

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

17 September 1947

UNITED STATES)

v.)

Erhard HACHENBERGER, et al.)

Case No. 000-50-2-36

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried jointly at Dachau, Germany, on 18 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 Erhard HACHENBERGER, Peter Paul LEBEK, Otto LEDE, Wolfgang LOHR, Samuel MUELLNER, Franz OBERFRANK, Josef PROCKL, Josef RAHL, Wilhelm Hermann Heinrich REISSMANN, Albin KESSLER 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 Erhard HACHENBERGER, Peter Paul LEBEK, Otto LEDE, Wolfgang LOHR, Samuel MUELLNER, Franz OBERFRANK, Josef PROCKL, Josef RAHL, Wilhelm Hermann Heinrich REISSMANN, Albin KESSLER 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, deliberately 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: The prosecution's evidence, wholly documentary in character, establishes the existence of a mass atrocity operation at

the Dachau Concentration Camp and certain of its outposts, criminal in its

capacities. Prosecution's 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., 000-50-2, March 1946, hereinafter referred to as the "Parent Case", see Section V, post, R 9).

IV. EVIDENCE AND RECOMMENDATIONS:

1. BERNARD H. SCHNEIDERGER

Nationality:	German
Age:	39
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	3 years, commencing 10 May 1945

Evidence for Prosecution: Accused's sworn questionnaire indicates he was a member of the Waffen SS from 22 April 1940, he was a carpenter and relief day guard on work details at the "Training Institute for Arms Technics, Munich - Dachau" (R 10; P-Ex 2).

Evidence for Defense: Accused did not take the stand or offer any evidence in defense. He had no connection with the movement of prisoners (R 10; P-Ex 2).

Sufficiency of Evidence: There is no evidence in the record as to the exact location of the Arms Institute. Insofar as the record is concerned it may have been located at some distance from the main camp. Furthermore, there is no evidence in the record in this subsequent proceedings or in the record of the Parent Case as to atrocities committed there.

The findings of guilty and the sentence 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.

2. PETER PAUL LEHCK

This accused was served but not tried.

3. OTTO LEDE

Nationality: Polish (Claims German citizenship)
Age: 36
Civilian Status: Unknown
Party Status: Unknown
Military Status: SS Corporal
Plea: No Charge I; No Charge II
Findings: G Charge I; G Charge II
Sentence: 21 months, commencing 30 April 1945

Evidence for Prosecution: LEDE joined the Waffen SS on 15 August 1941. He was a guard at the Dachau Concentration Camp from August 1942 to October 1942. Thereafter he was assigned as a guard in the out detail, Bayrisch Zell, from October 1942 to September 1945. At the completion of this period he was again assigned to guard duty, this time with the special detail, Plannsee, and at the Hotel Forralls, Tyrol, where he remained until April 1945 (R 11; P-Ex 3).

Evidence for Defense: LEDE took the stand and in an unsworn statement testified that because of physical incapacity he was not qualified for combat duty (R 16, 18) and for this reason was sent to Camp Dachau where he remained for two months (R 16). During this time he performed the duties of guard at the plantation, the Liebhof, the boiler house, and also on the tower (R 18). He was never in the compound at Camp Dachau, and outside thereof prisoners were not mistreated (R 18, 19, 21). He lived in barracks which were located inside the gate, but outside the compound (R 19). If prisoners received mistreatment in the compound, it was not known to him (R 19, 20). He did not discuss this subject with others because to do so was forbidden (R 20, 21).

The Camp at Bayrisch Zell, to which accused was later sent (R 16), was a farm used as a rest camp for wounded soldiers (R 17, 20), but a

group of from 40 to 70 prisoners did the work around the place (R 16, 17, 20). The accused was assigned to guard duty there, also he drove horses with the prisoners (R 17). From Bayrisch Zell, LEHE was transferred to Plansee which he described as a hotel where men were kept (R 17). There was no evidence that accused was connected with the transportation of prisoners (R 11; P-Ex 3).

Sufficiency of Evidence: The accused was assigned to Camp Dachau for two months. At outcamp Bayrisch Zell his tour of duty ran in excess of one year. There is evidence in the Parent Case that prisoners were subjected to mistreatment at this outcamp (Parent Case, Vol. 1, R 61, 62).

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.

4. WOLFGANG LOHR

Nationality:	Rumanian (Volksdeutscher)
Age:	32
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Private First Class
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	20 months, commencing 6 May 1945

Evidence for Prosecution: Accused entered the Waffen SS 15 July 1943. From February 1944 to October 1944 he was a guard stationed at R.A.W., Railroad Equipment Works, at Freimann. He was then transferred to Castle Itter, where he was again a guard, serving from 7 October 1944 to 15 January 1945. On 16 January 1945 he returned to the R.A.W., Railroad Equipment Works at Freimann where he worked in locomotive control until April of the same year (R 11; P-Ex 4).

Evidence for Defense: LOHR did not take the stand or offer any evidence in defense. He had no connection with the movement of prisoners (R 11; P-Ex 4).

Sufficiency of Evidence: He was at no time a guard at the main Dachau Camp. The record in the Parent Case is devoid of evidence that prisoners were mistreated either at the Railroad Equipment Works at Freimann or at Castle Itter. Likewise, in the record in this subsequent proceedings there is a lack of evidence upon this point. Rumania was a cobelligerent of Germany,

The findings of guilty and the sentence 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.

5. SAMUEL MUELLNER

Nationality:	Czechoslovakian (Volksdeutscher)
Age:	32
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	21 months, commencing 30 April 1945

Evidence for Prosecution: Accused entered the Waffen SS 25 January 1943. He was a guard at the Dachau Concentration Camp from that date to 25 August 1943, when he was transferred to the labor camp, Haunstuetten, where he again served as guard until 25 October 1943. The following day he returned to Camp Dachau and was a guard there until 28 September 1944. He was then transferred to the Plansee outcamp where he performed guard duties from 29 September 1944 to 29 April 1945. In August 1944, he was guard on a transport carrying prisoners from Camp Dachau to Ravensbruck (Ravensbruck) (R 12; P-Ex 5).

Evidence for Defense: The accused did not take the stand or offer any evidence in defense.

Sufficiency of Evidence: The evidence indicates that the accused was connected with Camp Dachau as a guard for a period of approximately one and a half years (R 9; P-Ex 1).

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.

6. FRANZ OBERFRANK

Nationality:	German
Age:	35
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Place:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	1 year, commencing 10 April 1946

Evidence for Prosecution: This accused joined the Waffen SS on 7 September 1939. He served as a guard at the Dachau Concentration Camp from 1 July 1942 to 20 February 1943 (R 13; P-Ex 6).

Evidence for Defense: OBERFRANK did not take the stand or offer any evidence in his own behalf. He was not connected with the transport of prisoners (R 13; P-Ex 6).

Sufficiency of Evidence: The evidence establishes that OBERFRANK was connected with Camp Dachau as a guard for a considerable period of time (R 9; P-Ex 1).

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.

7. JOSEF FROCKL

This accused was acquitted (R 29).

8. JOSEF RABL

Nationality: German
Age: 41
Civilian Status: Unknown
Party Status: Unknown
Military Status: SS Private
Plea: NG Charge I; NG Charge II
Findings: G Charge I; G Charge II
Sentence: 21 months, commencing 5 May 1945

Evidence for Prosecution: RABL entered the Waffen SS 1 June 1944.

He was assigned as a guard to outcamp Rotschweige from 13 June 1944 to 9 September 1944. On the latter date he was transferred to outcamp Allach where he also served as a guard until 26 April 1945. He performed guard duty in connection with the transportation of prisoners from Allach to Wolfretshausen from 26 to 29 April 1945 (R 14; P-Ex 8).

Evidence for Defense: This accused did not take the stand or offer any evidence in defense.

Sufficiency of Evidence: Both Rotschweige and Allach were outcamps of the Dachau Concentration Camp. The accused served at these outcamps for a considerable period of time between the dates alleged (R 9; P-Ex 1).

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. WILHELM HERMANN HEINRICH KELLMANN

This accused was served but not tried.

10. ALBIN NESSLER

Nationality: Austrian
Age: 38

Civilian Status: Unknown
Party Status: Unknown
Military Status: SS Corporal
Plec: NG Charge I; NG Charge II
Findings: G Charge I; G Charge II
Sentence: 21 months, commencing 1 May 1945

Evidence for Prosecution: Accused entered the Luftwaffe on 9 May 1941. On August 9, 1944, he was transferred to the Taffen SS. He was assigned to guard duty at Camp Dachau from 1 September 1944 to November 1944. Thereafter he was transferred to Stefanskirchen, an outcamp of Camp Dachau, where he was a guard from November 1944 to April 1945. On a movement of prisoners from Camp Dachau to an unknown destination, which lasted from 26 April 1945 to 28 April 1945, he served as a foot guard (R 15; P-Ex 9).

Evidence for Defense: WESSLER did not take the stand or offer any evidence in defense.

Sufficiency of Evidence: The accused was on duty at Dachau as a guard for a considerable period of time. He participated in the evacuation of prisoners from Dachau. Austria was a co-belligerent of Germany.

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.

A question not raised during the course of the trial merits discussion, viz., did the Court have jurisdiction of the persons of the accused who were allegedly nationals of other United Nations. Otto LEIDE was a national of Poland who claimed German citizenship, and Samuel

MUELINER was a national of Czechoslovakia. 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. Altfeldisch, et al., February 1947), and in the Belsen Concentration Camp case, British Army of the Rhine, December 1945. Apparently, all concerned with the reviews and approvals 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, US 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 XXXIII, June 1945, No. 2, pp 177-218.

Application of Parent Case: The Court was required to take cognizance of the decision rendered in the parent Dachau Concentration Camp 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 accused, LEDE, MUELLNER, OBERFRANK, RABL, and RESSLER, 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 was such as to warrant the sentences imposed. Concerning accused HACHENBERGER and LOHR it was shown that they participated and the nature of their duties was satisfactorily proved. However, a search of the record in the Parent Case and the record in this subsequent proceedings reveals no evidence as to atrocities committed at the outcamps where they were assigned. It is believed that the participation of these two accused in the mass atrocity was too remote to form a proper basis for sentencing by the Court. By virtue of the absence of evidence as to what occurred at the outcamps in question, they are not shown to have participated to a substantial degree and there is inadequate evidence as to the nature and extent of their participation to permit of arriving at appropriate sentences. It could be contended with considerable merit that the Court, with propriety, could have inferred that the inmates of all outcamps were subjected to cruelties and tortures substantially like those clearly proved to have been inflicted at the parent camp and various outcamps. If that view were adopted, at least theoretically, injustices could result and those too remotely connected with the mass atrocity might be severely punished without a proper gauge to measure the magnitude of their crime.

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

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved, except as to Erhard HACHENBERGER and Wolfgang LOHR, and that as to each of these two accused the findings and sentences be disapproved.

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

/s/ Anthony J. Albert
ANTHONY J. ALBERT
Attorney
Post Trial Branch

Having examined the record of trial, I concur, this 17th day of September 1947.

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

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
15 October 1947

SUBJECT: Release of Prisoner in the Case of the United States vs. Erhard
HACHENBERGER, et al. (Case No. 000-50-2-36).

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
and to the inclosed copies of the Order on Review in the above entitled
case as to accused Erhard HACHENBERGER.

Upon compliance with the Order on Review the certificate below
will be completed and returned to the Deputy Judge Advocate for War
Crimes, 7708 War Crimes Group, APO 407, U.S. Army.

BY COMMAND OF GENERAL I. CLAY,

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

1 Incl:

1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

Release of prisoner 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 Erhard HACHENBERGER has been
released from confinement at
Landsberg War Crimes Prison No. 1
on 9 May 1947

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON
Captain CMP
Prisoner Officer

(Organization)

David A. Oakley

(Countersignature and Rank of)