

29 July 1947

UNITED STATES)

v.)

Josef STURM, et al.)

Case No. 000-50-2-35

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, on 18 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 Josef STURM, Georg PFEUFFER, Hermann RUMPOLD, Otto Heinrich SALOMON, Heinrich SCHIEBEL, Andreas SCHMIDT, Lorenz Johann SCHMITT, Josef SCHWARZENBERGER, Otto SCHWERDTFEGER, and Josef SZABO, 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 LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, 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 Josef STURM, Georg PFEUFFER, Hermann RUMPOLD, Otto Heinrich SALOMON, Heinrich SCHIEBEL, Andreas SCHMIDT, Lorenz Johann SCHMITT, Josef SCHWARZENBERGER, Otto SCHWERDTFEGER, and Josef SZABO, 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, wilfully, 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: All of the accused were, by their own admissions, members of the SS at Camp Dachau and/or its outcamps for considerable periods of time between the dates alleged and were shown to have participated as guards 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

1946, hereinafter referred to as the Parent Case; see Section V, post; R 11).

IV. EVIDENCE AND RECOMMENDATIONS:

1. JOSEF STURM

At the request of the prosecution, the name of this accused was stricken from the charge sheet (R 2).

2. GEORG PFEUFFER

A nolle prosequi was entered in favor of this accused (R 2).

3. HERMANN HUMFOLD

Nationality:	German
Age:	29
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Corporal
Flea:	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 served as a tower guard in Camp Dachau and at Trostberg, apparently an outdetail of Camp Dachau, from 1 October 1944 to 1 May 1945 (R 12; R 50; P-Ex 2).

Evidence for Defense: HUMFOLD testified that he did not come voluntarily to the SS but was assigned with this unit as a result of being unfit for front line duty due to a nervous breakdown. He stated that when the Americans came to Trostberg, they asked prisoners how he had treated them and they said "well" (R 49-51).

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.

4. OTTO HEINRICH SALOMON

A nolle prosequi was entered in favor of this accused (R 2).

5. HEINRICH SCHIEBEL

This accused was acquitted (R 70).

7. LORENZ JOHANN SCHMITT

Nationality:	German
Age:	42
Civilian Status:	Blacksmith
Party Status:	None
Military Status:	Waffen SS, Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	C Charge I; C Charge II
Sentence:	20 months confinement, from 4 May 1945

Evidence for Prosecution: SCHMITT served as a sergeant of the guard at outcamp Allach from 1 September 1944 to 26 April 1945 (R 14; P-Ex 5). He acted as a guard on two prisoner marches from outcamp Allach (R 44). He saw prisoners fall out on the prisoner march that left outcamp Allach on 26 April 1945 (R 40). He made no attempt to be relieved of his duty as sergeant of the guard. At outcamp Allach, Russians, Frenchmen, Poles and Italians were incarcerated (R 45).

Evidence for Defense: The accused did not voluntarily go to outcamp Allach. He never saw or heard of any prisoners being beaten at this camp (R 39). He gave tea to the prisoners (R 40). He did not wish to join the SS (R 43). He was with the Wehrmacht from 1940 to 1944 when he was forced to join the SS (R 43; D-Ex 6). A certificate, signed by one Repp, for the Mayor of Lauda, states that the accused never was a member of the Nazi party or its organizations. He is a good Catholic and holds his religion in honor (R 41; D-Ex 5).

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.

8. JOSEF SCHWARZENBERGER

Nationality:	German
Age:	37
Civilian Status:	Blacksmith

Military Status: Waffen SS, Corporal
Plea: NG Charge I; NG Charge II
Findings: G Charge I; G Charge II
Sentence: 7 months confinement, from 10 July 1946

Evidence for Prosecution: SCHWARZEMBERGER served as a guard at Buchenwald Concentration Camp from June 1941 until January 1942 when he was transferred to Dachau Concentration Camp where he served as a guard until November 1942. He then served as guard at outcamp Feldafing until February 1943 (R 17; P-Ex 6). Germans, Poles, Frenchmen and Russians were prisoners at Camp Dachau and at outcamp Feldafing during his period of service. While at Camp Dachau and outcamp Feldafing, he acted as a camp guard and detail guard (R 55, 56). There were approximately 80 prisoners on his detail at outcamp Feldafing engaged in digging ditches (R 58, 59).

Evidence for Defense: No prisoners at outcamp Feldafing were reported for punishment (R 60). The prisoners at outcamp Feldafing received the same amount of food as is now being served the prisoners at Camp Dachau (R 59). He never heard of prisoners being beaten at Camp Dachau (R 60).

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.

9. OTTO SCHWERDTFEGER:

Nationality: German
Age: 47
Civilian Status: Unknown
Party Status: Unknown
Military Status: Waffen SS, Sergeant
Plea: NG Charge I; NG Charge II
Findings: G Charge I; G Charge II
Sentence: 20 months confinement, from 4 May 1945

Evidence for Prosecution: SCHWERDTFEGER served as a guard at outcamp Allach and outcamp Augsburg from 20 September 1944 to April 1945 (R 18; P-Ex 7). At outcamp Allach his guard post was at the BMW Works. At outcamp Augsburg he

Evidence for Defense: The accused did not go to outcamp Allach voluntarily (R 63).

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.

10. JOSEF SZABO

Nationality:	Rumanian
Age:	34
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:	29 months confinement, from 3 May 1945

Evidence for Prosecution: The accused served as a guard at Gusen, an outcamp of Mauthausen Concentration Camp, from 20 July 1943 to 18 February 1944 and as a guard at Freimann (Munich-Freimann) an outdetail of Camp Dachau, from 20 February 1944 to 27 April 1945 (R 19; P-Ex 8). At outdetail Freimann the prisoners worked in a locomotive repair shop. The duty of the accused was to act as an escort guard and take the prisoners from Camp Dachau to outdetail Freimann in the morning and return with them in the evening (R 67). During the working hours he acted as a guard outside the locomotive repair works (R 66). The prisoners at outdetail Freimann were of Polish, German, French and Italian nationality.

Evidence for Defense: SZABO never performed guard duty at Camp Dachau (R 67). Outdetail Freimann is mentioned once in the Parent Case in the testimony of Simon Kiern, sentenced to death therein, and it was not shown that atrocities were committed there (Vol. VI, R 1234, Parent Case).

Sufficiency of Evidence: The findings of guilty are not warranted by

the evidence. Rumania was a co-belligerent of Germany.

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

Recommendation: It is recommended that the findings and sentence be disapproved.

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 (Ltr., Hdqs. USFET, file JAG-AGO, subj: "Trial of War Crimes Cases" 14 Oct. 1946, and the Parent Case). With the exception of accused SZABO, all 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 as to them that they not only participated to a substantial degree but that the nature and extent of their participation was such as to warrant the sentences imposed. Concerning accused SZABO, it was shown that he participated and the nature of his duties was also satisfactorily proved. However, a search of the record in the Parent Case and the record of this subsequent proceeding reveals no evidence as to atrocities committed at outdetail Freimann. It is true that it was shown that slave laborers were worked at outdetail Freimann but, if they were not otherwise mistreated and tortured, it is believed that the participation of SZABO 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 the Freimann outdetail, 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 the Freimann outdetail men-

clearly proven to have been inflicted at the parent camp and the other outcamps. If that view were adopted, at least theoretically, injustices could result and those too remotely connected with this or other mass atrocities might be severely punished without a proper gauge to measure the magnitude of their crimes.

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 as to all the accused, with the exception of accused SZABO be approved, and the findings and the sentence as to the accused SZABO be disapproved.

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

/s/ MURRAY J. ANDROVETTE
MURRAY J. ANDROVETTE
Attorney
Post Trial Branch

Having examined the record of trial, I concur:

/s/ C. E. STRAIGHT
C. E. STRAIGHT (30 Sept 47)
Lt. Colonel, JAGD
Deputy Judge Advocate
for War Crimes