Dachau Concentration Camp 4 August 1944. He served as guard at outcamp Allach until 2 May 1945. He was a guard in April 1945 on a prisoner march from Allach to Wolfratshausen (P-Ex 2, R 6).

Evidence for Defense: PFALLER relied solely upon his extrajudicial sworn questionnaires. There is no evidence of any individual acts of cruelty or mistreatment (P-Ex 2, R 8).

Sufficiency of Evidence: The admissions of the accused concerning the length of time he served as a guard at camp Dachau are sufficient to sustain the findings of guilty when the findings of the Parent Case, of which this Court was required to take judicial notice, are also

considered. The sentence cannot be considered as excessive.

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

Recommendation: That the findings and sentence be approved.

2. JOMANN PHILIPP

Nationality:	Roumanian (Volksdeutscher)
Age:	40
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Plea:	NG First Charge; NG Second Charge
Findings:	G First Charge; G Second Charge
Sentence:	Twenty-one months confinement from 8 May 1945

Evidence for Prosecution: PHILIPP joined the Waffen SS in July 1943 and was assigned to the Dachau Concentration Camp in February 1944. He remained at Camp Dachau until August 1944 where he performed guard duty (P-Ex 3, R 9).

Evidence for Defense: PHILIPP relied solely upon his extrajudicial sworn questionnaires. There is no evidence of any individual acts of cruelty or mistreatment. He did not take part in any prisoner marches (P-Ex 3, R 9).

Sufficiency of Evidence: The admissions of the accused concerning the length of time he served as a guard at Camp Dachau are sufficient to sustain the findings of guilty when the findings of the Parent Case, of which this Court was required to take judicial notice, are considered. Romania was a co-belligerent of Germany. In view of the findings of guilty to both charges, the sentence cannot be considered as excessive.

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

Recommendation: That the findings and sentence be approved.

3. ADOLF PICKENHAHN

Nationality:	Czechoslovakian (Volksdeutcher)
Age:	52
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Technical Sergeant
Plea:	NG First Charge; NG Second Charge
Findings:	G First Charge; G Second Charge
Sentence:	Two and one-half years confinement from 3 May 1945

Evidence for Prosecution: In January 1940 PICKENHAHN was assigned to duty with the Waffen SS. He served as mail clerk at Camp Dachau from February 1940 to April 1945 (P-Ex 4, R 10).

Evidence for Defense: PICKENHAHN relied solely upon his extra-judicial sworn questionnaires. There is no evidence of individual acts of cruelty or mistreatment. He took no part in any prisoner marches (P-Ex 4, R 10).

Sufficiency of Evidence: The admissions of the accused concerning the length of time he served at Camp Dachau are sufficient to sustain the findings of guilty when the findings of the Parent Case, of which this Court was required to take judicial notice, are considered. The sentence is not excessive.

Petitions: No Petitions for Review were filed. A Petition for Clemency dated 19 May 1947 and signed by Emma Pickenhahn, wife of accused PICKENHAHN, together with two supporting certificates, has been considered.

Recommendation: That the findings and sentence be approved.

4. MICHAEL FITTER

Nationality:	Roumanian (Volksdeutcher)
Age:	40
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Private

Plea: NG First Charge; NG Second Charge
Findings: G First Charge; G Second Charge
Sentence: Twenty-one months confinement from
30 April 1945

Evidence for Prosecution: FITTER, who is of German racial extraction, joined the Roumanian Army in February 1928 and transferred to the Waffen SS in August 1943. In October 1943 he was assigned to Dachau Concentration Camp and served as a guard in the main camp and on out-station Flansee until April 1945 (P-Ex 5, R 11).

Evidence for Defense: FITTER relied solely upon his extrajudicial sworn questionnaire. There is no evidence of any individual acts of cruelty or mistreatment. He took no part in any prisoner marches (P-Ex 5, R 11).

Sufficiency of Evidence: The admissions of the accused concerning the length of time he served as a guard at Camp Dachau are sufficient to sustain the findings of guilty when the findings of the Parent Case, of which this Court was required to take judicial notice, are considered. Roumania was a co-belligerent of Germany. 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. ALFRED JOSEF PLATENIK

Nationality: Czechoslovakian (Volksdeutscher)
Age: 44
Civilian Status: Unknown
Party Status: Unknown
Military Status: SS Private
Plea: NG First Charge; NG Second Charge
Findings: G First Charge; G Second Charge
Sentence: Twenty-one months confinement from
6 May 1945

Evidence for Prosecution: PLATENIK joined the Luftwaffe in July 1941 and was transferred to the Waffen SS in September 1944. Accused

spent the night of 1-2 August 1944 at Allach, an outcamp of Camp Dachau, his status being that of flier (Parent Case, Volume 1, pp. 23, 24, 32, 31, 94). On 2 August 1944 he began duty as guard at outcamp Ottobrunn and remained at that outcamp until April 1945. He took part in a prisoner transport in April 1945 (P-Ex 6, R 12).

Evidence for Defense: FLATENIK relied solely upon his extrajudicial sworn questionnaire. There is no evidence of any individual acts of cruelty or mistreatment (P-Ex 6, R 12).

Sufficiency of Evidence: The overnight stay at Allach is alone insufficient to attribute to the accused any of the atrocities committed at outcamp Allach. The Parent Case contains no record of any atrocities having been committed by this accused. However, it was admitted that the accused took part in a prisoner transport in April 1945 which transport was a part of the general plan for evacuation of the Dachau Concentration Camp system during which many cruelties and murders were committed. The findings of guilty are warranted by the evidence and the sentence is not excessive.

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

Recommendation: That the findings and sentence be approved.

6. JOHANNES PROSSWIMMER

Nationality:	German
Age:	56
Civilian Status:	Unknown
Party Status:	Allgemeine SS 1940
Military Status:	SS Technical Sergeant
Flee:	NG First Charge NG Second Charge
Findings:	G First Charge; G Second Charge
Sentence:	Two and one-half years confinement from 4 May 1945

Evidence for Prosecution: PROSSWIMMER joined the Waffen SS in February 1940 and at the same time was assigned as messenger and guard at Concentration Camp Dachau where he served as guard until April 1945

P-Ex 7, R 13).

Evidence for Defense: PROSSWIMMER relied solely upon his extrajudicial sworn questionnaire. There was no evidence of any individual acts of cruelty or mistreatment. He took no part in any prisoner marches (P-Ex 7, R 13).

Sufficiency of Evidence: The admissions of the accused concerning the length of time he served as a guard at Camp Dachau are amply sufficient to sustain the findings of guilty when the findings of the Paren Case, of which this Court was required to take judicial notice, are considered. In view of the findings of guilty to both charges, the sentence cannot be considered as excessive.

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

Recommendation: That the findings and sentence be approved.

7. PAUL ALFRED FUNDRICH

Nationality:	German
Age:	42
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Corporal, Waffen SS
Place:	NG First Charge; NG Second Charge
Findings:	G First Charge; G Second Charge
Sentence:	Twenty-one months confinement from 3 May 1945

Evidence for Prosecution: FUNDRICH joined the Luftwaffe in April 1940 and later transferred on an unspecified date to the Waffen SS. He was assigned as guard at Dachau Concentration Camp in August 1944 and remained there until April 1945. He took part in a prisoner march from Dachau to a point near Beierberg in April 1945 (P-Ex 9, R 14).

Evidence for Defense: FUNDRICH relied solely upon his extrajudicial sworn questionnaires. There was no evidence of any individual acts of cruelty or mistreatment (P-Ex 9, R 14).

Sufficiency of Evidence: The admissions of the accused concerning

the length of time he served as a guard at Camp Dachau are sufficient to sustain the findings of guilty when the findings of the Parent Case, of which this Court was required to take judicial notice, are also considered. In view of the findings of guilty to both charges, the sentence cannot be considered as excessive.

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

Recommendation: That the findings and sentence be approved.

8. ERWIN ALFRED SCHULZ

Nationality:	German
Age:	41
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Corporal, Waffen SS
Plea:	NG First Charge; NG Second Charge
Findings:	G First Charge; G Second Charge
Sentence:	Twenty-one months confinement from 3 May 1945

Evidence for Prosecution: SCHULZ joined the Luftwaffe in April 1940 and transferred to Waffen SS in September 1944. He performed guard duty at Dachau Concentration Camp and outcamp Allach from August 1944 to April 1945. He was a guard on a prisoner march from Allach to Beierberg in April 1945 (P-Ex 9, R 14).

Evidence for Defense: SCHULZ relied solely upon his extrajudicial sworn questionnaire. There was no evidence of any individual acts of cruelty or mistreatment (P-Ex 9, R 14).

Sufficiency of Evidence: The admissions of the accused concerning the length of time he served as a guard at Camp Dachau are sufficient to sustain the findings of guilty when the findings of the Parent Case, of which this Court was required to take judicial notice, are also considered. In view of the findings of guilty to both charges, the sentence cannot be considered as excessive.

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

Recommendation: That the findings and sentence be approved.

9. JOSEF STURM

This accused was not served nor tried (R 7).

10. ALOIS JOSEF NOSSEK

Nationality:	Czechoslovakian (Volksdeutscher)
Age:	53
Civilian Status:	Unknown
Party Status:	Allgemeine SS 1939
Military Status:	Sergeant, Waffen SS
Plea:	NG First Charge; NG Second Charge
Findings:	G First Charge; G Second Charge
Sentence:	Two and one-half years confinement from 4 May 1945

Evidence for Prosecution: NOSSEK joined the Waffen SS in April 1940. He was assigned to Dachau Concentration Camp in April 1940 and served as guard and clerk until April 1945 (P-Ex 10, R 15).

Evidence for Defense: NOSSEK relied solely upon his extrajudicial sworn questionnaire. There was no evidence of any individual acts of cruelty or mistreatment. He took no part in prisoner marches (P-Ex 10, R 15).

Sufficiency of Evidence: The admissions of the accused concerning the length of time he served as a guard at Camp Dachau are sufficient to sustain the findings of guilty when the findings of the Parent Case in which this Court was required to take judicial notice, are also considered. In view of the findings of guilty to both charges, the sentence cannot be considered as excessive.

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

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

TICKENHAHN, PLATENIK and NOSSEK, former Czechoslovakian nationals, cannot be questioned on the ground that Czechoslovakia is a member of the United Nations. War criminals, brigands, and pirates are the common enemies of all mankind and all nations have an equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated in "Wheaton's International Law", Volume I, Sixth Edition, at page 269, that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed." Nationals of other United Nations were sentenced, which sentences have been approved and carried into execution, in the Mauthausen Concentration Camp case (United States v. Altfuldich, et al., February 1947), and the Belsen Concentration Camp case, British Army of the Rhine, December 1945. Apparently, all concerned with the reviews and approval in those cases considered the universality of jurisdiction over war crimes to be so well recognized that discussion was not necessary. Military Government Courts have jurisdiction over the nationals of any country who are in the United States Zone of Occupation, except as to certain classes of American and other nationals, e.g., military personnel which are not pertinent to the jurisdictional question here involved. Concerning jurisdiction over war crimes, no limitation is imposed. See Sections 5-300.2 and 5-300.3, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters U.S. Forces, European Theater, 30 November 1945). Concerning the general question of universality of jurisdiction over war crimes see "Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXVIII, June 1945. No. 2. pp. 177-218.

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

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 as 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 proceeding, in concluding as to them that they not only participated to a substantial degree, but the nature and extent of their participation was 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.

/s/ George M. Lentz
GEORGE M. LENTZ
Captain, JAGD
Post Trial Branch

Having examined the record of trial, I concur, this 19th day of September 1947.

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

LEGAL FORM NO. 16
HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

AGO 757
2 Oct 1947

SUBJECT: Execution of Sentence in the Case of the United States vs.
Josef PFALLER, et al. (Case No. OOC-50-2-30)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO,

Subject: "Designation of Prisons for War Criminals," 26 February 1947
to the inclosed copies of the Order on Review in the above entitled
as to accused Josef PFALLER

Upon compliance with the Order on Review the certificate be-
will be completed and returned to the Deputy Judge Advocate for
Crimes, 7708 War Crimes Group, APO 207-1, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review
was carried into execution at War Criminal Prison No. 1, Landsberg,
Germany, on _____ 1947, at _____
(Date) (Hour)

Prisoner Josef PFALLER has been
released from confinement in
Landsberg War Crimes Prison No. 1
on 1 February 1947 per expiration
of sentence.

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON, Capt. CMP
Prison Officer

(Organization)

/s/ David A. Oakley
(Countersignature and Rank of
Witnessing Officer)
DAVID A. OAKLEY, 1st Lt. CmlC

PO
Not Filed