

8 August 1947

UNITED STATES)

v.)

Engelbert SOELKEN)

Case No. 000-50-2-79

REVIEW AND RECOMMENDATIONS

TRIAL DATA: The accused was tried at Dachau, Germany, during the period 12-13 May 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

PARTICULARS: In that Engelbert SOELKEN, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual aiding in 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, willfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, 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 German Reich in exercise of belligerent control.

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

PARTICULARS: In that Engelbert SOELKEN, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual aiding in 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, willfully, deliberately and wrongfully encourage, aid, abet and 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, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: From September 1944 until the end of the war, accused SOELKEN was identified with the administration of two Dachau Concentration Camp subsidiaries, outcamps Kaufering Nos. VII and XI. These camps were an integral part of the mass atrocity operation about which revolved the common design established 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"). Accused's service in these camps as a labor detail leader establishes his active participation in the proven scheme of mass atrocity. In addition, he committed acts of personal cruelty against various prisoners.

IV. EVIDENCE AND RECOMMENDATIONS:

ENGELBERT SOELKEN

Nationality:	German
Age:	53
Civilian Status:	Painter Foreman
Party Status:	Unknown
Military Status:	T/Sgt
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	Life imprisonment

Evidence for Prosecution: SOELKEN, transferred from the Wehrmacht to the Waffen SS in October 1944, served from September of that year to the end of the war as a work detail leader at outcamps Kaufering Nos. VII and XI (P-Ex 3), two subsidiaries in the Dachau Concentration Camp system. At various times he had charge, among others, of the Moll detail (R 25), the Maerkische Construction Firm detail (R 33), the Igling detail

(R 33), and the Klein Held and Franke Construction Company detail (R 340, 49); of these, the last named was the most notorious (R 40). These work details were drawn from inmates of outcamps Kaufering Nos. VII and XI, whose population was international in character, being made up of Poles, Rumanians, Czechs, Frenchmen, Hungarians, Lithuanians and others (R 9, 22, 41, 45, 49). SOELKEN treated the prisoners under his jurisdiction with brutality, frequently beating them with sticks, clubs and other instruments (R 9, 17, 23, 33, 42), as did also the guards under his command (R 39). There is testimony that two prisoners, one either French or Hungarian (R 18), and the other Polish (R 24), died as a result of beatings administered by accused (R 18, 23, 24).

The witness Heinz Hegenholz (R 88), called in rebuttal, testified that the Hoffman family, including the two defense witnesses Regina Hoffman and son-in-law Horst Opitz (R 89, 90), were fined (and by implication convicted) for harboring a wanted SS man (R 90). It does not appear whether a trial of any kind was had nor what court or agency imposed the fine (R 89, 90). The testimony of this witness was offered and received for the purpose of attacking the credibility of the two defense witnesses referred to (R 60, 61, 67).

Evidence for Defense: SOELKEN, testifying under oath, admitted he was a leader of various work details at outcamps Kaufering Nos. VII and XI (R 71, 72). He denied having ever beaten the prisoners with his hands, feet or a club, or in any other way mistreating them (R 74, 75). He did not permit others to abuse prisoners nor did he ever see them mistreated (R 75). No personnel belonging to his various work details were returned to the camps dead (R 77). On one occasion, however, a prisoner was shot while attempting to escape, and another time a prisoner on the detail Moll was killed while working with concrete (R 77). One day, he received a report that a prisoner had been mistreated (R 75). At times prisoners on the details became sick and had to be carried by

to the camp, but none were beaten (R 70).

Two of SOELKEN's former work detail guards, one who had been on details under him twice (R 81), and the other who had served with him for a week (R 84, 87), stated he treated the prisoners with kindness (R 82, 85). Two other defense witnesses, Regina Hoffman (R 54), and his son-in-law Horst Opitz (R 62), testifying generally to their acquaintance with accused, their opportunity for observing his conduct toward prisoners on the details, declared that his conduct was proper. They were questioned by the prosecution as to whether they had been convicted by a German or a Military Government Court since the war (R 60, 67) for the purpose of laying the foundation for impeachment. They both replied in the negative (R 60, 67).

Sufficiency of Evidence: The evidence is legally sufficient to sustain the findings of guilty as to Charge I and the particulars thereunder. At Kaufering Camps No. VII and XI, prisoners were subjected to mistreatment in the mass atrocity operation. They were civilian nationals of countries then at war with the then German Reich. From September 1944 to the war's end, accused is shown to have been a responsible actor on the staff of these two Dachau outcamps. The duties performed were essential to and identify him with the system of ill-treatment there. The existence and scope of this system are established in the Parent Case and this Court was bound by the findings in that case (P-Ex 2). Proof of overt acts of individual cruelty, while not requisite to a finding of guilty since SOELKEN's participation in the scheme is amply established, are evidence as to the degree of his participation and useful and pertinent in determining the punishment to be assessed against him.

There is contradiction as to just what mistreatments the accused personally committed. Two witnesses, corroborating the defense theory denying improper conduct on the part of the accused, were Regina Hoffman

and Horst Opitz. The Court permitted the prosecution to introduce relatively immaterial evidence to the effect that these two witnesses were fined for and impliedly convicted of sheltering a wanted SS man. The accused's active participation in the mass atrocity operation and the nature and extent thereof were already fully developed by other evidence. As to the legal significance of admitting this testimony, see Section V, post. 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.

QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction 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 was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters United States Force European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crime Cases", 14 October 1946, and the Parent Case). The accused was 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 him that the nature and extent of this participation was substantial.

Impeachment of Defense Witnesses: Reference is made to the latter portion of Section IV, supra, concerning the attempted impeachment of two defense witnesses. At least in theory, the evidence in question

might improperly influence a jury in an American criminal trial. However, a war crimes court can properly admit any evidence believed to be of probative value as measured from a non-technical and non-legalistic point of view (Sections 5-351, 5-354.4 and 5-329, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947, and paragraphs b, c, d and e of Section 270, "Manual for Trial of War Criminals and Related Cases", 15 July 1946).

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

II. CONCLUSIONS:

1. It is recommended that the findings and the sentence be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ A. J. Albert
A. J. ALBERT
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