

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

17 May 1947

UNITED STATES)

vs)

Case No. 000-50-2-10)

Wilhelm BOEHLER, Robert)
GERHARDT, Josef GRELNER,)
Otto HAUSWIRTH, Wendel)
KIRSCHBAUM, Alfred Rudolf)
KORFF, Hugo UNTERPAINNER)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried jointly at Dachau, Germany
Date: 30 October 1946
Intermediate Military Government Court

<u>ACCUSED</u>	<u>DATA</u>	<u>SENTENCE</u>
BOEHLER, Wilhelm	Age 50 German national SS guard Rank: Sergeant	18 months confinement from 2 August 1945
GERHARDT, Robert	Age 42 German national SS guard Rank: Unknown	18 months confinement from 2 May 1945
GRELNER, Josef	Age 45 German national SS guard Rank: Unknown	18 months confinement from 7 July 1945
HAUSWIRTH, Otto	Age 48 German national SS guard Rank: Unknown	18 months confinement from 3 May 1945
KIRSCHBAUM, Wendel	Age 39 Roumanian national SS guard Rank: Pfc	18 months confinement from 9 June 1945
KORFF, Alfred Rudolf	Age 28 German national SS guard Rank: Corporal	18 months confinement from 7 July 1945

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 exultice and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

2. RECOMMENDATION: That the findings and sentences be approved except as to accused KORFF and UNTERPAINNER be disapproved.

3. EVIDENCE:

For the Prosecution, The prosecution's case was based on extrajudicial sworn testimony as hereinafter indicated. Exhibit P-1 is a certified copy of the charges, particulars, findings, and sentences in the parent Dachau Concentration Camp Case (U.S. vs Weiss et al., 000-50-2, March 1946; R 10). Exhibits P-2 thru 8 consist of extrajudicial testimony of each of the accused (R11 thru 17).

It was shown that during the period 1 January 1942 to 29 April 1945 each of the accused was an SS guard for considerable periods of time in Dachau Concentration Camp and/or its out-camps (P-Ex 2 thru 8).

For the Defense, The defense called no witnesses, relying solely on extrajudicial sworn testimony of the accused introduced by the prosecution (P-Ex 2 thru 8; R11 thru 17), and a statement signed by seven former inmates on behalf of accused UNTERPAINNER (D-Ex 1, R 18).

Accused BUEHLER was a guard for six months at out-camp Kaufering III, which contained 1000 Hungarian and Lithuanian Jewish men and women. It appears the Fischer detail, working out of out-camp Kaufering III, consisted of 220 prisoners of various nationalities working at an armament factory (P-Ex 2, R-10; reference Kaufering III, see U. S. vs Weiss et al., 000-50-2, March 1946, R 621, 741, 1339).

In defense, HUEHLER denies having seen prisoners beaten at either out-camp Kaufering 111 or on the Fischen detail, although he heard that "Organization Todt" men beat prisoners at Kaufering 111. He claims never to have beaten prisoners nor reported them for punishment (P-Ex 2, R 10).

Accused GERHARDT was an SS tower and work detail guard at Camp Dachau and out-camps Kottern, Fischen, Kompten and Muhlendorf-Mettenheim for a period of one year. He described the bad condition of prisoners at Muhlendorf-Mettenheim where there were approximately 700 Hungarian Jewish prisoners, and each day some dies from lack of medical care due to a typhoid fever epidemic (P-Ex 3, R 12).

In defense, GERHARDT denied ever having beaten prisoners or reported them for punishment at any of the out-camps where he had guard duty (P-Ex 3, R 12).

Accused GREINER joined the SA and the Nazi Party in 1932 because he had no job. He joined the German Army in 1941. In August 1944 he was ordered to out-camp Lauingen on the Danube and to out-camp Augsburg, where he performed the duty of tower guard and guard on the road. He was taken into the SS on 1 November 1944 (P-Ex 4A, 4B, R 12).

In defense, GREINER stated he knows nothing about mistreatments and beatings. From 27 September 1944 to 6 December 1944 he was hospitalized, after which he received a 16-day furlough. He was again hospitalized 1 January 1945 for 10 days. He left out-camp Lauingen on 10 April 1945; the transports left Lauingen on 10 April 1945 (P-Ex 4A, 4B, R 12).

Accused HAUSMIRTH came to Camp Dachau 13 July 1944. His duties were that of tower guard on the plantation detail for 8 days, after which he was hospitalized and furloughed. He returned to Camp Dachau in October 1944 and was assigned to out-camp Beumenheim. Upon the evacuation of this out-camp he was sent to Kaufering. He was a guard on the prisoner march Kaufering to Camp Dachau on 28 or 29 April 1945. (P-Ex 5, R 13).

In defense, HAUSWIRTH, disclaimed any knowledge of beating or mistreatment of prisoners at Camp Dachau and out-camp Boumonheim, or that prisoners suffered any mistreatment on the prisoner march on which he was guard (P-Ex 5, R 13).

Accused KIRSCHBAUM was a work detail guard in Camp Dachau on the Wuolfert canned meat factory detail, where 200 to 300 prisoners of various nationalities were worked and guarded by 15 to 20 guards (P-Ex 6, R 15).

In defense, KIRSCHBAUM stated that no prisoners died at the canned meat factory. Prisoners ate and slept at the factory and did not go into the main camp at Dachau. His guard duty was on the outside of the factory. He did not know what went on inside. He denied knowing anything about atrocities inside Camp Dachau until he read about them in the newspapers after the capitulation (P-Ex 6, R 15).

Accused KORFF joined the Nazi Party in March 1944. He was an SS guard with the rank of corporal. He received his guard training at Camp Dachau and, after approximately 5 weeks, was sent to out-camp Fischen, a small out-camp where prisoners worked at a Messerschmitt factory which produced patterns and stencils. The work shifts consisted of 50 men in the daytime and 50 men at night. (P-Ex 7, R 15).

In defense, KORFF stated he was drafted into the Waffen SS in October 1944. No prisoners were mistreated or killed at out-camp Fischen. Prisoners had a day off every 14 days when the night and day shifts changed. The food, so far as he could judge, was good and sufficient at this out-camp. On 12 March 1945 he was again sent to the front and remained there until the capitulation (P-Ex 7, R 16).

Accused UNTERPAINMEIER was transferred into the Waffen SS from the German Army on 6 July 1944. On 12 July 1944 he was transferred from Camp Dachau to out-camp Seehausen, near Lurnau, Germany. On 18 October 1944 he

was made work detail leader. His detail varied from 27 to 49 prisoners who were employed in a small armament factory. He was in charge of from 12 to 15 guards and performed those duties until the dissolution of the camp on 30 April 1945, when the guard crews surrendered and were arrested (P-Ex 8, R 17).

In defense, UNTERPAINNER stated that he never beat prisoners nor reported them to Camp Dachau for punishment. He also denied knowing of one of his guards beating a prisoner (P-Ex 8, R 17). In a statement purportedly signed by 7 former inmates in UNTERPAINNER's detail, it is stated that no atrocities occurred under his command and that he definitely opposed any mistreatment of prisoners (D-Ex 1, R 18).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

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

All of the accused were, by their own admissions, SS guards at Camp Dachau and/or its out-camps for considerable periods of time between the dates alleged (P-Ex 2 thru 6).

The Court was required to take cognizance of the decision rendered in the parent Dachau Concentration Case, including the findings of the Court therein that the mass atrocity operation was criminal in nature and that the participants therein, acting in the 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 AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases," 14 October 1946, and U.S. vs Weiss et al., 000-50-2, March 1946). With the exception of accused KORFF and UNTERPAINNER all accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the parent Dachau

Case or in this subsequent proceeding, in concluding as to them 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. Concerning accused KORFF and UNTERPAINNER, it was shown that they participated and the nature of their 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 out-camp Fischen or out-camp Seehausen. It is true that it was shown that approximately 100 slave laborers were at out-camp Fischen and approximately 50 at out-camp Seehausen, but if they were not otherwise mistreated or tortured it is believed that KORFF's and UNTERPAINNER's participation in this mass atrocity was too remote to form a basis of sentencing by the Court. By virtue of the absence of evidence as to what occurred at the Fischen and Seehausen out-camps, they are not shown to have participated to a substantial degree and there is inadequate evidence as to the nature and extent of their 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 Fischen and Seehausen out-camps were subjected to cruelties and tortures substantially like those clearly proven to have been inflicted at the parent camp and the other out-camps. If that view were adopted, at least theoretically, injustice 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.

6. CLEMENCY: There are no Petitions for Review nor Petitions for Clemency.

7. CONCLUSIONS:

a. It is recommended that all the findings and sentences except those as to accused KORFF and UNTERPAINNER be approved.

b. It is recommended that the findings and sentences as to accused KORFF and UNTERPAINNER be disapproved.

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

/s/ LOUIE T. FISCHER
Attorney
Post Trial Section

Having examined the record of trial, I concur.

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