

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

4 February 1948

UNITED STATES )

v. )

Ferdinand WILHELM, et al. )

Case No. 000-50-46-2

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 12-21 November 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

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

Particulars: In that Ferdinand WILHELM, Emil WEYRICH, Ernst DOEPLITZ, Josef KLUTE and Albert FIEDLER acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses and indignities, did, at or near the vicinity of Flossenburg Concentration Camp, near Flossenburg, Germany and at or near the vicinity of the Flossenburg out-camps, particularly Hersbruck, Wolkenburg, Gansacker and Leitmeritz, and with transports of prisoners evacuating said camps, all in German or German-controlled territory at various and sundry times, between the 1st of January 1942 and the 8th of May 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of Poles, Frenchmen, Yugoslavs; citizens of the Soviet Union, Norwegians, Danes, Belgians, citizens of the Netherlands, citizens of the Grand Duchy of Luxembourg, British subjects, stateless persons, Czechs, citizens of the United States of America and other non-German nationals who were then and there in the custody of the then German Reich, and 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 killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating many thousands.

III. SUMMARY OF EVIDENCE: All of the accused were involved in various capacities in the operation of Flossenburg Concentration Camp for a period of time between the dates alleged in the charge. Accused WILHELM, WEYRICH and DOEPLITZ were members of the Waffen SS. Accused FIEDLER was an inmate who held the position of capo and later camp policeman. Three of the accused

were shown to have committed individual acts of cruelty against inmates, accused WILHELM in his capacity as an SS sergeant in charge of construction work; accused WEYRICH in his capacity as an SS sergeant in charge of bread deliveries; and accused FIEDLER in his capacity as capo, as guard at the entrance of the camp canteen, and also as camp policeman during the evacuation march.

Accused DOEPLITZ, though not shown to have committed any individual acts of cruelty against inmates, was shown to have been in charge of a large section of an evacuation transport in which many inmates were killed and many others allowed to die of exhaustion. Prosecution's P-Ex 9 (R 16) is a certified copy of the charge, particulars, findings and sentences in the parent Flossenburg Concentration Camp Case (United States v. Becker, et al., 000-50-46, opinion DJATC, May 1947, hereinafter referred to as the "Parent Case", see Section V, post).

#### IV. EVIDENCE AND RECOMMENDATIONS:

##### 1. Ferdinand WILHELM

Nationality:	German
Age:	40
Civilian Status:	Technician
Party Status:	Member of Nazi Party since 1933
Military Status:	SS Sergeant
Flee:	NO
Findings:	G
Sentence:	3 years, commencing 23 April 1945

Evidence for Prosecution: From March 1940 until the liberation, the accused was an SS sergeant in charge of construction work in Flossenburg Concentration Camp (R 409). He was seen beating inmates with a broken shovel handle (R 80). In about 1944 he was seen beating inmates with his fists (R 81-82). Everybody fled when the accused approached the construction site (R 82). Toward the end of 1944 or in the beginning of 1945 the accused beat a Czech inmate causing his face to swell (R 86). Between 1942 and 1944 the accused was seen at various times beating

Polish, Rumanian, and French inmates with his fists and kicking them with his feet for trivial matters (R 87; P-Exs 13, 13A). He was seen beating and kicking inmates in 1943, 1944 and early 1945 (R 89; P-Exs 15, 15A). He beat a Polish inmate with the butt of his pistol after the inmate had collapsed (R 90; P-Exs 15, 15A). The accused hit a Russian inmate in the face with his fist because the inmate was unable to unload heavy packages. The inmate was knocked to the ground and hit over the head with the handle of a pistol until he became unconscious (R 92; P-Exs 16, 16A).

Evidence for Defense: While in charge of construction at Grafeneuroth during 1943 or 1944, the accused treated the inmates very well (R 180) and provided them with extra food (R 181). The accused made no reports about inmates (R 193). By diverting construction material he was partly responsible for not erecting a gas chamber in Flossenburg Concentration Camp (R 194). Once in a while the accused slapped an inmate who had violated camp regulations (R 241), but the inmates were not injured and no punishment reports were made (R 242). There was no talk in the camp about the accused having seriously injured a Russian inmate with a pistol (R 261, 262). The accused did favors for the inmates at his own expense (R 262).

In his testimony, the accused testified that he may have slapped some inmates accused of having committed some acts of sabotage (R 412), but denied that he ever carried a club or any instrument with which he struck the inmates (R 412). He testified that he reprimanded an assistant capo, Koenig, who testified for the prosecution, for having beaten an inmate with a spade or other instrument (R 412, 413). He also denied striking an inmate with a pistol (R 417), stating it would be impossible to beat with a loaded pistol (R 418).

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

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

Recommendation: That the findings and sentence be approved.

2. Emil WEYRICH

Nationality:	German
Age:	58
Civilian Status:	Baker
Party Status:	Member of Nazi Party since 1932
Military Status:	SS Sergeant
Flea:	NG
Findings:	G
Sentence:	2 years, commencing 20 March 1946

Evidence for Prosecution: The accused, an SS sergeant, was in Flossenburg Concentration Camp following December 1941 (R 148). From the spring of 1944 until the evacuation of the camp he was in charge of bread deliveries (R 94, 105, 218, 229).

His assignment was to pick up the bread from the railroad station and to deliver it to the camp store room (R 94). He stood near the bread truck with a stick or a leather strap and did not let anyone get close to the truck (R 94). He beat those inmates who got too close to it (R 95). He caused the arrest of a Polish inmate who stole a loaf of bread from the truck (R 94, 95). When an inmate fell to the ground, the accused kicked him with his feet (R 96). Towards the end of 1944 two Russian inmates were caught stealing bread and a punishment report was made. They were relieved from the detail and sent to the bunker (R 98).

It was generally known that the accused made punishment reports (R 99). The accused beat and kicked inmates, most of them Rumanians and Poles, who stole bread (R 105, 106). He beat inmates with whatever he got into his hand (R 106). Sometimes he beat inmates in a nearby hut so severely that they had to be carried home (R 106).

Evidence for Defense: The accused treated the inmates very well while at Grafeureuth (R 157). He let them perform extra work for farmers in order to receive extra food (R 159). The inmates who worked in the accused's detail received extra bread (R 199, 220). The accused always treated the inmates well (R 200). The inmates claimed his was the best

detail in the camp (R 200). The accused slapped a few inmates who stole some bread (R 218-220), but he never used a club or any other instrument, and he never caused any injury (R 218). No inmate in the accused's detail was mistreated necessitating their being carried back to camp (R 219). The accused did not make punishment reports about inmates who took bread. The witness did not receive any reports as to inmates being beaten at the bread unloading detail (R 229).

The accused testified that his punishment of inmates consisted of either having them assigned to another detail or of not giving them any bread (R 452). He never took any inmates for punishment into the hut which stood near the place where the bread was unloaded from the railroad car, but he once saw an SS technical sergeant beating an inmate there (R 454). He further testified that while in Flossenburg he made no punishment reports about inmates (R 454) and never slapped an inmate (R 455).

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

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

Recommendation: That the findings and sentence be approved.

3. Ernst DOEPLITZ

Nationality:	German
Age:	52
Civilian Status:	Clerk
Party Status:	Member of Nazi Party since 1937
Military Status:	SS Technical Sergeant
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 6 May 1945

Evidence for Prosecution: The accused was an SS technical sergeant in Flossenburg Concentration Camp from August 1944 to 19 April 1945

(R 113, 292, 293; P-Exs 17, 17A). He was placed in charge of a section of a transport which left Flossenburg 19 April 1945 for Dachau Concentration Camp. There were about 750 inmates in the section (R 113, 131; P-Exs 17, 17A). The transport went by train to Naarburg. From there it continued on foot. From Naarburg to Schwandorf the accused by his own admission had under his command 30 SS guards and 60 camp policemen (R 113, 297; P-Exs 17, 17A). The transport consisted of two groups of inmates (R 115). One group was composed of about 35 prominent inmates. The other consisted of about 750 sick inmates (R 115, 148). The accused was in charge of the latter group, which included Rumanians, Poles, and Hungarians (R 116, 122, 131, 133).

Shots fired in the group led by the accused were heard by an inmate marching in the other group (R 118). When last seen at Schwandorf by one of the prosecution witnesses, the accused's section which had only 300-350 inmates left (R 118, 123). When last seen by another prosecution witness at Rossbach, it had no more than 200 inmates (R 137).

At Schwandorf the inmates of this transport were placed in railroad box cars in the expectation of resuming the travel by train (R 126). They remained there for three or four hours (R 123, 136). During that time the accused was seen walking up and down along the transport (R 123). In front of the cars, only a few meters away, there were two mass graves containing 50 to 60 dead bodies (R 117, 120). Bodies from the box cars, in which stood inmates of accused's section, were being placed in the graves (R 124). Some were thrown from the cars into the graves (R 136, 150).

SS Lieutenant Schaefer was in command of the entire transport (R 113, 116, 130, 294; P-Exs 17, 17A), but he was always ahead of it (R 131, 210). An SS man told prosecution witnesses that an order had been given directing that inmates who could not march and fell behind were to be shot (R 118, 138, 145). Bodies of inmates could be seen along the route (R 134) from Schwarzenfeld to Schwandorf in the ditch to the left and to the right of the road (R 134).

While marching from Schwandorf, one of the prominent inmates heard the leader of his group remark to the accused that the accused's group was growing less and less (R 136). The accused merely laughed (R 137). The accused was seen with his group beyond Regensburg after crossing the Danube and again two days later (R 143). A witness heard that 60 inmates from the accused's group were shot by SS men near Traunstein (R 138, 145), but the witness did not see the accused there (R 146).

Evidence for Defense: A former guard with the group of prominent inmates testified that he did not see the accused after leaving Schwandorf (R 207, 208), saw no dead inmates (R 212), and saw no mass graves (R 213).

The accused testified that he participated in five line-ups and no accusations were made against him (R 293). He testified that he was assigned to the larger group of inmates when the transport left the train (R 296); that there were then about 700 inmates; and that their physical condition was not good (R 296). He further testified that the transport traveled at a pace of two or two and a half kilometers per hour (R 297) with about five breaks during the day (R 298); that various inmates dropped out; that he assumed the transport leader who was following in a horse drawn vehicle would pick them up (R 298); that there were no deaths among the inmates on the way to Schwandorf (R 299); and that no orders were given about the disposition of inmates who could not keep up with the march column (R 299). Four inmates died from natural causes before reaching Naarburg (R 299). A few dead inmates received a mass burial at Schwandorf, but there was nothing to indicate that they had been shot or killed (R 302).

The accused further testified that at Schwandorf he suggested to transport leader Schaefer that the inmates were unable to march further and should remain there (R 302, 303), but this to no avail. The transport proceeded in the direction of Regensburg and reached Rossbach. While at Rossbach during the night the transport left without the knowledge of the accused, and the accused had no further connection with it (R 305, 306).

He was never in Traunstein (R 306). He was with the transport only four days. During those days he did not see any inmates who had been shot nor did he hear of any shootings (R 306, 307). He tried to improve the bad situation, but there was not much he could do (R 308, 309).

The accused testified that he was a member of the Social Democratic Party prior to its dissolution in 1933 (R 323). He joined the Nazi Party in 1938 though the record shows 1937 (R 323). He was pressed into joining it by reason of his employment with a public service company (R 324). He was not in agreement with the aims of the party nor with its methods (R 326).

Sufficiency of Evidence: Acts of personal violence by the accused are not proved. However, an extremely high percent of deaths occurred on the section of the evacuation march in charge of the accused and at least part of the responsibility for such deaths is traceable directly to the accused. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed 5 December 1947 by Donald J. Ross, defense counsel, and Lothar Steiner, German associate counsel. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

4. Josef KLUTE

This accused was served but not tried (R 1, 3; P-Ex 2).

5. Albert FIEDLER

Nationality:	German
Age:	36
Civilian Status:	Upholsterer
Party Status:	None
Military Status:	None
Place:	NR
Findings:	c
Sentence:	10 years, commencing 19 June 1945.

Evidence for Prosecution: The accused, a homosexual inmate of



and was made camp policeman prior to the evacuation of the camp. As such, he guarded the inmates during the evacuation march (R 20) and marched at the end of the column armed with a rifle (R 20).

While a <sup>camp</sup> guard in Flossenburg Concentration Camp, the accused beat inmates who rushed to the canteen, using his hands, a stick, and a rubber hose, and he also kicked inmates (R 21) to such an extent that some bled and some were knocked to the ground (R 21). He hit prosecution witness Trobel, a Polish national, with a stick causing his head to swell (R 28). He beat a Polish inmate, named Apfel Baum or Apfel Saft, causing him to spit blood (R 65, 66). This victim died two days later from a hemorrhage (R 67). The accused also beat other inmates with a piece of wood or a ladle (R 68). In his extrajudicial sworn statement, Joachim Wolf (R 73; Exs 11-11A) stated that the accused beat inmates indiscriminately. The witness was beaten rather severely in about February or March 1945.

While acting as guard of an inmate evacuation march which left Flossenburg on April 19, the accused participated with the SS men in shooting inmates unable to go further (R 23, 24). He rushed to the ground (R 26) and shot in the head a Polish inmate named Jakob Goldblum (R 24, 25). This was observed by witness Trobel (R 25). He also shot several other inmates (R 27, 28). Witness Apel Lemel, who left Flossenburg Concentration Camp on 16 April 1945 and joined another transport on 22 or 23 April 1945 (R 42), saw the accused, whom he knew from Flossenburg Concentration Camp on the latter date (R 43). This witness testified that, on April 23 about an hour prior to the liberation (R 46), the accused shot and killed a Polish inmate named Adler (R 45).

Evidence for Defense: The accused was a harmless and quiet man (R 163). He was very much liked in his block (R 171). Nothing detrimental was heard about him (R 174). He enjoyed a good reputation among the German inmates (R 185). His general reputation among the other inmates in the camp was good (R 264). He was correct and kept his place (R 283).

The accused could not have been a camp policeman three or four months

by some prosecution witnesses, because the camp police was not organized until March or April 1945 (R 163, 174, 185, 190, 244, 263, 264, 285, 342).

The accused admitted beating inmates who rushed to the canteen (R 190, 283, 340), and the using of a hollow rubber hose 50 centimeters long in those beatings (R 337). He testified, however, that he used it to keep order and that he did not beat hard (R 340). A witness, who saw the accused beat an inmate with a whip or a rubber hose (R 192), testified that the accused beat the inmates because they pushed into the canteen. However, nobody was injured (R 190).

In his testimony the accused denied that he ever beat an inmate with a ladle, as testified by one of the prosecution witnesses (R 342). He also denied ever marching at the end of the column during the evacuation march, as testified by prosecution witness Trebel. In this he was corroborated by witness Giselman, who testified that he, the witness, was always in the last row; that he saw the accused only once when the latter went there to inquire about a friend; and that prosecution witness Trebel was at no time in the last row (R 440). The accused denied that he shot inmates during the march (R 348). He never used his gun (R 348) and no inmates were ever shot in his presence, though he heard of inmates being shot in the other columns (R 350). The accused further testified that none of the inmates present at the time they were liberated by the Americans made any accusations against him (R 355). While in custody the accused heard about the death of inmate Adler. This inmate according to a statement made by one Bahlig (R 359; D-Ex 2A) was shot by an SS man during the night of April 22 1945. In an unsworn pretrial statement, Grim, a former Czech inmate, stated that the accused marched beside him during the evacuation and did not shoot anybody (R 362; D-Exs 3, 3A).

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

Petitions: A Petition for Review was filed 5 December 1947 by Donald J. Ross, defense counsel, and Lothar Steiner, German associate counsel. No Petitions for Clemency were filed.

Recommendation: That the findings and the 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 Tarent Case: The Court was required to take cognizance of the decision rendered in the Tarent 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 16 000.5 JMC-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Tarent Case). All of the convicted accused were shown to have participated in the mass atrocity and the Court was warranted by <sup>the</sup> evidence adduced, either in the Tarent 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 sentence imposed.

Admission of Evidence: The defense objected to the admission in evidence of Prosecution Exhibit 23, which is the undated and unsigned Identification of Prisoner Sheet relative to the accused used by operational personnel of 7708 War Crimes Group in recording screening and detention identification data concerning individuals who were detained in the War Crime Enclosure, Dachau, Germany. The statement "admits having shot to camp inmates on an evacuation march," appears on the sheet. The objection was based on the ground that the exhibit was in the nature of a general arrest report and "not a confession or evidence that can be admitted against a person" (R 478, 479). Military Government Courts may admit any evidence which it deems to be of probative value, or to state the rule otherwise, any evidence which in its opinion will aid in arriving at true findings (Section 5 - 329, Title 5, "Local and Canal Administration" of "Military Government Regulations", published by Office of Military

Government for Germany (US), 27 March 1947; Section 270 "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended). Therefore, the Court did not err in overruling the objection (R 1,80). At the same time it is conceded that its value as proof, if any, is very slight. However, the findings and sentence as to accused FUDLER are amply supported by other evidence.

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.

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

CLAUDIO DELITALA  
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