

25 June 1947

UNITED STATES)

v.)

Case No. 000-50-2-29

Waldemar Kurt Hans MOELLER,
et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried jointly at Dachau, Germany, during the period 16 - 17 December 1946, before an Intermediate Military Government Court.

II. CHARGES AND PARTICULARS:

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

PARTICULARS: In that Waldemar Kurt Hans MOELLER, Albert Rudolf-MORRELL, Erwin NALEPINSKI, Friedrich NEUGEBOHN, Otto NEUMANN, Alois NIRMANN, Alfred Paul Reinhard NOWKA, Otto OELZE, Richard ORTOLT, Oswald E. PELE 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 LANZBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, 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 Waldemar Kurt Hans MOELLER, Albert Rudolf-MORRELL, Erwin NALEPINSKI, Friedrich NEUGEBOHN, Otto NEUMANN, Alois NIRMANN, Alfred Paul Reinhard NOWKA, Otto OELZE, Richard ORTOLT, Oswald E. PELE 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, willfully, 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: Each of the convicted accused were SS guards and were shown to have participated in the Dachau Concentration Camp mass atrocity. Prosecution's exhibit P-Ex 1 is a certified copy of the charges, particulars, findings and sentences in the Parent Dachau Case (U.S. vs. WEISS et al., 000-50-2 March 1946, hereinafter referred to as the "Parent Case" R 13; see Section V, Post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. WALDEMAR KURT HANS FOWLER

Nationality:	German
Age:	27
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS, Technical Sergeant
Place:	NG, Charge I; NG, Charge II
Findings:	G, Charge I; G, Charge II
Sentence:	20 months confinement from 3 May 1945

Evidence for Prosecution: The accused was an SS Technical Sergeant in charge of the guard at outcamp Ottobrunn from 1 September 1944 to 24 April 1945. Accused participated as a guard in a prisoner transport of 130 prisoners from camp Ottobrunn to Gaisfeld/Tyrol from 24 - 27 April 1945 (P-Ex 2; R 14). The prisoners worked on various details either as skilled or common laborers (R 29 - 32)

Evidence for Defense: Accused testified in his own defense to the effect he did not mistreat any prisoners (R 26). The prisoners were fed fairly well (R 31). The prisoners were not mistreated in the camp (R 32).

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

It was shown that accused participated in the Dachau Concentration Camp system and the nature of his duties was also satisfactorily proved. However, a search of the record in the Parent Case and the record in

this subsequent proceeding reveals no evidence as to atrocities committed at outcamp Ottobrunn. It is true that it was shown that prisoners worked at camp Ottobrunn but that they were not otherwise mistreated or tortured. It is believed that NOELLER'S participation in this mass atrocity was too remote to form a proper basis of sentencing by the Court. By virtue of the absence of evidence as to what occurred at outcamp Ottobrunn he is not shown to have participated to a substantial degree and there is inadequate evidence as to the nature and extent of his participation to permit of arriving at an appropriate sentence. It could be contended with considerable merit that the Court, with propriety, could have inferred that the inmates of outcamp Ottobrunn were subjected to practices and torture substantially like those clearly proven to have been inflicted at the Parent camp and other outcamps. If that view were adopted, at least theoretically, injustices could result and those too remotely connected with this and other mass atrocities might be severely punished without proper gauge to measure the magnitude of their crimes.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be disapproved.

2. ERWIN MALCZINSKI

This accused was acquitted (R 78).

3. FRIEDRICH HEDGEBORN

Nationality:	German
Age:	32
Civilian Status:	Unknown
Party Status:	None
Military Status:	SS Corporal
Plan:	NG, Charge I; NG, Charge II
Findings:	C, Charge I; C, Charge II
Sentence:	20 months confinement from 3 May 1945

Evidence for Prosecution: Accused was an SS guard at outcamp Allach from 15 March 1944 to 12 March 1945 (P-Ex 4; R 16). Accused guarded prisoners from camp Allach to the HEW works and return, a distance of five kilometers each way. He also guarded prisoners inside the HEW works (R 51, 52). Accused saw Russian prisoners working inside of camp Allach. He heard from prisoners that they had been punished by being beaten with the 25 lashes (R 52, 53).

Evidence for Defense: Accused testified in his own defense to the effect he never beat or mistreated prisoners (R 51), nor did he ever see prisoners mistreated (R 52). The appearance of the prisoners was not too bad. The food they received was fair and in addition to the regular food they received extra food from the HEW works. No prisoners ever fell out of a detail he guarded (R 53, 55).

Sufficiency of Evidence: The accused was an SS guard at outcamp Allach for a considerable period of time between the dates alleged. His place of duty was at the HEW works. Prisoners were punished and mistreated at camp Allach (R 249; P-Ex 124, Parent Case). He is therefore guilty of participating in the common design to subject civilian nationals and surrendered and unarmed prisoners of war to cruelties and mistreatment.

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. OTTO NEUMANN

Nationality:	German
Age:	42
Civilian Status:	Unknown
Party Status:	None

Military Status: SS Corporal
Plea: NG, Charge I; NG, Charge II
Findings: G, Charge I; G, Charge II
Sentence: 21 months confinement from
3 May 1945

Evidence for Prosecution: Accused was an SS guard at camp Allach from August 1944 to April 1945. He participated as a guard in a prisoner march from camp Allach to Bayersdorf 26 - 30 April 1945. There were 450 prisoners and 40 - 50 guards on the prisoner march (P-Ex 5; R 16).

Evidence for Defense: Accused testified in his own defense to the effect he never beat or mistreated prisoners (R 57). His duties were outside guard at BMW works. Approximately 1000 prisoners marched from camp Allach to the BMW works and returned. He never saw or heard of prisoners being beaten or mistreated (R 57, 58).

Sufficiency of Evidence: Accused was an SS guard at camp Allach for a considerable period of time between the dates alleged. Prisoners were punished and mistreated at camp Allach (R 849; P-Ex 124, Parent Case). Accused also participated as a guard in a prisoner transport. He is therefore guilty of participating in the common design to subject civilian nationals and surrendered and unarmed prisoners of war to cruelties and mistreatment.

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.

5. ALOIS NIEBMAN

This accused was acquitted (R 78).

6. ALFRED PAUL REINHARD HOFER

Nationality: German

Age: 42

Civilian Status:	Unknown
Party Status:	None
Military Status:	SS Corporal
Plea:	NG, Charge I; NG, Charge II
Findings	G, Charge I; G, Charge II
Sentence:	21 months confinement from 4 May 1945

Evidence for Prosecution: Accused was an SS guard at outcamp Allach/Neubing-Garmering from 6 August 1944 to 1 October 1944; from 15 April 1944 to 10 December 1944 Camp Dachau; from 11 December 1944 to 5 April 1945 outcamp Allach; from 5 April 1945 to 4 May 1945 outcamp Ottobrunn. Accused participated as a guard in a prisoner march from camp Ottobrunn to Bad Wiessee 26 - 28 April 1945. There were 150 - 200 prisoners and 25 guards on the prisoner march (P-Ex 7; R 18). Accused heard that prisoners were mistreated in the above named camps (R 68).

Evidence for Defense: Accused testified in his own defense to the effect he did not beat or mistreat prisoners (R 67) nor did he see prisoners mistreated on the prisoner march (R 68).

Sufficiency of Evidence: Accused was a member of the SS and was a guard at camp Dachau and/or subsidiary camps thereto for a considerable period of time between the dates alleged. He also participated as a guard in a prisoner march. He is therefore guilty of participating in the common design to subject civilian nationals and surrendered and unarmed prisoners of war to cruelties and mistreatment.

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. OTTO ORLIZE

Nationality:	German
Age:	51
Civilian Status:	Unknown
Party Status:	None
Military Status:	SS Sergeant
Plea:	NG, Charge I, NG, Charge II
Findings:	G, Charge I; G, Charge II
Sentence:	20 months confinement from 3 May 1945

Evidence for Prosecution: Accused was an SS guard at camp Dachau from 1 January 1942 to 30 October 1942; from 1 November 1942 to 10 February 1944 outcamp Feldafing; from 11 February 1944 to 25 April 1945 he was stable master at camp Dachau (P-Ex 8; R 18). He heard that prisoners were mistreated and beaten by report leaders (R 71).

Evidence for Defense: Accused testified in his own defense to the effect he did not beat or mistreat prisoners (R 69). Since his confinement in Camp Dachau he received a package from a former prisoner (R 69, 70). His duties at Camp Dachau from February 1944 to April 1945 was stable master (R 69). Defense witness Weiss testified to the effect the accused brought prisoners to her home and they said good things about the accused. One of these prisoners lived in her home for a year after he was liberated and during that time he sent a package of food to the accused (R 38, 39). The prisoners were fed at her place as they had volunteered to work (R 40).

Sufficiency of Evidence: Accused was an SS guard at Camp Dachau and outcamp Feldafing for a considerable period of time between the dates alleged. He is therefore guilty of participating in the common design to subject civilian nationals and surrendered and unarmed prisoners of war to cruelties and mistreatment.

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.

1. NICHOLAS WENIG

Nationality:	German
Age:	42
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	3 Corporal
Charges:	10, Charge I; 10, Charge II
Findings:	0, Charge I; 0, Charge II
Sentence:	21 months confinement from 5 May 1945

Evidence for Prosecution: Accused was an SS guard at outcamp Allach from 1 August 1944 to 26 April 1945. He participated as a guard in a prisoner march from camp Allach to Holbratenhausen 25 - 31 April 1945. There were 10 prisoners and 2 guards on the prisoner march (P-24 3, R 14; R 75).

Evidence for Defense: The accused testified in his own defense to the effect he did not beat or mistreat prisoners nor did he see or hear of prisoners being beaten or mistreated (R 72).

Sufficiency of Evidence: Accused was an SS guard at outcamp Allach for a considerable period of time between the dates alleged. He also participated in a prisoner march. Prisoners were punished and mistreated at camp Allach (R 69; P-24 13, Parent Case). He is therefore guilty of participating in the common design to subject civilian nationals and surrendered and unwarmed prisoners of war to cruelties and mistreatment.

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.

9. OSWALD E. FELZ

This accused was acquitted (R 78).

V. QUESTIONS OF LAW:

Jurisdiction: The Court was legally constituted and had jurisdiction of the persons of the accused and of the subject matter.

Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Dachau Concentration Camp 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 know 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.) With the exception of accused MOELLER, 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 proceeding in concluding that they not only participated to a substantial degree but the nature and extent of their participation was 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 accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved except that the findings and sentence imposed in the case of Weidemar Kurt Hans MOELLER be disapproved.

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

/s/ Elmer Moody
1st Lt
Post Trial Branch

Having examined the record of trial, I concur.

/s/ C. E. Straight
C. E. STRAIGHT
Colonel, JAGC
Deputy Judge Advocate
for War Crimes