

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 407

6 February 1948

UNITED STATES)

v.)

August BURKHARDT, et al.)

Case No. OOO-50-2-101

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 16-17 June 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that August Burkhardt, Alfred Kraus, /and/ Karl Hans Wehner, 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 August Burkhardt, Alfred Kraus, /and/ Karl Hans Wehner, 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: All the accused were members of the SS at Dachau Concentration Camp and/or its subcamps for considerable periods of time

between the dates alleged and were shown to have participated in the Dachau Concentration Camp mass atrocities. Prosecution's P-Ex 4 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 DJAWG, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post, R 8).

IV. EVIDENCE AND RECOMMENDATIONS:

1. August BURKHARDT

Nationality:	German
Age:	57
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS Master Sergeant
Floa:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	26 months, commencing 27 April 1945

Evidence for Prosecution: The accused, in his extrajudicial sworn testimony, admitted that he served as a guard, guard leader, detail leader and deputy roll call leader for varying periods of time from 15 February 1943 until 27 April 1945 at Dachau Concentration Camp and subcamps Friedrichshafen and Augsburg of Dachau Concentration Camp. He acted as a transport leader on a transport consisting of 200 inmates from Dachau Concentration Camp to subcamp Friedrichshafen. In January 1944, he was a guard on a transport of 1600 inmates from Dachau Concentration Camp to Implin. He acted as a roll call leader on the inmate evacuation transport consisting of 1100 inmates from subcamp Augsburg to Schwabmuenchen in April 1945 (R 11, 38; P-Exs 9, 22).

Extrajudicial sworn testimony was introduced indicating that at Dachau Concentration Camp the accused was ruthless and brutal towards the inmates and guards. He never let an opportunity pass without showing his brutality. He reported inmates and guards for punishment (R 10; P-Ex 7). The accused slapped an inmate in the face and deprived him

of his extra meal for 14 days (a slice of bread with a bit of fat) (R 10; P-Ex 8). At subcamp Augsburg Pfersee he was present several times when whippings took place (R 11; P-Ex 9). He beat many inmates including Russians, Poles and Czechs. Russian inmates bled from the nose and mouth as a result of beatings administered by the accused. He made many reports, as a result of which inmates received 25 strokes with a stick (R 12, 13; P-Exs 10, 11, 12).

Evidence for Defense: The accused testified that he never beat or killed an inmate (R 47); that he never did anything inhuman and tried his best "to make out with the inmates" (R 48); and that he never saw or heard of any inmates being mistreated in a concentration camp (R 49). A former SS man testified that he never knew or heard of the accused mistreating, beating or killing an inmate (R 40). Another former SS man testified that he never knew of the accused mistreating or beating inmates (R 42). A former inmate testified that "there will not be a single prisoner that would say anything bad about Burkhardt" (R 43). A former civilian employee of the porcelain factory testified that the accused never beat or abused the inmates at the factory. He further testified that "he didn't see anything at all that the accused behaved badly toward the prisoners or practiced any chicanery towards them" (R 45). He never saw the accused beat or abuse any of the inmates in the work shop at the factory (R 46).

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

Petitions: No Petitions for Review were filed. A Petition for Clemency was filed by the accused, 27 July 1947.

Recommendation: That the findings and sentence be approved.

2. Alfred KRAUS

Nationality:	German
Age:	25
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:	15 years, commencing 24 April 1947

Evidence for Prosecution: The accused was a block leader of blocks 2 and 4 at Dachau Concentration Camp from January 1944 to April 1944 and acted as a block leader and roll call leader at subcamp Ottobrunn of Dachau Concentration Camp from April 1944 to March 1945 (R 8, 17; P-Exs 5, 16). Germans, Poles, Czechs and French were inmates at subcamp Ottobrunn (R 17; P-Ex 16). For approximately three weeks in January 1944 he acted as a detail leader on a detail of 300 inmates consisting of Germans, Poles, Czechs and French at subcamp Friedrichshafen (R 17; P-Ex 16). Schnederle, a former inmate, testified that he knew the accused at subcamp Ottobrunn from the fall of 1944 until April 1945 (R 19); that on Sundays he often saw the accused chase inmates around the kitchen block and beat those who fell out of line with a twig of varying sizes; that he also heard that the accused had beaten inmates; and that the inmates were not very well fed and were overworked (R 20, 21). Bischoff, a former inmate, testified that at subcamp Ottobrunn when the inmates were lined up for roll call the accused made them do exercises for punishment; that in the winter when there was water at the camp entrance the inmates had to walk through it and, if any of the inmates tried to walk through the dry spots, the accused beat them with a stick; that he made the entire crew of approximately 200 inmates run around the barracks; that the accused often stood at the corner of the barracks and beat the inmates as they came by; that two or three of the inmates, in order to escape these beatings, ran against an electrically charged wire placed only one meter and 20 centimeters away from the side of the barracks; and that these inmates suffered burns and would have been injured more severely, if a Polish inmate had not cut off the electricity immediately (R 24, 25). This witness also testified that he saw the accused participate in the hanging from a tree or scaffold of an Italian inmate who had

escaped and had been recaptured; that he saw the accused together with a "green" inmate named Dingler tie the arms of this Italian or Russian to his back and then suspend him from a tree or scaffold in such a manner that the victim's feet were above the ground; that they then tied a rock to the feet of the inmate; that Dingler kicked the inmate in order to keep him swaying around; and that Dingler and the accused then left (R 25). This witness testified further that the accused returned and caused the inmate to start swaying again (R 25); that at subcamp Ottobrunn there were Italians, Russians, Poles, Greeks, Yugoslavs, Frenchmen, Dutchmen and Germans (R 26); that on another occasion he heard that an Italian inmate, who had stolen a piece of bread from the witness, was hit over the head with a piece of board by the accused after having previously been beaten by an eldest; and that later in the day, the witness heard that the Italian inmate had died in the bunker (R 26). Vater stated in his extrajudicial sworn testimony that at Camp Dachau on the roll call square the accused had inmates do knee bends while about 50 inmates of Polish, Russian and German nationality were being whipped (R 16; P-Ex 15). The accused admitted in his extrajudicial sworn testimony that on some occasions at subcamp Ottobrunn he administered two slaps in the face to inmates and that he beat three or four inmates with his hands at subcamp Friedrichshafen. The inmates were of German, Polish, Czech and French nationalities (R 17; P-Ex 16).

Evidence for Defense: A former SS guard testified that he did not know of any cases of mistreatment, beating or killing of any inmates by the accused (R 40). The accused testified that he slapped a Russian inmate twice in the face for stealing bread and that, if he had reported the inmate, he would have received more severe treatment (R 51). The prosecution witness Bischoff was mistaken when he testified that the inmate was Italian (R 52). He never whipped an inmate with a stick or switch (R 51, 52). The accused, referring to the incident of the Italian inmate suspended from the tree or scaffold, denied beating or torturing the inmate and testified that instead upon seeing the inmate suspended he

informed the camp commander that, if he did not take the inmate down, he would report him to Dachau Concentration Camp (R 54); that for reporting a camp commander, the accused was sent to the fighting front as punishment (R 55); that Camp Commander Dorst never threatened the accused because of his mistreatment of inmates (R 55, 56); that he never hit an Italian inmate over the head with a board nor did any inmates die as long as he was at subcamp Ottobrunn (R 57); and that on two occasions the accused was placed under arrest for four weeks for assisting inmates (R 55).

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. Karl Hans WEHNER

Nationality:	German
Age:	28
Civilian Status:	Unknown
Party Status:	Member of German Labor Front
Military Status:	Waffen SS Corporal
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	5 years, commencing 4 May 1945

Evidence for Prosecution: The accused was a guard at Allach and Ottobrunn, subcamps of Dachau Concentration Camp, from 15 April 1944 to 1 May 1945. He served as a guard on a transport of 130 inmates in April 1945 from subcamp Ottobrunn to Oetzthal (R 9, 37; P-Exs 6, 31). Extrajudicial sworn testimony was introduced indicating that, at subcamp Ottobrunn sometime between November 1944 and 17 April 1945, the accused with other SS men beat a young Russian inmate to force a confession from him regarding three other Russian inmates who had escaped (R 14; P-Ex 13). Two witnesses stated in their extrajudicial

sworn statements that foreign civilian workers were beaten at subcamp Ottobrunn in about January or February 1945 by the accused and other SS men for allegedly having refused to work (R 14, 15; P-Exs 13, 14). A further witness stated in an extrajudicial sworn statement that the accused participated in the lashing of Russian prisoners of war at subcamp Ottobrunn in November 1944 and during the following three months (R 36; P-Ex 20). The accused, in his extrajudicial sworn testimony, placed the average number of inmates in subcamp Ottobrunn during the year 1944-45 at between 350 to 400 and identified them as being of Czech, German, Russian, French and Polish nationalities (R 36; P-Ex 19A).

Evidence for Defense: The accused testified that he never beat the Russian prisoners of war mentioned in the evidence for the prosecution (R 58, 14; P-Ex 13); and that Stoll, a former SS man, made a statement against him due to jealousy (R 61, 15; P-Ex 14). Prosecution witness Schneiderle testified that he never saw the accused beat anyone (R 22). The accused stated in his extrajudicial sworn testimony that no inmates fell ill or died on the inmate evacuation transport from subcamp Ottobrunn to Oetzthal in April 1945 (R 34; P-Ex 18).

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 the 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 inmates 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 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.

Proof Under Charge II: The evidence as to the participation of accused Karl Hans WEHNER relates only to acts at a subcamp where prisoners of war may not have been present during the periods of participation. The record of trial in the Parent Case demonstrates that the Dachau Concentration Camp operation included the subjection of prisoners of war to the illegal acts alleged. Regardless of whether the accused participated at the main camp or a subcamp, participation in the common design is proved by evidence of participation at the main or at subcamps thereof within the allegations of the particulars under either Charge I or Charge II.

Charges I and II allege participation in the execution of one and the same common design and are identical, except that the particulars under Charge II allege that prisoners of war were subjected to illegal acts rather than civilians. The question arises as to whether adequate proof to support findings of guilty under one of the charges is necessarily adequate proof for findings of guilty under the other. The gravamen of the offense under both charges and the particulars thereunder in both this and the Parent Case is participation in the execution of the common design in any or all of its aspects. It is not the subjection of inmates of any category to illegal acts flowing immediately from the acts of the accused or other participants at the same location, e.g., concentration camp managerial personnel in the Himmler's Reich Security Head Office. Therefore, it is obvious that, inasmuch as it was satisfactorily proved that the accused participated in the execution of the common design, the Court

did not err in its findings of guilty as to both charges.

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

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.

MURRAY J. ANDROVETTE
Attorney
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