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

14 July 1947

UNITED STATES )  
                  ) )  
                  v. )  
                  ) )  
Walter SCHMIDT, et al. )

Case No. 000-50-2-37

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 19-20 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 Walter SCHMIDT, Johann SCHWESIG, Johann SPAETH, August STRAUBINGER, Wilhelm STRAUSS, Phillip TERKL, Friedrich THEISSEL, Michael THELLMANN, Heinrich THIENENKAMP, and Ludwig Josef TIRSCHHEL, 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 mistreatments, 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 Walter SCHMIDT, Johann SCHWESIG, Johann SPAETH, August STRAUBINGER, Wilhelm STRAUSS, Phillip TERKL, Friedrich THEISSEL, Michael THELLMANN, Heinrich THIENENKAMP, and Ludwig Josef TIRSCHHEL, 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 the convicted accused were members of the SS at Camp DACHAU and/or its outcamps for considerable periods of

It was 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 Parent Dachau Concentration Camp case (United States v. Weiss, et al., 000-50-2, March 1945, hereinafter referred to as the Parent Case; see Section V, post; R 9).

IV. EVIDENCE AND RECOMMENDATIONS:

1. WALTER SCHMIDT

Nationality:	German
Age:	37
Civilian Status:	Manager of book store
Party Status:	NSDAP: SA
Military Status:	Waffen SS, Corporal
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	2 years, commencing 4 May 1945

Evidence for Prosecution: The accused served as a guard at outcamp Allach, outdetail Germering and at Camp Dachau from 26 March 1944 to 26 April 1945. He also participated as a guard on an inmate evacuation march from Dachau to Bayerdorf 26-29 April 1945 with about 800 inmates and 30 guards (R 10; P-Ex 2). He saw inmates beaten at outcamp Allach (R 21). He saw exhausted inmates standing along the side of the road on the inmate evacuation march from Dachau to Bayerdorf on 26 April 1945 (R 21).

Evidence for Defense: The accused in his unsworn statement to the Court stated that he did not enter the Waffen SS of his own accord but was transferred from the air forces in September 1944 (R 19). He was never inside outcamp Allach, outdetail Germering or Camp Dachau (R 19). During his period of service as a guard, he never beat or mistreated any inmates or saw any killed (R 20, 21). He joined the Nazi party in 1939 in order to continue as manager of a book store owned by his aunt (R 20).

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.

2. JOHANN SCHWESIG

Nationality:	German
Age:	60
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Sergeant
Plea:	MG Charge I; MG Charge II
Findings:	G Charge I; G Charge II
Sentence:	20 months, commencing 4 May 1945

Evidence for Prosecution: The accused served as a guard at Camp Dachau, outcamp Faldafing and outcamp Friedrichshafen from 16 February 1942 to 25 May 1944 and as a cook at Camp Dachau from 26 May 1944 to 26 April 1945 (R 11; P-Ex 3). He did not have anything to do with the rations for inmates (R 23). He once saw inmates beaten at outcamp Friedrichshafen (R 24; R 811; P-Ex 99, Parent Case).

Evidence for Defense: The accused in his unsworn statement to the Court stated that he did not enter the Waffen SS of his own free will. He was never inside the camp at Camp Dachau (R 22). He worked all over outdetail Faldafing (outcamp Faldafing; see Parent Case Volume VII, R 1673; R 24). During his service as a guard he never beat or mistreated any inmates (R 22).

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. JOHANN SPAETH

This accused was not served nor tried (R 3).

4. AUGUST STRANDBINGER

Nationality:	German
Age:	40
Civilian Status:	Unknown
Party Status:	None
Military Status:	Waffen SS, Corporal
Place:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	21 months, commencing 3 May 1945

Evidence for Prosecution: The accused served as a guard at outcamp Allach from 10 April 1944 to 26 April 1945 (R 12; P-Ex 4). He was a guard on an inmate evacuation march of 600 inmates who left outcamp Allach for Bayerberg on 27 April 1945. There were 30 guards on this detail (R 12; P-Ex 4). During his tour of duty at outcamp Allach, he was stationed at the Bavarian Motor Works and as it was part of his duty, he escorted details that varied in number from 100 to 200 inmates from outcamp Allach to the Bavarian Motor Works in the morning and returned with them in the evening. It was forbidden to talk to the inmates. Airplane parts were manufactured at the Bavarian Motor Works (R 26). He heard of inmates being beaten at outcamp Allach (R 26).

Evidence for Defense: The accused in his unsworn statement to the Court stated that he never beat or mistreated inmates in any way (R 25). He never saw any inmates beaten at outcamp Allach nor did he ever witness a public execution (R 26).

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.

5. WILHELM STRAUSS

Nationality: German  
Age: 35  
Civilian Status: Unknown  
Party Status: None  
Military Status: Waffen SS, Corporal  
Plas: NG Charge I; NG Charge II  
Findings: G Charge I; G Charge II  
Sentence: 21 months, commencing 2 May 1945

Evidence for Prosecution: The accused was a guard at Camp Dachau from 1 September 1944 to 12 March 1945 (R 13: P-Ex 5). His duty as a guard was to escort details consisting of 350 inmates to and from work and to guard them at work at outdetail Munich-Freimann (R 30-32). He knew that inmates were beaten at Camp Dachau (R 31).

Evidence for Defense: The accused in his unsworn statement to the Court stated that he was transferred from the air forces to the Waffen SS in June 1944. He never was inside Camp Dachau. He never mistreated or administered punishment to an inmate (R 30). The inmates looked well and did not appear weak. Guards did not beat inmates on his work detail. He never saw any inmates beaten or mistreated (R 31). No inmates ever fell out of line due to illness. Sometimes inmates had to be hospitalized due to accidents occurring while at work (R 31, 32). Outdetail Freimann (Munich-Freimann) is mentioned once in the Parent Case in the testimony of Simon Kiern, sentenced to death therein, and it was not affirmatively 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.

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

Recommendation: That the findings and sentence be disapproved.

6. PHILIP TRAJ

This accused was not served nor tried (R 3).

7. FRIEDRICH THEISSL

Nationality: Czechoslovakian  
Age: 35  
Civilian Status: Unknown  
Party Status: None  
Military Status: Waffen SS, Corporal  
Plea: NG Charge I; NG Charge II  
Sentence: 2 years, commencing 5 May 1945

Evidence for Prosecution: The accused was a guard at Camp Dachau, outdetail Prezifix, outcamp Friedrichshafen and outcamp Saulgau, from 2 January 1943 to 20 April 1945 (R 14; P-Ex 6). There were 800 inmates at Friedrichshafen. He served on the guard chain around the camp. The duties of a guard varied from day to day. One day he had guard duty around the camp, another day around the workshop (R 37).

Evidence for Defense: The accused in his unsworn statement to the Court stated that he was drafted into the Waffen SS in 1943 (R 33). During his period of service as a guard he never beat, mistreated or punished an inmate (R 35). He never heard of, or saw, any beatings or mistreatment of inmates (R 37). The inmates were well fed at all times (R 38).

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. MICHAEL THELLMANN

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

Military Status	Waffen SS, Private
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	21 months, commencing 1 May 1945

Evidence for Prosecution: The accused served as a guard at Camp Dachau and outcamp Allach from 8 August 1943 to 26 April 1945. He participated as a guard in an inmate evacuation march from outcamp Allach to Wolfretshausen 26 April 1945 to 1 May 1945. About 10 to 12 guards and 100 inmates were on this march (R 16; P-Ex 7, R 41, 42).

Evidence for Defense: The accused in his unsworn statement to the Court stated that he was never a member of the Nazi party. He was drafted from the Rumanian Army into the Waffen SS. During his period of service as a guard at Dachau and Allach, he never beat or in any way mistreated any inmates, nor did he ever have occasion to punish any inmates for infraction of rules or any other reason (R 42). He was never inside Camp Dachau or outcamp Allach. On the inmate evacuation march from Allach to Wolfretshausen, he did not beat or mistreat any inmates nor did he see or hear of any mistreatment of inmates on this march (R 42, 43). The inmates had cold rations on this march (R 43).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive. Rumania was a co-belligerent of Germany.

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

Recommendation: That the findings and sentence be approved.

9. HEINRICH THIEBENKAMP

This accused was not served nor tried (R 3).

10. LUDWIG JOSEF TIRSCHEL

Nationality:	Czechoslovakian
Age:	26
Civilian Status:	Waiter
Party Status:	None

Military Status:           Waffen SS, Private First Class  
Plea:                        NG Charge I; NG Charge II  
Findings:                   G Charge I; G Charge II  
Sentence:                   22 months, commencing 27 April 1945

Evidence for Prosecution: The accused served as an SS guard at Camp Dachau from 28 January 1943 to 30 September 1944. During April 1944 he acted as a guard on an inmate transport consisting of twenty inmates from Camp Dachau to Oranienburg. From 1 October 1944 to 12 March 1945 he served as an orderly in the officer's mess at Camp Dachau (R 17; P-Ex 8).

Evidence for Defense: The accused in his unsworn statement to the Court stated that he was drafted into the Waffen SS (R 44). As a waiter in the officer's mess, he did not come in contact with inmates. He never punished any inmates nor did he beat or in any way mistreat inmates (R 45). The inmates looked normal and well. He did not know how much food the inmates were getting. He never heard of or attended any public executions. He never heard of any inmates dying at Camp Dachau nor of their being mistreated or beaten (R 46). He was not fit for front line duty in 1943 because of a hernia. In 1944 he was marked fit for combat duty but did not ask for assignment to a combat unit because he was told by his master sergeant that such an order would come from higher authority. He did not know of any order from Hitler that any able bodied man who wanted to could go to the front (R 47 , 48).

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: A question not raised during the course of the trial merits discussion, viz., did the Court have jurisdiction of the persons of the accused Friedrich THIELSL and Ludwig Josef FIRSCHEL, who are allegedly nationals of other United Nations.       SUBJECT -- PROCEEDINGS



nationals of Czechoslovakia. War criminals, brigands, and pirates are the common enemies of all mankind and all nations have an equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated in "Wheaton's International Law", Volume I, Sixth Edition, at page 269, that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed." Nationals of other United Nations were sentenced, which sentences have been approved and carried into execution, in the Mauthausen Concentration Camp case (United States v. Altfudisch, et al., February 1947), and in the Belsen Concentration Camp case, British Army of the Rhine, December 1945. Apparently, all concerned with the reviews and approvals in those cases considered the universality of jurisdiction over war crimes to be so well recognized that discussion was not necessary. Military Government Courts have jurisdiction over the nationals of any country who are in the United States Zone of Occupation, except as to certain classes of American and other nationals, e. g., military personnel, which are not pertinent to the jurisdictional question here involved. Concerning jurisdiction over war crimes, no limitation is imposed. (See Sections 5-300.2 and 5-300.3, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, US Forces, European Theater, 30 November 1945.) Concerning the general question of universality of jurisdiction over war crimes see "Universality of Jurisdiction over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pp. 177-213.

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

Forces, European Theater, file 000.5, JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). With the exception of accused STRAUSS, 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 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. Concerning STRAUSS, 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 proceedings reveals no evidence as to atrocities committed against inmates at outdetail Munich-Freimann and in the absence of evidence showing that they were not otherwise mistreated and tortured, it is believed that the participation of STRAUSS 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 on the outdetail mentioned, he is not shown to have participated in the mass atrocity to a substantial degree and there is inadequate evidence as to the nature and extent of his participation to permit arriving at an appropriate sentence. It could be contended with considerable merit that the Court, with propriety, could have inferred that the inmates of outdetail Munich-Freimann were subjected to cruelties and tortures substantially like those 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

be approved, but the findings and sentence as to accused STRAUSS 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  
/t/ MURRAY J. ANDROVETTE  
Attorney  
Post Trial Branch

Having examined the record of trial, I concur this 20th day of  
October 1947.

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

HEADQUARTERS  
EUROPEAN COMMAND

AG 383 JAG

Nov 7, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs.  
Walter SCHMIDT, et al (Case No. 000-50-2-37)TO : Commanding General  
First Military District,  
APO 1, U.S. Army.Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO,  
subject: "Designation of Prisons for War Criminals," 26 February 1947  
and to the enclosed copies of the Order on Review in the above entitled  
case as concerned Walter SCHMIDT.Upon compliance with the Order on Review the certificate be-  
low will be completed and returned to the Deputy Judge Advocate for War  
Crimes, 7703 War Crimes Group, APO 407, U.S. Army.

BY COMMAND OF GENERAL CLAY:

1 Incl:  
1 Form No. 15 (in dup)/s/ Wm. E. Bergin  
/t/ Wm. E. BERGIN  
Lieutenant General, USA  
Adjutant General

Frankfurt 7175

## CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was  
carried into execution at War Criminal Prison No. 1, Landsberg, Germany,  
on \_\_\_\_\_ 1947, at \_\_\_\_\_  
(Date) (Hour)Prisoner Walter SCHMIDT has been  
released from confinement at  
Landsberg War Crimes Prison No. 1  
on 3 May 1947 per expiration  
of sentence/s/ Lloyd A. Wilson  
(Signature and Rank)  
/t/ LLOYD A. WILSON  
Captain GCP  
(Organization)  
Prison Officer/s/ David A. Oakley  
(Countersignature and Rank  
of Witnessing Officer)  
/t/ DAVID A. OAKLEY  
1st Lieutenant GMC  
Asst. Prison Officer