

26 August 1947

UNITED STATES)

v.)

Case No. 000-50-2-48

Karl August KUETNER, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, on 8 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 Karl August KUETNER, Kurt LANGE, Jakob LINDNER, Emil MARKS, Peter MATTEKOWITZSCH, Friedrich Karl NEMETZ, Franz Joseph PAUL, Wilhelm PRETTIN, Ewald SCHERESCH, Xaver SEITZ, 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 Karl August KUETNER, Kurt LANGE, Jakob LINDNER, Emil MARKS, Peter MATTEKOWITZSCH, Friedrich Karl NEMETZ, Franz Joseph PAUL, Wilhelm PRETTIN, Ewald SCHERESCH, Xaver SEITZ, 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: All of the convicted accused except MATWEKOWITSCHE, who was an inmate and room eldest, were, by their own admissions, members of the SS at Dachau Concentration Camp 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. 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., CGO-50-2, March 1946, DJANE, hereinafter referred to as the "Parent Case"; see Section V, post; R11).

IV. EVIDENCE AND RECOMMENDATIONS:

1. KARL AUGUST KUERTER

This accused was served but not tried (R3).

2. MURT LANGE

Nationality:	German
Age:	41
Civilian Status:	Unknown
Party Status:	Algemeine SS
Military Status:	Waffen SS Corporal
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	1 year and 9 months, commencing 8 May 1945

Evidence for Prosecution: The accused was a guard at Camp Dachau from February 1942 to June 1944 when he was made mess sergeant at outcamp Allach, where he served until 1 March 1945 (R 11; P-Ex 2).

Evidence for Defense: The accused did not participate in any inmate transports or marches (R 11; P-Ex 2). The accused testified to the effect that he never beat nor mistreated any inmates during his tour of duty as guard at Camp Dachau, and that his duties were on the outside of the camp (R 22).

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.

3. JAKOB LINDNER

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: 1 year and 8 months, commencing
30 May 1945

Evidence for Prosecution: The accused was a guard at Camp Dachau from October 1942 until May 1945. From May 1943 until 4 May 1945 he was a driver at outcamp Itter Castle (R 13; P-Ex 3).

Evidence for Defense: The accused did not participate in any inmate transports or marches (R 13; P-Ex 3). He testified to the effect that he never beat nor mistreated inmates at Camp Dachau and that he was a driver of a horse drawn carriage at outcamp Itter Castle (R 24).

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

4. EMIL MARKS

This accused was served but not tried (R 3).

5. PETER MATTEKOWITSCHE

Nationality: German
Age: 35
Civilian Status: Unknown
Party Status: Unknown

Military Status: None.
Plea: NG Charge I; NG Charge II
Findings: G Charge I; G Charge II
Sentence: 1 year and 8 months, commencing
28 April 1945

Evidence for Prosecution: The accused was an inmate at Camp Dachau from February 1943 to April 1945. In March 1945 he was made room eldest and served in this capacity until the evacuation (R 14; P-Ex 4). The accused, testifying in his own behalf, admitted beating inmates in Camp Dachau while he was room eldest in one of the blocks (R 26).

Evidence for Defense: The accused did not participate in any inmate transports or marches (R 14; P-Ex 4). He testified to the effect that toward the end of the war there was very little food and that just enough was issued to the inmates to sustain life. When one inmate would steal bread from another inmate it became necessary to punish him, and the slaps in the face which he gave them were for these thefts. Had he reported thefts to the SS, the punishment would have been much more severe (R 26).

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.

6. FRIEDRICH KARL NEMETZ

Nationality: German
Age: 45
Civilian Status: Unknown
Party Status: Allgemeine SS
Military Status: Waffen SS Sergeant
Plea: NG Charge I; NG Charge II
Findings: G Charge I; G Charge II
Sentence: 1 year and 9 months, commencing 5
May 1945

Evidence for Prosecution: The accused was a guard at Camp Dachau and outcamp RaGolfzell from December 1940 until April 1942. From April 1942 to 1 April 1945 he served as a clerk in the record office and personnel section at Camp Dachau. From 1 April 1945 until the capitulation he was with a training company at Camp Dachau. He participated as an escort guard in the inmate evacuation march from Dachau to Koenigsdorf, 26-30 April 1945, with about 1000 inmates and 60 guards (R 15; P-Ex 5).

Evidence for Defense: The accused testified to the effect that he never beat nor mistreated inmates, nor did he ever see anybody mistreated, as his service was on the outside of the camp (R29).

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.

7. FRANZ JOSEPH PAUL

Nationality:	German
Age:	47
Civilian Status:	Unknown
Party Status:	Allgemeine SS
Military Status:	Waffen SS Corporal
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	1 year and 9 months, commencing 2 May 1945

Evidence for Prosecution: The accused was a guard at Camp Dachau from 26 February 1941 to November 1943. After that time he served as a guard at Flossenburg Concentration Camp (R 16; P-Ex 6).

Evidence for Defense: The accused did not participate in any inmate transports or marches between the dates alleged (R 16; P-Ex 6). He testified to the effect that he was never on the inside of Camp

Dachau and that he never saw any inmates beaten or mistreated while there, nor did he beat or mistreat anyone in the course of his duties (R 31, 32).

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 . . . approved.

8. WILHELM PRETTIN

Nationality:	German
Age:	53
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Offen S3 Technical Sergeant
Plas:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	1 year and 9 months, commencing 26 May 1945

Evidence for Prosecution: The accused was a guard at Camp Dachau from April 1940 to October 1942, and a clerk in the post office in Camp Dachau from October 1942 until the capitulation in April 1945 (R 17, 36; P-Ex 7). He knew that many inmates died in Camp Dachau from typhoid epidemics in 1942-1943 and 1944-1945 (R 34).

Evidence for Defense: The accused did not participate in any inmate transports or marches (R 17; P-Ex 7). He testified to the effect that during the time he served as a guard he was never on the inside of the concentration camp and that he never beat nor mistreated anyone. At the post office he allowed the mail of some inmates to go out of camp uncensored (R 33).

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.

9. ETALD SCHERESCH

Nationality: Rumanian
Age: 38
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: 1 year and 8 months, commencing 4
May 1945.

Evidence for Prosecution: The accused was at Camp Dachau from 1 December 1943 until 27 April 1945 and worked in the headquarters dental station where dental treatment was given to the troops (R 18; P-Ex 8).

Evidence for Defense: The accused did not participate in any inmate transports or marches (R 18; P-Ex 8). He testified to the effect that he never performed any guard duty and never beat or mistreated inmates in any way. The patients he worked on as a dentist were SS guard unit troops (R 36, 37).

Sufficiency of Evidence: Rumania 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.

10. XAVIER SEITZ

Nationality: German
Age: 29
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

Evidence for Prosecution: The accused was a guard at outcamps Allach and Aubing from 26 October 1943 to 26 September 1944. He was a guard at Camp Dachau from 26 September 1944 to December 1944. From December 1944 until 1 April 1945 he was a guard at Buchenwald Concentration Camp and one of its outcamps. On 1 April 1945 he was assigned to Turkheim, an outcamp of Camp Dachau, where he served as a guard until the capitulation. He was a guard on an inmate transport from Camp Dachau to Camp Buchenwald in December 1944 with about 2000 inmates under 120 guards (R 19; P-Ex 9).

Evidence for Defense: The accused testified to the effect that during the time he served as a guard at Camp Dachau and its outcamps Allach, Aubing and Turkheim, he never beat or mistreated inmates in any way, and that his duties at Camp Dachau and the outcamps mentioned were on the outside of the camps (R 37, 38). He also testified that he did not hear of any inmates dying on the inmate transport from Dachau to Buchenwald in December 1944 (R 39).

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 operations 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-100; subject: "Trial of the German Cases," 14 October 1946, and the

Parent Case). 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 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.

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

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/ Louie T. Fischer
/t/ LOUIE T. FISCHER
Attorney
Post Trial Branch

Having examined the record of trial, I concur,
this 31st day of October 1947.

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

SUBJECT: Execution of Sentence in the Case of the United States vs. Karl August KUEHNER, et al. (Case No. 000-50-2-48)

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

Reference is made to letter, HQ. USFET, 111 G 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the enclosed copies of the Order on Review in the above entitled case as to accused WILHELM FRIEDRICH.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7703 War Crimes Group, APO 407, U.S. Army.

BY COMMAND OF GENERAL CLAY:

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

1 Incl:
1 Form No. 13 (In dup)

Franfurt 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 WILHELM FRIEDRICH has been released from confinement at Landsberg War Crimes Prison No. 1 on 25 February 1947 per expiration of sentence.

/s/ Lloyd A. Wilson
(Signature and Rank)
/t/ LLOYD A. WILSON
Captain USF
Prison Officer

(Organization)

/s/ David A. Oakley
/t/ DAVID A. OAKLEY
1st Lieutenant ColC
Asst. Prison Officer