

DEFENDERS: In that Alex Bernhard
FIORKOWSKI, Heinz Georg Alfred
DETMERS, acting in pursuance of a
common design to commit the acts
hereinafter alleged, and as individu-
als aiding in 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,
willfully, deliberately and wrong-
fully encourage, aid, abet and
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,
including killings, beatings, tortures,
starvation, abuses and indignities,
the exact names and numbers of such
prisoners of war being unknown, but
approximate many hundreds.

FIORKOWSKI
DETMERS

NO
NO

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6

2. RECOMMENDATIONS: That the findings and the sentences be approved.

3. EVIDENCE:

For the Prosecution. The prosecution's case was based on oral
sworn testimony of thirty-four witnesses and 6 Exhibits as hereinafter in-
dicated. Exhibit P-1 is a certified copy of the charges, particulars, find-
ings and sentences in the Parent Dachau Concentration Camp case (U.S. vs
Weiss et al., 000-50-2, March 1946, hereinafter referred to as the "Parent
Case"; R 56). Exhibit P-2, consists of the original records kept at Camp
Dachau showing the status of the prisoners such as death, transfers and new
arrivals (R 299). Exhibits P-3 and 4, are sketches of the cold water ex-
periments (R 363). Exhibit P-5 is the official death book of Camp Dachau
(R 332). Exhibit P-6 is an inmate's card from the original card files of
Camp Dachau (R 393).

It was shown that accused FIORKOWSKI was SS camp commander and accused
DETMERS was SS camp adjutant at Camp Dachau for considerable periods of
time between the dates alleged.

For the Defense. The defense's case was based on oral sworn testimony
of eleven witnesses and 21 exhibits as hereinafter indicated. Exhibit D-1,
a map of Dachau Concentration Camp was marked for identification, but not
received into evidence (R 54, 167). Exhibit D-2, a pencilled form, was

D-3, a pencilled diagram of the prisoner of war inclosure, was marked for identification but not received into evidence (R 311). Exhibit D-4 is a signed statement on behalf of accused DEPMERS (R 373). Exhibit D-5 is a diagram of Dachau Concentration Camp hospital (R 373). Exhibit D-6 is official correspondence between Counsel Section and Defense Counsel (R 412). Exhibit D-7 is extrajudicial sworn testimony on behalf of accused FIORKOWSKI (R 415). Exhibit D-8 is the passport of Frau FIORKOWSKI (R 420). Exhibit D-9, a medical report on FIORKOWSKI, was marked for identification but not admitted into evidence (R 437, 439). Exhibit D-10 is extrajudicial sworn testimony on behalf of accused FIORKOWSKI (R 457). Exhibit D-11 consists of references to extracts from the Parent Case (R 473). Exhibit D-12 consists of extracts from a book entitled "German Concentration Camps" prepared by Supreme Headquarters, Allied Expeditionary Forces, Evaluation and Dissemination Section, and were read into the record. Permission was granted to withdraw the exhibit after the reading (R 479). Exhibit D-13 is the official military code for armed forces in Germany. Portions thereof were read into the record and a parently permission was granted to withdraw the exhibit after the reading (R 476). Exhibit D-14 consists of extracts from a book entitled "The German Police" prepared by Supreme Headquarters, Allied Expeditionary Forces, Evaluation and Dissemination Section, dated April 1945, and were read into the record. Permission was granted to withdraw the exhibit after the reading (R 519). Exhibit D-15 is an organization chart of the concentration camp system (R 484). Exhibit D-16 is a labor function chart of the concentration camp system (R 485). Exhibits D-17 - 20 are questionnaires on behalf of accused FIORKOWSKI (R 618). Exhibit D-21 is a chart of the concentration camp disciplinary system (R 578).

Accused FIORKOWSKI arrived in Camp Dachau the latter part of 1938 with duties as security camp commander (R 22, 23). In March 1940, accused FIORKOWSKI became the camp commander remaining as such until June 1942 (R 34, 35). Witness Kraemer, a former inmate and block clerk at Camp Dachau testified to the effect that accused FIORKOWSKI participated in the selection of prisoners for a great number of invalid transports that left

gas chamber at other camps (P 23, 38, 42, 47, 48). On one of the invalid transports in the spring of 1942 a prisoner requested his crutches but was told by FICHTKOWSKI "You do not need any more crutches; tomorrow you are with Saint Peter" (R 25). Accused FICHTKOWSKI signed more than 100 punishment reports weekly without sending them to Berlin. The types of punishment noted out as the result of these punishment orders were 25 strokes with a stick or oxtails, post hangings, at which the arms of the prisoners were tied behind their backs and then pulled up by a chain and left hanging in the air; they were also kicked in the ribs (R 27, 53). In December 1941 and January 1942, blocks 17 to 29 within Camp Dachau were fenced in and became a prisoner of war inclosure. The tubercular prisoners remaining in block 29 at that time were sent to the headquarters arrest building in groups of 20 and killed by injections and these bodies were then sent to the crematory (R 28, 29). In the Spring of 1942 the prisoner of war inclosure was occupied by 420 Russian prisoners of war who were part of a larger transport of Russian prisoners of war. There were five Russian prisoners sent to the infirmary of which three died. The balance, 415 Russian prisoners of war were taken to the rifle range and executed by shooting (R 29, 30, 39, 51). The two remaining Russian prisoners of war were killed by injection and their bodies taken to the crematory (P 31). In April 1942 accused FICHTKOWSKI received the war merit badge which was for meritorious service on the home front. This was for participating in the execution of the Russian prisoners of war (P 35). Accused FICHTKOWSKI visited the experimental station of Dr. Rescher, where experiments in cold water and the pressure chamber were conducted; and the experimental malaria station of Professor Schilling. Accused also accompanied Himmler and high SS officials to these experimental stations (R 36). Prisoners were picked for experiments by Dr. Rescher who had the authority to do so from accused FICHTKOWSKI. If a prisoner refused to be experimented upon by Rescher or Professor Schilling he would be, first beaten, and then forcibly taken to the experimental station by the SS (R 37, 38, 56). During the period of January to June, accused FICHTKOWSKI was responsible for reports for punishment, executions by shooting, the experimental stations and the invalid

nationalities such as Polish, French, Czechoslovakian, Russian and Norwegian (R 62).

FOOD: The food was very bad during the period of January to June 1942. This caused many prisoners to suffer from malnutrition which was a primary factor in their deaths (R 70, 71, 330). Food was stolen from the prisoners' kitchen by SS personnel and others (T 232, 233, 245a).

MISTREATMENT: Prisoners during the first six months of 1942 were beaten by supervisory personnel of Camp Dachau (R 67, 77). A great number of prisoners were operated on by young doctors without anesthesia causing many deaths (R 78, 79). Once a prisoner collapsed at the political department while being interrogated and while in an unconscious condition was kicked by SS personnel and thrown out of the office (R 80, 81, 87). During a scabies epidemic the prisoners were isolated in blocks 9, 11, and 13. These prisoners were not treated medically; many prisoners died in these isolated blocks due mostly to undernourishment. The bodies were removed from the block by the "Moor Express" (R 103, 105, 207). The prisoners who were suspected of having scabies were treated by having cold water poured over them in cold rooms. This caused the death of several prisoners (R 208, 209). Prisoners were shot and given terrible beatings in the bunkers and were punished on orders to receive "25 lashes" but actually they were always given double the number of lashes ordered. This procedure was stopped, that is, the doubling of the number of lashes ordered when accused FIOREKOWSKI left Camp Dachau (R 121). Prisoners were also punished by being tied by their hands to the hanging post and by being placed in solitary confinement (R 122, 279). Conditions in Camp Dachau, during the time accused FIOREKOWSKI was camp commander, were very bad for the prisoners. It was also the greatest period for mass killings (R 212a, 219). Accused FIOREKOWSKI inspected the barracks where the bodies of dead prisoners were stored prior to their being cremated (R 255, 256). Prisoners were forced to pull carts and trailers around Camp Dachau and the town of Dachau like "draft animals". The "Moor Express" was the name of one of these details (R 278). Yugoslavian prisoners were also executed by shooting at Camp Dachau (R 288). During 1942 there were 5,137 prisoners killed of which

personnel and were hanged to the hanging post by their tied hands. Priest of all nationalities died from undernourishment, exhaustion, mistreatment, tortures and their being sent on the invalid transports (E 135, 136, 137).

INVALID TRANSPORTS: Invalid transports consisted of prisoners of all nationalities who were old, sick or who could not do their work. Approximately 1000 prisoners per month were sent out, from Camp Dachau, to other camps on invalid transports. It was known they went to their death by gas at these other camps (E 92, 93, 119, 130, 198, 199, 216, 217, 229 - 233). Accused FIOREKOWSKI was present when invalid transports were put together and prisoners were beaten (E 218). Prisoners turned in all of their personal property to the prisoners' personal property department prior to their departing on invalid transports from Camp Dachau (E 218, 235, 238, 312).

MEDICAL EXPERIMENTS: Many Russians during the first six months of 1942 were selected for Dr. Rascher's experiments and died as the result thereof (E 79). These experiments consisted of the pressure chambers, freezing, and cold water experiments. Dr. Schilling experimented in malaria. They both used priests, Jews of all nationalities and Russian prisoners of war for their experiments. In May 1942 Himmler and accused FIOREKOWSKI inspected the experimental stations (E 164, 165). In Dr. Schilling's experimental station prisoners were injected with malaria infected blood (E 189). Many of these prisoners who were subjected to the malaria experiments died as a result thereof (E 192). When prisoners were needed by Dr. Schilling for his malaria experiments he would send a signed requisition to the camp commander for the number of prisoners needed (E 358). Accused FIOREKOWSKI was repeatedly in Dr. Schilling's experimental station (E 61). Blood was taken from prisoners who were being experimented on by Dr. Rascher and sent to Dr. Schilling for his experiments (E 362). In Dr. Rascher's experimental station prisoners, who were used in the cold water experiment, were placed in a large tub-like container filled with water and blocks of ice, and were dressed in air corps uniforms. The prisoners were placed in the water and ice so they could

not sink or drown (E 362, 363; F-Ex 3 - 4, E 363). There were also experiments performed on the liver by Dr. Brechtel. These experiments were made by puncturing the liver with a needle and withdrawing fluid therefrom (E 366 - 368). Every experiment regardless of the type, was done without the prisoner's consent (E 376).

In defence, witness Stenelfeld testified he had known the accused for a number of years and had several conversations with him in regard to civilian work if he could be discharged from the SS and his duties at Camp Dachau (E 381, 382, 386, 423). Accused FIOROWSKI helped to secure the release of a few German prisoners confined in Camp Dachau (E 384, 386). It was impossible for SS personnel of the headquarters staff of concentration camps to secure a release, from their duty at concentration camps, for front line duty (D-Ex 7, E 415). During December 1941, January, February and March 1942, accused was confined to his home, due to illness, and was not at Camp Dachau (E 421, 434, 435). Defense witness Lt. Davis testified to the effect accused was operated on for a kidney ailment in 1936 and it is possible for periods of recurrence and suffering to be present as late as 1942 (E 439). There were no naked Russian prisoners seen leaving the gate from Camp Dachau; no prisoner were seen standing at the gate with potatoes or vegetables in their mouths; nor were there any priests seen parading throughout the whole week on the roll call square (E 442). In the early part of 1942 a prisoner barber from the SS barber shop attended accused FIOROWSKI at his home almost daily for two or three months (E 443). He was not seen beating any prisoners (E 444). Accused once saved a prisoner barber from an erroneous operation (E 445, 446). It was stipulated to by and between the defense and the prosecution that if witness Whitman were present he would have testified that accused FIOROWSKI was human, he was just, and prisoners had the right to justify themselves. During his command, there were no epidemics and the camp had the greatest cleanliness (E 459). It was forbidden for SS personnel to beat prisoners on their own and if they were caught they were subject to punishment by the police court (E 460). Superior officers were subject to punishment if they failed to

report anyone under their command that violated these regulations (D-Ex 13, E 476). Defense witness Gertli testified to the effect all food rations for the prisoners and SS were prescribed by Berlin. Food for the prisoners was requisitioned as prescribed in the book published in Berlin (E 486, 489). The staff personnel of Camp Dachau drilled in regular uniforms with helmets and rifles and the tower guards also wore the same uniforms (E 491). Accused FICHTENSKI, as Camp Commander of Dachau Concentration Camp, was under the direct control and received his orders from the headquarters in Oranienburg which in turn received their orders from Hitler's headquarters in Berlin (D-Ex 13, E 479; 480, 481; D-Ex 14, E 519; E 520 - 525). Defense witness Grimm testified to the effect all orders pertaining to labor and the allocation of labor originated at the headquarters in Berlin. The hours of labor prescribed for prisoners was established in headquarters, Berlin (E 484, 517; D-Ex 16, E 485). Defense witness Bichels testified to the effect the rifle range at Dachau was under the control of Post Dachau which was entirely separate and distinct from Camp Dachau. Schedules for the use of the rifle range were published, and personnel from Camp Dachau could not use the range without permission from the post commander. The rifle range was never requested by the commander of Camp Dachau for execution purposes. Post Dachau was under the command and jurisdiction of headquarters, Berlin (E 488). The construction work was under the command of a construction leader at Post Dachau and all construction was carried out by orders from the post construction leader (E 490). The Russian prisoners of war in the prisoner of war inclosure were transferred to Camp Mauthausen and were not executed in Camp Dachau. Other Russian prisoners that arrived at Dachau were not taken into the camp, but were taken direct to the rifle range (E 530). Defense witness Dr. Muthig testified to the effect the invalid transports contained prisoners from Camp Dachau, who were unable to work and were selected by a commission that came to Camp Dachau for the specific purpose. This was a stepped up universal German Reich work policy in operation throughout the entire area of the German Reich. The mistreatment of prisoners by

concentration camps. The tubercular experiments were conducted upon the direct orders of Himmler. At Camp Dachau the prisoners with tuberculosis were treated for cure only. Professor Schilling, who conducted the malaria experiments, was ordered by Himmler to continue his experiments at Camp Dachau. Dr. Rascher, who conducted experiments in air pressure and cold water for the Air Corps, also received his orders from Himmler (R 531, 532, 534, 537). Defense witness Colonel Schluns testified to the effect concentration camp commanders had a limited disciplinary authority for the purpose of maintaining order and discipline in the camp (R 576). A camp commander who failed to comply with execution orders issued from the Reich main security office would be punished by being placed, as an inmate, in a concentration camp or would be shot (R 577). The Reichsfuehrer of the SS had the power, without the jurisdiction of any court, to order Russian prisoners of war executed. All orders issued by the Reichsfuehrer had to be obeyed "There was absolutely no objection in Germany", "no camp commander would have authority to lift a finger against it" (R 577-579, 590-593). All Russian uniforms that were in the SS warehouses were sent to Camp Dachau for further use or repairs in 1941 and 1942 (R 579, 580).

Legal Sufficiency of Evidence. The preponderance of evidence definitely establishes the practices of killings, cruelties and mistreatments of prisoners under the leadership of accused FICHTKOWSKI, who for a considerable period of time between the dates alleged in the charges and particulars was the camp commander. It is obvious that he knew of the atrocities being committed in the camp. It is not clear from the record as to whether the accused's defense was based to a material degree on superior orders. However, in any event it clearly appears that his desire to cooperate with and please superiors was stronger than other considerations, that most of his many acts were performed at points distant from superiors; that he did not act under immediate compulsion and that he did not meet the burden of proof concerning superior orders as required by the authorities discussed in Section 5, post. He participated in the common design to a very substantial degree. The evidence is

sufficient to support the findings and sentence of the Court.

Accused DEYMERS was the adjutant to camp commander PIORKOWSKI and in addition to his official duties, took care of accused PIORKOWSKI'S personal matters (E 183, 184). Accused DEYMERS was feared amongst the prisoners as much as the camp commander (E 187). Accused DEYMERS was present at the rifle range during executions by shooting of Russian prisoners of war (E 270, 282, 551). Accused DEYMERS was present during executions of prisoners in the bunkers which was called "Headquarters arrest building" (E 285, 286). Accused DEYMERS conducted inspections of the prisoners in Camp Dachau (E 291, 292). He was also present during roll call and the reports were given to accused DEYMERS (E 305). Accused DEYMERS very frequently visited accused PIORKOWSKI at his home during periods of time when accused PIORKOWSKI was sick (E 435, 436).

In defense evidence was introduced indicating that accused DEYMERS was the adjutant at Camp Dachau and left Dachau on 20 February 1942 (E 183, 310). Witness Grim testified that in his opinion accused DEYMERS "a very young man had become the tool of a criminal system and its leaders". He did not commit any acts of brutality in Camp Dachau (E 307) nor was he ever seen beating any prisoners (E 444).

Legal Sufficiency of Evidence. Although no personal cruelties were proved against accused DEYMERS, his position as adjutant, under accused PIORKOWSKI, is such that he is charged with knowledge of the administration and executions of Camp Dachau, thus the conclusion must be reached, that he is guilty of participating in the common design, therefore the finding of guilty must be sustained. The evidence is sufficient to support the findings and sentence of the Court.

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 omissions which resulted in injustice to the accused.

Both of the accused were members of the SS at Camp Dachau for substantial periods of time between the dates alleged (E 34, 35, 183, 184).

The Court was required to take cognizance of the decision rendered

in the Farent 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 knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, File AG 000.5 JAC-AGC, subject: "Trial of War Crimes Cases," 14 October 1946, and the Farent Case). Both the accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Farent 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.

It is not clear that accused HOFKOWSKI relied solely upon superior orders to justify his acts. However, the accused did offer sufficient evidence to show that part of his defense was based upon superior orders. Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 353, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Dominikus Thomas December 1945; and United States v. Alfons Klein, et al., (Hedden Murder Factory Case), February 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928 paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior directing that he commit the wrongful act, (b) that he did not know or, as a reasonable prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human

conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945. Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 37-10, War Department, U.S. Army, "Rules of Land Warfare", paragraph 345.1. Change No. 1. 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 88, "Military Occupation and the Rule of the Law", by Ernst Fraenkel; and opinions of the Deputy Theater Judge Advocate for War Crimes in U.S. v. Albert Bury and Wilhelm Hofner, September 1945. U.S. v. Dominikus Thomas, December 1945, and U.S. v. Gerd Beck and Otto Weinreich, December 1946).

6. CLEMENCY: Petition for review was filed 20 January 1947 by defense counsel Major Sigelw Boyson and Major Olaf Tolnes. Consideration was given to petitions for clemency on behalf of accused WITTMIS dated 22 January 1947 and signed by Major Sigelw Boyson and Major Olaf Tolnes, defense counsels; and on behalf of accused FIONKOWSKI dated 22 January 1947 and 23 January 1947 both signed by Berta FIONKOWSKI, his wife. No clemency is recommended.

7. CONCLUSIONS:

a. It is recommended that the findings and the sentences be approved.

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

/s/ Elmer Moody
/t/ ELMER MOODY
1st Lt. Inf.
Post Trail Branch

Having examined the record of trial, I concur,
this _____ day of _____ 1947.

/s/ C. E. Straight
/t/ C. E. STRAIGHT
Lieutenant Colonel, JAGC
for War Crimes