

13 January 1948

UNITED STATES)

v.)

Johann ANTKOWIAK, et al.)

Case No. 000-50-2-96

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 30 June to 1 July 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Rudolf BERGER and Johann ANTKOWIAK, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) 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 Rudolf BERGER and Johann ANTKOWIAK, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) 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: The accused were members of the SS at Camp Dachau and/or its outcamps and outdetails thereof for considerable periods of time between the dates alleged and were shown to have participated in the Dachau Concentration Camp mass atrocity. In addition thereto, it was shown that they personally beat and mistreated inmates. Prosecution's Exhibit P-Ex 3 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"; Section V, post, RO).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Johann ANTKOWIAK

Nationality:	German
Age:	50
Civilian Status:	Unknown
Party Status:	NSDAP from 1933
Military Status:	SS Technical Sergeant
Pleas:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	3 years commencing 9 October 1946

Evidence for Prosecution: The accused served at Camp Dachau from July 1941 to April 1945 (R 10; P-Ex 4). Apparently, his permanent duty at the camp was in the capacity of drum major, but he occasionally served as "officer of the day" or noncommissioned officer of the guards, in which capacity he engaged in inspection duties (R 12, 29, 32, 72).

The accused searched the inmates as they left the tailor shop where they worked. He beat many of them when he discovered articles from the shop in their possession. These beatings lasted as long as five minutes (R 13, 14). The

accused reported to the SS some of the inmates he had beaten. As a result, they received additional punishment consisting of 25 or 50 lashes (R 30). On 25 April 1945 the accused beat many inmates with a board, causing injury to some of them. He also threatened the inmates with a pistol. He did this because the inmates stormed an area where certain property was being kept to secure for themselves articles of clothing or a blanket for the evacuation of Camp Dachau (R 33-35, 60, 51). The physical condition of the inmates involved in this incident was very bad due to extreme malnutrition (R 39).

Evidence for Defense: The accused was in a dangerous situation in April 1945, the day before Camp Dachau was evacuated, inasmuch as he was the only SS man present when a great number of inmates tried to storm an area where property was being held. The inmates were trying to secure for themselves articles of clothing or a blanket. The accused was required to call for reinforcements (R 33-35, 37, 38). On one occasion, during rainy weather, the accused asked the SS detail leader, in charge of a small detail, to place the inmates, in his detail, under cover during the rain. The accused neither objected when the inmates picked up scraps of food from the pig sty, nor reported them for such acts (R 72, 73).

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.

Recommendations: That the findings and sentence be approved.

2. Rudolf BERGER

Nationality:	German
Age:	36
Civilian Status:	Unknown

Party Status:	Unknown
Military Status:	SS Corporal
Pleas:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	3 years, commencing 2 August 1945

Evidence for Prosecution: The accused served as a cook at outdetail Schleissheim from December 1939 to April 1945. This was an outdetail of Camp Dachau and approximately 30 inmates worked there (R 07; P-Ex 6).

The accused admitted in his extrajudicial sworn statement that he slapped inmates who worked in the outdetail Schleissheim (R 07; P-Ex 6).

A witness testified that the accused reported an inmate to the work detail leader for stealing bread. This inmate was given 25 lashes as punishment (R 47). The accused beat a Polish inmate in the face severely enough to wound him (R 48). This witness testified that he saw an inmate named Niroba return to the inmates' quarters with his face all bloody. The inmate claimed he was beaten by the accused (R 49). The accused had the reputation of being a beater and a brutal person. He constantly reported inmates for punishment (R 49, 53). On one occasion, when the accused was drunk, he went into the inmates' quarters and terrified them by swinging a chain about the room (R 52). The accused once slapped an Italian inmate because a female employee reported him for making improper advances toward her (R 82).

Evidence for Defense: A witness testified that the accused, in order to help the inmates, sent the left over food from the SS kitchen to them. As a result the inmates had enough to eat (R 79, 82, 90). The accused helped this witness by giving him extra food and tobacco. He also arranged for this witness to receive white bread as he was

beat only inmates that were caught stealing food (R 80). The inmate named Niroba who claimed to have been beaten by the accused was, at that time, so drunk he could hardly stand up. On that occasion the accused discovered the loss of one or two liters of liquor (R 80). The accused was not known to have reported any inmates (R 84). The Polish inmate who was allegedly beaten by the accused told this witness that he had been only slapped by the accused. He was slapped for stealing four loaves of white bread (R 89).

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.

Admission of Extrajudicial Statement: The defense objected to the admission into evidence of an extrajudicial sworn statement of accused BERGER on the grounds that this accused was going to take the stand in his own behalf; and that it would be wasteful of the Court's time to admit his statement (R 67)

The Court properly overruled the defense objection and admitted the exhibit into evidence (R 67). A Military Government Court shall in general admit oral, written, and physical evidence having a bearing on the issues before it, and may exclude any evidence which in its opinion is of no value as proof (Section 5-520, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Office of Military Government for Germany (U.S.), 27 March

1947; and Section 270, G(1), "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended 1 February 1947).

Motion to Dismiss: The Court's denial of the motion to dismiss the second charge and particulars at the close of the prosecution's case was not improper (R 71). It is not error for a war crimes tribunal to overrule a motion for findings of not guilty made at the close of the case for the prosecution if it believes that there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Title V; and Section 501, page 409, "Manual for Trial of War Crimes and Related Cases", both supra). A similar practice is followed in courts-martial (paragraph 71, d, "Manual for Courts-Martial, U.S. Army", 1928).

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", 14 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 produced, either in the Parent Case or in this subsequent proceeding, in concluding 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.

VI. CONCLUSIONS:

1. It is recommended that the findings and sentence be

approved.

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

ELMER MOODY
1st Lt. INF
Post Trial Branch

Having examined the record of trial, I concur, this day
of 1948.

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