

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

1 August 1947

UNITED STATES )

v. )

Case No. 000-50-2-38

Karl BESIER, et al. )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 20-23 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 Karl BESIER, Xaver DIETHELM, Gustav EBERT, Hermann FROEMTER, Georg Heinrich RECHLER, Max HEGGER, Leo HEIN, Alfred LUGGSEK, Johann Dietrich M. HLSTEDT, Josef M. TELJA, 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 LANESBERG, 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 Karl BESIER, Xaver DIETHELM, Gustav EBERT, Hermann FROEMTER, Georg Heinrich RECHLER, Max HEGGER, Leo HEIN, Alfred LUGGSEK, Johann Dietrich M. HLSTEDT, Josef M. TELJA, 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 accused, were by their own admissions, members of the SS at Camp Dachau and/or its outcamps for considerable periods of time between the dates alleged, and were shown to have participated to a substantial degree in the Dachau Concentration Camp mass atrocity. Prosecution's P-Ex 1 (R 8) 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, 1 ch 1946, hereinafter referred to as the "Parent Case", see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. KARL BEBIER

|                  |                                |
|------------------|--------------------------------|
| Nationality:     | German                         |
| Age:             | 43                             |
| 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:        | 3 years, commencing 4 May 1945 |

Evidence for Prosecution: The accused served as a guard at outcamp Kaufbeuren from 8 August 1944 to 15 April 1945 and at Camp Dachau from 15 April 1945 to 26 April 1945. He participated as a guard in an inmate evacuation march from Camp Dachau to Wolftratshausen on 26-30 April 1945 with 400 inmates and 12 guards (R 10; P-Ex 2). Accused, in his unsworn statement to the Court, stated that he served as camp guard and on outside details at outcamp Kaufbeuren and Camp Dachau (R 18). He liked his work and made no effort to transfer. He once saw an SS lieutenant slap an inmate for stealing (R 19). For various periods he supervised the gravel pit, gas works, or detail Eigen with as many as 12 to 15 inmates at one time, and in seven months supervised a total of 300 to 400 inmates (R 20). Guards were fed somewhat better than inmates (R 21). He heard of mistreatment of inmates (R 23). On the inmate evacuation march of 26-30 April, [redacted] bread and butter for the four days (R 25).



Evidence for Defense: The accused, in his unsworn statement to the Court, stated that he at no time served in the compound where inmates were confined. On outside details, guards were required to keep eight paces behind their inmates and were not allowed to talk to them (R 18). He saw no mistreatment and did not participate in any hanging, shooting, or beating of inmates (R 19). No inmates left his details because of ill health, and none was replaced for any reason (R 20). The inmates were well fed and healthy (R 21). On the inmate evacuation march starting 26 April 1945, none fell out or was beaten, mistreated or shot (R 24). The inmates looked well at the start and finish of the march. They received the same food as he did (R 25). He knew of no deaths at outcamp Kaufbeuren or Camp Dachau (R 26). He had nothing to do with apportioning food (R 27). Except for the inmate who was slapped for stealing, he saw no slapping at outcamp Kaufbeuren. He heard no shots and saw no transports arrive at Camp Dachau (R 27, 28).

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

Petitions: A Petition for Review was filed 24 December 1946 by defense counsel Captain Frank E. Moran. Two Petitions for Clemency were filed by the accused's wife, Klara Bosler, one undated and the other dated 22 May 1947.

Recommendation: That the findings and sentence be approved.

2. XAVER DIFREI

|                  |                                  |
|------------------|----------------------------------|
| Nationality:     | German                           |
| Age:             | 34                               |
| Civilian Status: | Unknown                          |
| Party Status:    | Unknown                          |
| Military Status: | SS Corporal                      |
| Plea:            | MG Charge I; MG Charge II        |
| Findings:        | C Charge I; C Charge II          |
| Sentence:        | 9 months, commencing 23 May 1946 |

Evidence for Prosecution: The accused served as a guard at Camp



Dachau from March 1942 to May 1942, on outdetail Radolfzell from June 1942 to January 1943, and at Camp Dachau from January 1943 to 13 February 1943 (R 11; P-Ex 3). The accused served as a guard on details and on the guard chain at Camp Dachau. In his unsworn statement to the Court, the accused stated that he heard of mistreatments, killings and beatings of inmates from civilians in the vicinity of Dachau (R 72, 73).

Evidence for Defense: The accused participated in no movements of inmates (R 11; P-Ex 3). In his unsworn statement to the Court, the accused stated that he did not mistreat inmates (R 67) and no inmate was mistreated while under his supervision. None of his guard duties was done inside the inmate enclosure (R 68). He left camp duty in February 1943 (R 69) and knew nothing about the crematory (R 72) as it did not exist while he was at Camp Dachau (R 73). On outdetail Radolfzell, inmates got more food than guards, or they could not have worked (R 75).

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

Petitions: A Petition for Review was filed 24 December 1946 by defense counsel Captain Frank E. Morse. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

3. GUSTAV EBERT

|                  |                                  |
|------------------|----------------------------------|
| Nationality:     | Austrian                         |
| Age:             | 37                               |
| Civilian Status: | Unknown                          |
| Party Status:    | Unknown                          |
| Military Status: | SS Private                       |
| Flea:            | NG Charge I; NG Charge II        |
| Findings:        | G Charge I; G Charge II          |
| Sentence:        | 21 months, commencing 1 May 1945 |

Evidence for Prosecution: The accused served as a guard at Camp



Dachau from 25 January 1943 to 17 August 1943, and as an orderly at special detail Plansee from 18 August 1943 until captured, which was apparently upon liberation of the camp (R 12; P-Ex 4). The accused served in the guard chains at Camp Dachau (R 29). He went to outcamp Plansee as a waiter and stayed there until 1 May 1945, serving French generals and high government officials (R 30). He knew there was a crematory at Camp Dachau (R 32) and that inmates who died were cremated there. Details under him had 10 to 20 inmates and worked at the boiler house, lumber yard and nursery (R 33). During the last months of the war he heard that inmate transports arrived at Dachau (R 35).

Evidence for Defense: The accused participated in no movements of inmates (R 12; P-Ex 4). Accused, in his unsworn statement to the Court, stated that he did not mistreat any inmates (R 29, 31, 36). He was never inside the inmate compound at Camp Dachau (R 30, 37). He asked for a transfer from Camp Dachau, which was refused. He saw no mistreatment of inmates there (R 32) and heard no shootings. He never heard of anyone dying in Camp Dachau (R 33, 37). No one fell out of his details because of illness. He saw no inmate transports or inmate marches arrive or leave (R 34). He denied hearing about what went on in Camp Dachau in general (R 37). He knew what was being burned in the crematory (R 38). A former inmate at special detail Plansee testified that the accused only served the inmates there and was good to them (R 41, 42). SS and German personnel were instructed to treat inmates well there (R 43). Some inmates on special detail Plansee were ordinary people, and he did not hear of the accused mistreating them (R 49).

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 24 December 1946 by defense counsel Captain Frank E. Morse. No Petitions for Clemency



were filed.

Recommendation: That the findings and sentence be approved.

4. HERMANN FROEMTER

|                  |                                |
|------------------|--------------------------------|
| Nationality:     | German                         |
| Age:             | 48                             |
| Civilian Status: | Unknown                        |
| Party Status:    | Unknown                        |
| Military Status: | SS Technical Sergeant          |
| Plea:            | NG Charge I; NG Charge II      |
| Findings:        | G Charge I; G Charge II        |
| Sentence:        | 3 years, commencing 4 May 1945 |

Evidence for Prosecution: The accused served as a clerk at Camp Dachau from 12 August 1941 to 29 May 1945 (R 12; P-Ex 5). On two or three occasions he served as guard at porcelain detail number two (R 56). His duties as clerk were to keep personnel records, pay-books, etc., on the guards (R 58). An inmate told him that those inmates who did not follow instructions were punished by beatings with a stick (R 60). He knew there was a crematory at Camp Dachau (R 62). He saw the last evacuation transport of 5,000 inmates leave Camp Dachau on 26 April 1945 (R 63). In 1944 food became poorer, and the inmates looked more undernourished (R 64). He did guard duty for five or six days while receiving training (R 65).

Evidence for Defense: The accused did not participate in any movements of inmates (R 12; P-Ex 5). Former inmates told his wife that no charges could be raised against him (R 54; D-Ex 1). Accused, in his unsworn statement to the Court, denied ever being inside the inmate compound, mistreating any inmates, or observing any mistreatment at Camp Dachau (R 55, 56). He never talked to guards about what happened to inmates (R 59), and heard of no shootings or hangings (R 60). Generally there was a good relationship between inmates and guards, and he never heard of beatings, tortures and killings by guards (R 61). He was told that inmates who were cremated had died



a natural death (R 62). He saw no transports come in. Up until 1943 inmates looked quite good (R 63). Some looked as well as the accused. He was never in the protective custody camp where punishments were administered. He kept no record on inmates as that was done at headquarters (R 64).

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

Petitions: A Petition for Review was filed 2<sup>d</sup> December 1946 by defense counsel Captain Frank E. Morse. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

5. GEORG HEINRICH HUEFLER

|                  |                                   |
|------------------|-----------------------------------|
| Nationality:     | German                            |
| Age:             | 42                                |
| Civilian Status: | Farmer                            |
| Party Status:    | Unknown                           |
| Military Status: | SS Sergeant                       |
| Plea:            | NG Charge I; NG Charge II         |
| Findings:        | G Charge I; G Charge II           |
| Sentence:        | 21 months, commencing 7 June 1945 |

Evidence for Prosecution: The accused served as a guard at out-detail Radolfzell (Bodensee) from 1 June 1941 to 1 July 1942; at Camp Dachau from 1 July 1942 to 5 February 1943; as a farmer at out-detail Hinter-Eckart (Upper Bavaria) from 5 February 1943 to 12 May 1945 (R 13; P-Ex 6). He supervised the farm work of ten Camp Dachau inmates at Hinter-Eckart (R 78). The farm was leased by the plantation that belonged to Camp Dachau (R 79). He heard at outdetail Radolfzell that several inmates were slapped (R 84).

Evidence for Defense: The accused did not participate in any movements of inmates (R 13; P-Ex 6). In his unsworn statement to the Court, the accused stated that he performed no duty inside the



of no killings, shootings, beatings or burnings at either outdetail Radolfzell or Camp Dachau (R 84). He treated inmates well and permitted visitors. None fell out of details at outdetail Radolfzell due to their physical condition, and inmates said the food was good there (R 88). Inmates and guards ate the same food at the farm. He did not know about solitary confinement at Camp Dachau (R 89). Former inmates on the farm gave the accused a letter of thanks for making their stay more bearable (R 80; D-Ex 2).

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

Petitions: A Petition for Review was filed 24 December 1946 by defense counsel Captain Frank E. Morse. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

a. MAY HEGGER

|                  |                                 |
|------------------|---------------------------------|
| Nationality:     | German                          |
| Age:             | 40                              |
| Civilian Status: | Merchant                        |
| Party Status:    | Unknown                         |
| Military Status: | SS Sergeant                     |
| Charges:         | NG Charge I; NG Charge II       |
| Findings:        | G Charge I; G Charge II         |
| Sentence:        | 2½ years, commencing 8 May 1945 |

Evidence for Prosecution: The accused served as a clerk at Camp Dachau from June 1941 to April 1945. He accompanied an inmate as guard from Camp Dachau to Schlachters in the fall of 1944 by train; and one inmate sent by train in the summer of 1944 from Camp Dachau to outcamp Kempten/Fottern (R 13; P-Ex 7). For two months at Camp Dachau the accused did company duty (R 92) and guard duty at the plantation. After that he worked in the orderly room of the third guard company keeping daily strength reports, files on relatives of members, and making periodic reports (R 93).



Evidence for Defense: The accused, in his unsworn statement to the Court, stated that he never mistreated inmates and never had duties inside the inmate enclosure at Camp Dachau (R 93). He had nothing to do with records of inmates (R 94). Guards had orders forbidding mistreatment of inmates (R 95). He never heard of any beatings or mistreatment of inmates (R 96) and never talked to other personnel about the inmates. It was known that the dead were cremated. Once there was talk of cremating the body of a member of the guard company (R 97). He heard of no medical experiments or typhoid or malaria inoculations and he never went to the hospital. He saw only one transport ready to depart from Camp Dachau during the last days of the war, and as far as he remembered, inmates in that transport looked quite well (R 98). He did not detail guards to accompany it (R 99).

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

Petitions: A Petition for Review was filed 24 December 1946 by defense counsel Captain Frank E. Morse. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

7. LEO HEIN

|                  |                                  |
|------------------|----------------------------------|
| Nationality:     | German                           |
| Age:             | 48                               |
| Civilian Status: | Tailor                           |
| Party Status:    | Unknown                          |
| Military Status: | SS Sergeant                      |
| Plca:            | NG Charge I; NG Charge II        |
| Findings:        | G Charge I; G Charge II          |
| Sentence:        | 21 months, commencing 4 May 1945 |

Evidence for Prosecution: The accused served as a guard at the spinning mill at outcamp Kaufbeuren from August 1944 to March 1945, and received instruction and did guard duty at Camp Dachau in March and April 1945 (R 14; P-Ex 8). At outcamp Kaufbeuren the accused



served as an escort guard on the quarry detail and on a detail at the railroad station. At Camp Dachau he checked vehicles and passes at the gate and served as an escort guard on three different details, one with two inmates, and two with 10-15 inmates (R 101).

Evidence for Defense: The accused participated in no movements of inmates (R 14; P-Ex 8). The accused, in his unsworn statement to the Court, stated that he did not request transfer to outcamp Kaufbeuren or to Camp Dachau (R 100, 101). He never mistreated inmates or took part in any executions or punishments. He prevented punishments on his details (R 102). He never entered the inmate compound at Camp Dachau (R 103). At outcamp Kaufbeuren he took Sunday morning walks with inmates and entered inns with them, though it was prohibited. They were treated well. He did not request a transfer because it would have been futile (R 104). He did not know of mistreatment of inmates at Camp Dachau (R 105). Inmates whom he saw did not look to be in bad health or ill treated (R 106). He did not know about the use of the crematory (R 107). He was never in the inmate enclosure at Kaufbeuren and never checked inmate transports in or out of Camp Dachau (R 108). A former inmate stated that the accused permitted inmates to get extra food, and he knew of no wrongful acts by the accused (R 110).

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

Petitions: A Petition for Review was filed 24 December 1946 by defense counsel Captain Frank E. Morse. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

8. ALFRED DUFAGSKY

|                  |                 |
|------------------|-----------------|
| Nationality:     | Czechoslovakian |
| Age:             | 27              |
| Civilian Status: | Unknown         |
| Party Status:    | Unknown         |



|                  |                                  |
|------------------|----------------------------------|
| Military Status: | SS Private                       |
| Plea:            | WG Charge I; WG Charge II        |
| Findings:        | G Charge I; G Charge II          |
| Sentence:        | 21 months, commencing 3 May 1945 |

Evidence for Prosecution: The accused served as a guard at Camp Dachau from 26 January 1943 to 26 April 1945. He participated as guard on an inmate march from Camp Dachau to outcamp Allach on or about 10 August 1944 with approximately 300 inmates and 60 guards (R 14; P-Ex 9). The accused, in his unsworn statement to the Court, stated that he did about three months training and guard duty at Camp Dachau (R 111). He heard from inmates of mistreatment and about burnings in the crematory (R 115).

Evidence for Defense: The accused, in his unsworn statement to the Court, stated that guards were ordered to keep a certain distance from inmates and not to talk to them or accept cigarettes or food from them. He was never inside the inmate compound and had no part in punishments, hangings, or shootings of inmates (R 112, 113). The inmate march from Camp Dachau to outcamp Allach lasted three and one-half hours. No inmates were slapped or beaten (R 113). None fell out during the march (R 117). At Camp Dachau he never saw any inmates fall out of a detail because they were too sick or too weak to work (R 115). Guards did not talk to him about prisoners, and they did not take food or cigarettes from inmates (R 116). He never heard of anyone being burned alive (R 117). A former inmate testified that the accused was his detail leader for some time. In 1943 he was a dog leader (119), and he conducted himself very correctly, never allowing his dog to bite an inmate. He never heard that the accused mistreated inmates (R 120), and though he was present at the war crimes suspect line-ups for 15 days, he never heard any former inmate make any charge against the accused (R 121). The accused did not participate in the inmate evacuation march of 26 April 1945 (R 123) but escaped with 15 inmates (R 129).



by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed 24 December 1946 by defense counsel Captain Frank E. Morse. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

9. JOHANN DIETRICH MAHLSTEDT

This accused was not served nor tried.

10. JOSEF MATEJA

This accused was not served nor tried.

V. QUESTIONS OF LAW:

Jurisdiction: A question not raised during the course of the trial merits discussion, viz., did the Court have jurisdiction of the person of accused LUKACSEF who is allegedly a national of 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 where-soever 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. Altfuldisch, 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.

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", 1<sup>st</sup> October 1946, and the Parent Case). The 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 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.



/s/ William C. Craft  
WILLIAM C. CRAFT  
Attorney  
Post Trial Branch

Having examined the record of trial, I concur,  
this 21st day of October 1947.

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