

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

22 July 1947

UNITED STATES)

v.)

Ludwig Philip CARL, et al.)

Case No. 000-50-2-46

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 3-4 January 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 Philip CARL, Robert Hugo DAUB, Alexander DJERIN, Josef DUERMEIER, Josef FEISTAUER, Heinrich FISCHBACH, Johann GRAEFF, Michael GREIL, Friedrich HENKEL, and Franz HUMM, 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 Ludwig Philip CARL, Robert Hugo DAUB, Alexander DJERIN, Josef DUERMEIER, Josef FEISTAUER, Heinrich FISCHBACH, Johann GRAEFF, Michael GREIL, Friedrich HENKEL, and Franz HUMM, 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 convicted 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 in the Dachau Concentration Camp mass atrocity. Exhibit P-Ex 1 is a certified copy of the charges, particulars, findings and sentences in the Parent Dachau Concentration Camp Case (U.S. v. Weiss, et al. 000-50-2, March 1946, hereinafter referred to as the "Parent Case;" see par. V, post; R 13-14).

IV. EVIDENCE AND RECOMMENDATIONS:

1. LUDWIG PHILIP CARL

This accused was acquitted (R 76).

2. ROBERT HUGO DAUB

Nationality:	German
Age:	35
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Corporal
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	2½ years, commencing 3 June 1945

Evidence for Prosecution: Accused was a guard at Camp Dachau from 13 July 1944 to 21 January 1945 and at outcamp Stefanskirchen from 21 January 1945 to 28 April 1945. He participated in three prisoner transports and one prisoner march. The prisoner transports were from Camp Dachau to Spangchingen; Camp Dachau to Buchenwald; Camp Dachau to Barth and the prisoner evacuation march was from Stefanskirchen to Nussdorf. All between the dates alleged (R 15; P-Ex 3).

Evidence for Defense: Accused testified that nothing happened at any time to any of the prisoners during any of the prisoner transports or the prisoner march in which he acted as a guard and that he never heard or saw any shooting or mistreatment of prisoners at any time (R 69-71).

Sufficiency of Evidence: The findings of guilty are warranted by

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

Recommendation: That the findings and sentence be approved.

3. ALEXANDER DJERIN

Nationality:	Latvian
Age:	29
Civilian Status:	Student
Party Status:	Unknown
Military Status:	Waffen SS, Staff Sergeant
Plea:	NG Charge I, NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	6 years, commencing 9 May 1946

Evidence for Prosecution: Accused was a platoon leader at Camp Dachau from November 1943 to April 1944 and from November 1944 to March 1945. He was both a platoon leader and deputy commando leader (presumed to mean detail leader) at outdetail Munich "AGFA" from February 1945 to May 1945, (R 15, 16; P-Ex 4).

Accused, as a deputy transport leader, engaged in a prisoner march from Munich to Wolfratshausen from 27 April 1945 to 29 April 1945 consisting of approximately 550 prisoners and 5 guards (P-Ex 4).

Evidence for Defense: Accused testified that on the prisoner march from Munich to Wolfratshausen he neither saw nor heard any snoring at any time and that the prisoners were well treated. He testified that he always treated prisoners well and that he never saw a prisoner mistreated. The women prisoners on the prisoner march had received rations for three days in Munich in addition to which he purchased food and gave them money to purchase foodstuff and that all of the women on this transport were well fed (R 60, 62, 63).

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

Petitions: Two Petitions for Review were filed by accused, one dated 20 February 1947 and one dated 30 June 1947. No Petitions for

Clemency were filed.

Recommendation: That the findings and sentence be approved.

4. JOSEF DUERMEIER

This accused was acquitted (R 76).

5. JOSEF FEI STAUER

A nolle prosequi was entered in favor of this accused (R 1).

6. HEINRICH FISCHBACH

This accused was acquitted (R 76).

7. JOHANN GRAEFF

This accused was acquitted (R 76).

8. MICHAEL GREIL

A nolle prosequi was entered in favor of this accused (R 49).

9. FRIEDRICH HENKEL

Nationality:	German
Age:	54
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Staff Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	3 years, commencing 28 May 1945

Evidence for Prosecution: Accused was a guard at outcamp Feldafing from 1 January 1942 to 4 January 1942, at Camp Dachau from 5 January 1942 to 12 September 1942, at outcamp Heppenheim, from 13 September 1942 to 16 December 1942, at Camp Dachau from 3 January 1943 to 21 February 1943, and as a Sergeant of the guard and detail leader at outcamp Allach from 22 February 1943 to 26 April 1945 (R 10-20; P-Ex 9A).

Accused participated as a detail leader in a prisoner march from Allach to Wolfratshausen from 26 April 1945 to 29 April 1945, consisting of approximately 2000 prisoners and 100 guards (P-Ex 9A).

Evidence for Defense: No evidence was introduced by the defense on behalf of this accused.

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.

10. FRANZ HUMM

Nationality:	Roumanian
Age:	40
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Corporal
Flea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	1 year and 8 months, commencing 3 May 1945

Evidence for Prosecution: Accused was a guard at outdetail Freimann, an outdetail from Camp Dachau, from 20 February 1944 to 27 April 1945 (R 20; P-EX 10).

Evidence for Defense: Accused participated in no prisoner marches or prisoner transports (P-EX 10).

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

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

Recommendation: That the findings and sentence be disapproved.

V. QUESTIONS OF LAW:

Jurisdiction: 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

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). With the exception of accused HUMM, all of 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 that the nature of his duties was also satisfactorily proved. However, a search of the record in the Parent Case and the record in this subsequent proceeding reveals no evidence to atrocities committed at outdetail Freimann. It is true that it was shown that prisoners were worked there but, if they were not otherwise mistreated and tortured, it is believed that HUMM's participation in this mass atrocity was too remote to form a proper basis of sentencing by the Court. By virtue of the absence of evidence as to what occurred at the outdetail Freimann, he is not shown to have participated to a substantial degree and there is inadequate evidence as to the nature and extent of his participation to permit of arriving at an appropriate sentence. It could be contended with considerable merit that the Court, with propriety, could have inferred that the prisoners while at outdetail Freimann were subjected to cruelties and torture substantially like those clearly proven to have been inflicted at the Parent Camp and the other outcamps. If that view were adopted, at least theoretically, injustices could result and those too remotely connected with this or other mass atrocities might be severely punished without a proper gauge to measure the magnitude of their crimes.

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused, except as to HUMM.

VI. CONCLUSIONS:

1. It is recommended that the findings and sentences except as to the accused HUMM be approved, and that the findings and sentence as to

the accused HUMM be disapproved.

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

/s/ Thomas L. Nair
THOMAS L. NAIR
Attorney
Post Trial Branch

Having examined the record of trial, I concur.

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

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
5 Sep 1947SUBJECT: Release of prisoner in the Case of the United States vs.
Ludwig Philip CARL, et al. (Case No. 000-50-2-46)TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGC
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 Franz HUMM.

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 178, U.S. Army.

BY COMMAND OF GENERAL 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

The release covered by the above described Order on Review
was carried into execution at War Criminal Prison No. 1, Landsberg,
Germany, on 23 January 1947, at 0900.
(Date) (Hour)

Prisoner Franz HUMM has been
released from confinement at Lands-
berg War Crimes Prison No. 1 on 23
January 1947 per expiration of
sentence.

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

(Organization)

/s/ Joseph H. Williams
(Countersignature and Rank of