

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COM. AND
APO 407

17 March 1948

UNITED STATES)

v.)

Franz KOHN, et al.)

Case No. 000-50-2-99

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA The accused were tried at Dachau, Germany, during the period 14-22 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 Franz Kohn, Kurt Leyser, Georg Lobsensky, Johann Reiss, Josef Riedl, Andreas Schuh, Ernst Emil Wicklein, and Julius Wollbrink 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 LANESBERG, 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 Franz Kohn, Kurt Leyser, Georg Lobsensky, Johann Reiss, Josef Riedl, Andreas Schuh, Ernst Emil Wicklein, and Julius Wollbrink 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 LANESBERG, 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: For various periods of time during the period alleged, each of the accused served as a noncommissioned officer of the Waffen SS at Dachau Concentration Camp. Each

held relatively important assignments within the camp, and individual acts of cruelty were shown to have been committed by each of them. Prosecution's Exhibit P-Ex 2 (R 15), 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, opinion DJAWC, March 1946, hereinafter referred to as the "Parent Case", see Section V, post). Dachau Concentration Camp, hereinafter referred to as "Dachau", was located near Dachau, Germany, with various subcamps in southeast Bavaria.

Little weight has been given to the testimony of Karl Arsemmer and Rudolf Wolf.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Franz KOHN

Nationality:	German
Age:	33
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Master Sergeant, Waffen SS
Charges:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	5 years, commencing 7 May 1945

Evidence for Prosecution: Antosik, a former Polish inmate of Dachau, testified that in early 1944 he knew the accused who was leader of the plantation detail at Dachau, and who later became a block leader; that at that time he was told by inmates who worked on the accused's detail that the accused beat French, Polish, Ukrainians, Yugoslavs, Czechoslovak, Greek and other inmates resulting in their hospitalization (R 20). Metczynski, a Catholic priest and former Dachau inmate, identified the accused and testified that in 1943 at Dachau he saw the accused on a bicycle chase another priest two kilometers. The witness was later told by a reliable witness that

the accused had kicked the priest and made him run with a loaded wheelbarrow (R 41, 42, partially corroborated R 56, 57, 18; R-Ex 30). Gearhardt, another priest, who was an inmate of Dachau identified the accused and testified that he knew him at Dachau as a detail leader. The witness further testified that the accused seriously abused the priest inmates, and that many later died from the work the accused forced them to do (R 55-58).

In an extrajudicial sworn statement former inmate Wawrowski described how the accused, at Dachau during 1943 and 1944, caused inmates to be severely punished for trivial offenses, such as getting leaves in order to appease their hunger (R 18; R-Ex 30).

The accused admitted his service as detail leader at Dachau (R 262) and as block leader (R 267). He admitted chasing a Catholic priest at double time for about 300 meters (R 268) for sleeping on the job (R 262, 263).

Evidence for Defense: Witness Antosik admitted that he never actually saw the accused beat inmates, but only heard that he had done so (R 26, 27). Witness Gearhardt testified that on the one occasion when he came in contact with the accused he was treated decently, and that the mistreatments testified to were based on hearsay (R 66).

The accused testified that his detail was an easy assignment for the inmates and that they were treated well (R 262, 263). He denied that he required inmates to push loaded wheelbarrows as punishment or that he kicked a priest (R 266). He denied that he beat or mistreated any inmates while he was a block leader (R 267).

Sufficiency of Evidence: The evidence established that as a detail leader and a block leader, and as a member of the command staff, the accused participated in the common design alleged.

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

Petitions: A Petition for Review was filed by W. A. McIlwain, defense counsel, 12 August 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. Kurt LEYSER

Nationality:	German
Age:	64
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Staff Sergeant, Waffen SS
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	20 years, commencing 27 February 1946

Evidence for Prosecution: Swinaki, a former inmate at Dachau, testified that, at Dachau from September 1940 to April 1943, the accused was assigned to the political department which was under the supervision of Johann Kick (sentenced to death in the Parent Case); that many of the inmates who were required to report there were Poles and Czechs; that some of the same inmates had to be taken to the dispensary where some of them died; and that some of the inmates showed the witness marks received in the beatings and told him that the accused had done the beatings. Many had dislocated shoulders from being hung up by their arms which were chained behind their backs, and the witness asserted that one Lehmann of Augsburg was a victim of such a hanging by the accused (R 95, 97, 98).

In an unsworn pretrial statement, Jelcic stated that during February 1942 to July 1944 the accused frequently beat inmates at Dachau with an oxtail whip, and that in February 1943 the accused beat French inmates so severely that he was unconscious and could not move (R 105; P-Ex 4A). In an extrajudicial sworn statement Hahn, a former inmate, stated that on unremembered dates at Dachau the accused wither w authorized privileges from the inmates, and made false reports on their conduct that to be used in (P-Ex 4A).

Azri Kremer, a former German inmate at Dachau, testified that he first knew the accused at Dachau in 1942. He identified the accused in Court and further testified that the accused, at Dachau during the period 1942-1944, beat inmates with an ox-tail whip, kicked, and beat them, and took part in the selection of inmates and Russian prisoners of war who were to be killed and sent to the crematory (R 70).

The accused admitted his presence at Dachau from August 1939 to 4 April 1944 as a guard, as a block leader and work detail leader, and as an employee in the political department. He also admitted that he was an SS staff sergeant (R 286-288), and a member of the headquarters staff (R 293).

Evidence for Defense: Swinski admitted on cross-examination that he never saw the accused beat inmates and that he was only told about the beatings and shown the marks of the beatings by the inmate victims (R 101-103).

The accused denied participating in beatings of inmates in the political department or in any beatings (R 286, 292, 293, 299). He denied that he ever took any inmate to the crematory, and denied that he was in Dachau on the date prosecution witness Kremer testified he participated in the liquidation of Russian inmates in the crematory in 1944 (R 287, 290, 291, 302). He testified that he had no voice in the operation of the camp (R 293). He was discharged in April 1944 because he was past 61 years old and because he treated inmates decently (R 287).

Sufficiency of Evidence: The evidence is clear that the accused, as a member of the command staff, and as block leader and detail leader, participated in the execution of the common design.

The findings of guilty are warranted by the evidence. However, the character and extent of beatings by him is not satisfactorily established. The sentence is excessive.

Petitions: A Petition for review was filed by W. A. McIlwain, defense counsel, 12 August 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for five years, commencing 27 February 1946.

Georg LOBZENSKY

Nationality:	German
Age:	55
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Technical Sergeant, Waffen SS
Plas:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	10 years, commencing 15 June 1945

Evidence for Prosecution: Schmidt, a former German inmate, testified that he knew the accused at Dachau beginning in 1943. It was common talk that the accused as block leader took part in ordering inmates punished and that he participated in whippings and in executions (R 108, 109).

The accused, in an extrajudicial sworn statement, and in his testimony, admitted his presence at Dachau from February 1940 to April 1945 and that he served as a guard and block leader (R 273, 274, 310; P-Ex 11). His rating was SS technical sergeant and he was a member of the command staff (R 276).

Aarl Kraemer, a former German inmate, testified that, in 1944 when the accused was block leader of block 23, he beat inmates and made reports on them resulting in their receiving punishment consisting of 25 blows with a heavy stick (R 72, 73). The accused took part in beatings outside the huts and was present when inmates were chained on wooden platforms (R 73, 86). Kraemer also testified that 50 percent of the inmates in block 23 died while the accused and other inmates

were in charge of that block (R 74-76).

Evidence for Defense: Schmidt admitted on cross-examination that he never saw the accused mistreat anybody, and that he was only told about the beatings (R 111, 112). In his testimony the accused denied taking part in executions (R 275). He denied that he ever beat or mistreated any inmates (R 276, 277).

Sufficiency of Evidence: The evidence is clear that the accused, as a member of the command staff and as a block leader, participated in the execution of the common design. The evidence as to individual acts of cruelty by the accused is of very little weight.

The findings of guilty are warranted by the evidence. The sentence is excessive.

Petitions: A Petition for Review was filed by W. A. McIlwain, defense counsel, 12 August 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for five years, commencing 15 June 1945.

4. Johann REISS

Nationality:	German
Age:	62
Civilian Status:	Farmer
Party Status:	Unknown
Military Status:	Master Sergeant, Waffen SS
Floor:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	5 years, commencing 18 June 1945

Evidence for Prosecution: Antosik, a former Polish inmate, testified that, in 1944 at Dachau, the accused as a labor detail leader and as a block leader beat and kicked inmates while they were returning from work (R 30, 31).

In his extrajudicial sworn statement, Slawinski a former inmate

stated that the accused frequently reported inmates and that he beat them producing marks on their bodies. No dates nor details were given (R 115; P-Ex 6A). Gasior, a former inmate, in an extrajudicial sworn statement stated without giving dates or other details, that the accused worked inmates so hard they collapsed; that he had one capo severely punished for treating his fellow inmates well; and that he used the camp dogs against the inmates (R 117; P-Ex 7A). The accused in an extrajudicial sworn statement admitted his presence at Dachau and outdetail Munich-Freimann from March 1940 until April 1945 (R 310; P-Ex 13). He was sergeant of the guard and a detail leader (R 164).

Evidence for Defense: Kraft, a former capo, (R 196, 197) testified that the accused failed to administer punishment ordered by the camp commander (R 185, 186, 192); that he was fair to his inmates and never beat them; that he materially aided in procuring additional food for the inmates; that he was good to them (R 187-192; corroborated R 225); that he issued orders forbidding the beating of inmates; and that he removed two capos for mistreating inmates (R 202).

The accused testified that he did not commit the acts of cruelty testified to by witness Antosik (R 163); that he received a nine months' sentence and was relieved as detail leader at outdetail Munich-Freimann because he allowed two inmates to escape (R 165, 166); that he was never a block leader (R 175, 176); and that he never had charge of the dogs at Dachau (R 178). He had no control of working conditions nor of working hours, and never overworked inmates (R 180).

Sufficiency of Evidence: The accused's rank was comparatively high, the positions held by him were of comparative importance, and the period served at Dachau was long.

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

petitions: A Petition for Review was filed by W. A. McIlwain, defense counsel, 12 August 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

5. Josef RIEDL

This accused was served but not tried (R 1, 12, 13).

6. Andreas SCHUH

Nationality:	German
Age:	58
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	First Sergeant, Waffen SS
File:	MG Charge I; MG Charge II
Findings:	G Charge I; G Charge II
Sentence:	20 years, commencing 2 May 1945

Evidence for Prosecution: Antonik, a former Polish inmate, identified the accused (R 28), and testified that in 1944 he saw the accused, who was a roll call leader at Dachau, severely beat inmates on their backs with an oxtail whip (R 29, 30). Weber, a former German inmate of Dachau, identified the accused whom he knew as roll call leader at Dachau from September 1943 until its final evacuation (R 117, 118). He further testified that he heard that the accused was a cruel person and that the inmates feared him (R 119). In one instance he saw the accused, after threatening a Czech inmate to beat him until he could not lie or sit for three weeks, together with a block leader armed with an oxtail whip take the inmate away. A short time later the inmate told the witness that he had been given 25 lashes (R 120). Wolf, a former German inmate at Camp Dachau, testified that in 1944 the accused severely beat two inmates on the roll call square, and left them lying there (R 130). Wolf further testified that the accused hit a Polish girl inmate 15 years of age in the face causing her nose to bleed (R 131). In his extrajudicial

sworn statement, Merz stated that in 1944 the accused caused a young Pole to be beaten and placed in the arrest bunker for bringing bread into his room (R 139; P-Ex 8A).

Karl Kraemer, a former German inmate at Dachau, testified that in 1944 he saw the accused beat inmates with an oxtail whip; that the accused passed out whips for use against inmates; that the accused was present when he, Kraemer, received 25 blows with a heavy stick; that the accused helped select inmates for invalid transports; and that he also helped line up Russian prisoners of war, who were sent to the crematory for extermination (R 78, 79, 90, 91).

In his extrajudicial sworn statement, the accused admitted service at various times at Dachau and outdetails Friedrichshafen and Raderach between the dates alleged. He served as detail leader and roll call leader (R 310; P-Ex 12). He also admitted in his testimony that he served at Dachau between the dates alleged (R 232).

Evidence for Defense: Weber admitted that he was only told that the accused beat the Czech inmate (R 125). It is also apparent from the testimony that the witness and the Czech inmate had been apprehended in smuggling caps out of Dachau for sale (R 119, 120).

The accused testified that he never beat inmates as testified by prosecution witness Antosik (R 229, 230). He never selected inmates for invalid transports or helped lead Russian inmates to the crematory (R 231).

Sufficiency of Evidence: It is established that the accused personally encouraged and participated in severe beatings.

The findings of guilty are warranted by the evidence. The sentence is excessive.

Petitions: A Petition for Review was filed by W. A. McIlwain, defense counsel, 12 August 1947. No Petition for Clemency was filed.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for 10 years, commencing

2 May 1945.

7. Ernst Emil WICKLEIN:

Nationality:	German
Age:	53
Civilian Status:	Unknown
Party Status:	None
Military Status:	Technical Sergeant, Waffen SS
Flee:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	10 years, commencing 3 May 1945

Evidence for prosecution: Opitz, a former German Communist inmate at Dachau, identified the accused and testified that in 1941 or 1942 he first knew the accused as a block leader. The accused beat inmates with his hands and kicked them (R 142, 143). He saw the accused in 1943 take Russian prisoners of war to the arrest compound, make them remove their uniforms and dress in the prison uniform (R 143, 153). A few days later four or five of the Russians were taken toward the crematory by the accused where the witness presumes they were executed (R 143, 151, 152, 154). Opitz further testified that the accused received the War Service Cross, which was awarded when an SS man distinguished himself before his superiors by being brutal toward the inmates (R 144). The accused was a block leader (R 148). In an extrajudicial sworn statement, Hertl, a former inmate, stated that the accused disobeyed a German general's order to turn inmates in the final evacuation march over to the advancing Americans. He never heard what happened to those inmates forced to continue the march (R 140; P-ex 9A).

In one of his extrajudicial sworn statements, the accused admitted his presence at Dachau from May 1941 until October 1944, except for five months in the early part of 1944. He admitted beating one inmate with a cowhide whip, but asserted he did so only to prevent a more severe beating of the inmate by a drunken SS

s.urgent (R 158; P-Ex 10A). In another extrajudicial sworn statement, the accused admitted that he was the commander of a group of 160 inmates during the final evacuation march in April 1945 (R 310; P-Ex 14).

Aarl Kraemer, a former German inmate of Dachau, testified that the accused was a blockleader in 1942. He beat inmates (R 77, 78).

Evidence for Defense: In an extrajudicial sworn statement, a former inmate stated that the accused knew of his escape from Dachau and, instead of reporting his hiding place, the accused frequently helped him (R 209; D-Ex 2A).

In an extrajudicial sworn statement, the accused stated that he only beat inmates in order to keep them from receiving more severe punishment from other sources (R 158; P-Ex 10A).

The accused testified that he did not remember any Russian prisoners of war arriving in Dachau and denied that he ever took any Russian prisoner of war to the entrance of the camp or to the crematory. He asserted that the testimony of Opitz is not true (R 205, 206). He assisted one inmate whom he escorted on a trip to Mannheim (R 206-208; corroborated R 208; D-Ex 1A). He only beat one inmate in order to keep him from being more severely beaten by a roll call leader (R 210, 211).

Opitz admitted that he never saw the accused use a stick or whip to beat inmates (R 147).

Aarl Kraemer testified that his information about the accused beating inmates was hearsay (R 78, 89).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. While beatings are established it is not shown that they were frequent or severe. The sentence is excessive.

Petitions: A Petition for Review was filed by W. A. McIlwain, defense counsel, 12 August 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved, but that the sentence be reduced to imprisonment for five years, commencing

3 May 1945.

8. Julius WOLLBRINK:

Nationality:	German
Age:	58
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Master Sergeant, Waffen SS
Ries:	MG Charge I; MG Charge II
Findings:	G Charge I; G Charge II
Sentence:	5 years, commencing 6 May 1945

Evidence for Prosecution: Wolf, a former inmate of Dachau, testified that he saw the accused participating in the final evacuation march (R 137). Opitz, a former German Communist inmate, identified the accused whom he knew at Dachau from 1942 "up to the end". The accused was a block leader and a detail leader. He frequently beat new inmates as they arrived and at roll calls. The accused knocked one inmate against part of the heating system causing his head to bleed profusely and then kicked him. The victim was then removed to the dispensary (R 144-146).

The accused admitted that he served at Dachau from 1939 until March 1945 as a detail leader and as a block leader with rank of master sergeant. He also admitted that he was a member of the camp command staff (R 246).

Evidence for Defense: Prosecution witness Wolf testified that he did not see the accused commit any acts of cruelty on the final evacuation march (R 137). The accused testified (R 243) that the incidents testified to by prosecution witness Opitz did not occur and that he did not participate in the final evacuation march as testified by prosecution witness Wolf, he having already left Dachau in March 1945 (R 244, 249, 250, 251). He denied beating or other mistreatment of inmates (R 252). He testified that he had no trouble

with the inmates and the order in his block was good (R 260).

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

Retentions: A Petition for Review was filed by W. A. Mellwein, defense counsel, 12 August 1947. A Petition for Clemency was filed by L. Wellbrink, wife of accused, 27 October 1947.

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 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 #G 000.5 JAG-AGU, 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 adduced, either in the Parent Case or in this subsequent proceedings, in concluding as to them that they participated to a substantial degree. However, the nature and extent of their participation were not such as to warrant the sentences imposed, except those as to accused KOHN, REISS, and WOLLBRINK. The other sentences should be reduced as indicated in Section IV, *supra*.

Informing Accused of Rights to Testify: At the outset of the case for the defense, accused REISS took the stand and testified under oath. It appears from the record that probably his rights in connection with personally given evidence were not explained by the Court (R 162). Section 501, page 410, "Manual for Trial of War

Crimes and Related Cases", 15 July 1946, as amended, provides that the Court will give accused an opportunity to make a sworn or an unsworn statement, informing them that they may be cross-examined thereon and that the Court may draw such inferences as the circumstances justify from their failure to take the stand or their refusal to answer questions after having taken the stand. The fact that the accused testified, demonstrates that the Court did not deprive him of this important right granted by the applicable rules. The failure of the Court to inform him in the other contemplated respects is more technical than otherwise, and it does not appear that the failure resulted in injustice to the accused.

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

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved, but that the sentence as to accused LEYSER be reduced to imprisonment for 5 years, commencing 27 February 1946; that the sentence as to accused LOBZENSKY be reduced to five years, commencing 15 June 1945; that the sentence as to accused SCHUH be reduced to 10 years, commencing 2 May 1945; and that the sentence as to accused WICKLEIN be reduced to 5 years, commencing 3 May 1945.

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

GEORGE M. LENTZ
Captain, JAGC
Post Trial Branch

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

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