

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

7 July 1946

UNITED STATES )

v. )

Case No. OOC-50-2-33

Herbert Kurt Franz BUENGER, et al. )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 12 - 13 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 Herbert Kurt Franz BUENGER, Hans RICHOW, Josef GWEISSER, August HERTSCHKE, Nikolaus WURTZ, Martin ZELNER, Georg Johann ZIMMERMANN 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 LAUBENBERG, 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 Herbert Kurt Franz BUENGER, Hans RICHOW, Josef GWEISSER, August HERTSCHKE, Nikolaus WURTZ, Martin ZELNER, Georg Johann ZIMMERMANN 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:

For Prosecution: All of the convicted accused were SS guards and participated 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 (U.S. v. WEISS et al., 000-50-2, March 1946, hereinafter referred to as the "Parent Case", R 31, see section V next).

IV. EVIDENCE AND RECOMMENDATIONS:

1. HERBERT KURT FRANZ BUENGER

This accused was acquitted (R 61).

2. HANS RICHHORN

This accused was acquitted (R 61).

3. JOSEF GEISLER

This accused was acquitted (R 62).

4. MAX HEGGER

The name of this accused was apparently stricken from the Charge Sheet and he was not before the Court.

5. LEO HEIN

The name of this accused was apparently stricken from the Charge Sheet and he was not before the Court.

6. AUGUST HENTSCHL

This accused was acquitted (R 62).

7. NIKOLAUS WUERTE

Nationality:	German
Age:	38
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Pfc
Plea:	NG, First Charge; NG, Second Charge

Findings: G, First Charge; G, Second Charge

Sentence: 18 months confinement from  
2 May 1945

Evidence for Prosecution: Accused was an SS guard at Camp Dachau from 24 March 1943 to 25 August 1944 (R 28; P-Ex 7).

Evidence for Defense: accused testified to the effect he did not beat or mistreat prisoners. He did not see prisoners beaten or hear of any executions (R 37). He did not see any cruelties or mistreatment of prisoners while they were working (R 38).

Sufficiency of Evidence: Accused was an SS guard at Camp Dachau for a considerable period of time between the dates alleged. He is therefore presumed, in the absence of appropriate rebuttal evidence, to be guilty of participating in the common design to subject civilian nationals and surrendered and unarmed prisoners of war to cruelties and mistreatment. The only rebuttal evidence introduced was the testimony of the accused which in its entirety is self serving and the credibility thereof was a question of fact to be determined by the Court.

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. MARTIN ZWILNER

Nationality:	German
Age:	34
Civilian Status:	• Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Plea:	NG, First Charge; NG, Second Charge
Findings:	G, First Charge; G, Second Charge
Sentence:	18 months confinement from 7 June 1945

Evidence for Prosecution: Accused was an SS guard at Camp Dachau from February 1941 to May 1943; from May 1943 to March 1945 outdetail Castle Itter; and from March 1945 to capitulation he was a guard on the ration dump detail (R 29; P- Ex 8).

Evidence for Defense: Accused testified in his own defense to the effect he did not beat or mistreat prisoners (R 34). He was good to the prisoners and did not harm them (R35).

Sufficiency of Evidence: Accused was an SS guard at Camp Dachau for a considerable period of time between the dates alleged. He is therefore presumed, in the absence of appropriate rebuttal evidence, to be guilty of participating in the common design to subject civilian nationals and surrendered and unarmed prisoners of war to cruelties and mistreatment. The only rebuttal evidence introduced was the testimony of the accused which in its entirety is self serving and the credibility thereof was a question of fact to be determined by the Court.

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. FRIEDRICH ZERBIAN

The name of this accused was apparently stricken from the Charge Sheet and he was not before the Court.

10. GEORG JOHANN ZIMMERMANN

Nationality:	German
Age:	41
Civilian Status:	Unknown
Party Status:	NSDAP since 1939
Military Status:	SS Sergeant

Flea:	NG, First Charge; NG, Second Charge
Findings:	G, First Charge; G, Second Charge
Sentence:	18 months confinement from 2 May 1945

Evidence for Prosecution: Accused was a member of the SS and a guard at outcamp Allach from 3 August 1944 to 26 April 1945. On 26 - 28 April 1945 he participated in a prisoner march as a guard from outcamp Allach to Wolf-ratshausen. There were 1000 prisoners and 50 guards on the prisoner march (R 30; P-Ex 9).

Evidence for Defense: Accused testified in his own defense to the effect he was transferred from an Air Corps Instruction Battalion to guard duty at outcamp Allach as he was not fit for front line duty (R 41). He never beat or mistreated prisoners (R 42). He did not know of prisoners being punished or receiving 25 lashes for violating camp regulations nor did he know of prisoners being placed in the standing-up bunker or receiving the tree punishment (R 42, 43). He gave the prisoners bread on the prisoner march and also in camp prior to the march as some of the prisoners appeared to be thin and hungry (R 43, 44). He tried unsuccessfully to transfer out of the guard unit as he did not like guard duty (R 45).

Sufficiency of Evidence: Accused was an SS guard at outcamp Allach for a considerable period of time between the dates alleged. Many prisoners were killed, mistreated and subjected to cruelties at outcamp Allach (R 849; P-Ex 124, Parent Case). He also participated in a prisoner march. He is therefore presumed, in the absence of appropriate rebuttal evidence, to be guilty of participating in the common design to subject civilian nationals and surrendered and unarmed prisoners of war to killings, cruelties and mistreatment. The only rebuttal evidence introduced was the testimony of the accused which in its entirety is self serving and the credibility thereof was a question of fact to be determined by the Court.

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: The Court was legally constituted and 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 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 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946 and the Parent Case). Each of the convicted accused was 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 the nature and extent of their participation were such as to warrant the sentences imposed.

Presumption of Law: In the trials of additional participants in a mass atrocity, the Court will presume, subject to being rebutted by appropriate evidence, that those shown by competent evidence to have participated in the mass atrocity knew of the criminal nature thereof, (Paragraph 12, Letter, File AG 000.5 JAG-AGO, supra). Presumption of law is a deduction which the law expressly directs to be made from particular facts. These are of two kinds, conclusive and disutable. The presumption applicable here is the disutable presumption which is an inference of law which holds good until it is invalidated by proof or a stronger presumption. (Black's Law Dictionary, pages 1409, 1410).

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 be approved.

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

/s/ ELMER MOODY  
ELMER MOODY  
1st Lt. Inf.  
Post Trial Branch

Having examined the record of trial, I concur.

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