

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

13 June 1947

UNITED STATES

vs

Case No. 000-50-2-17

Hans ULRICH and Otto MERKLE,
German Nationals

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried at Dachau, Germany
Date: 12 - 22 November 1946
General Military Government Court

<u>ACCUSED</u>	<u>DATA</u>	<u>SENTENCE</u>
ULRICH, Hans	Age 38 SS administrative Director, DAW (German Equipment Works) Rank: 1st Lieutenant Nationality: German	Confinement, 20 years from 7 May 1945
MERKLE, Otto	Age 46 SS, DAW Department Manager (Locksmith Shop) Rank: T/Sgt. Nationality: German	Confinement, 20 years from 30 August 1945

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

PARTICULARS: In that Hans ULRICH, and Otto MERKLE, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of 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 wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, 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 German Reich in exercise of belligerent control.

	<u>Pleas</u>	<u>Findings</u>
ULRICH	NG	G
MERKLE	NG	G

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

PARTICULARS: In that Hans ULRICH and Otto MERKLE, 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, and camps subsidiary thereto, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately and wrongfully 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 aggregating many hundreds.

ULRICH
MERKLE

Pleas

NG
NG

Findings

G
G

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

3. EVIDENCE:

For the Prosecution: The prosecution's case was based on the sworn testimony of 21 witnesses, and exhibits as hereinafter indicated: Exhibits P-1 - 4 are photographs. Exhibit P-5 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, hereinafter referred to as the "Parent Case"; R 73). Exhibits P-6 - 12 are photographs. Exhibits P-13 - 15 are extrajudicial testimony of accused MERKLE, P-13 being unsworn and P-14, 15 sworn, (R 193, 195). Exhibit P-16 is the extrajudicial sworn testimony of the accused Hans ULRICH (R 197). Exhibits P-17 and 18 are the extrajudicial unsworn testimony of one Leo Wiewiorowski (R 204). Exhibit P-19 is the extrajudicial unsworn testimony of accused ULRICH, and Exhibit P-20 is the "fragebogen" of accused ULRICH (R 249).

For the Defense: The defense's case was based on the sworn testimony of three witnesses (R 215 - 228), the unsworn testimony of accused ULRICH (R 230 - 263), and the extrajudicial testimony of both accused as introduced by the prosecution (P-Ex 13 - 16).

accused ULRICH was factory director for the DAW (German Equipment Works)

1943 he held the same position at the Buchenwald Concentration Camp. The DAW Works consisted of the cabinet making shop, the locksmith shop, tailor shop, shoe factory, cable insulating factory and weaving factory. Prisoners of Polish, Russian, Italian, French and other nationalities were worked at these various factories. Accused ULRICH knew the accused MERKLE who was in charge of the locksmith shop. As such ULRICH was MERKLE'S superior and had charge of all personnel and business in the locksmith shop. No arrangements were made for the protection of the workers, who were prisoners, during air raids until after nine prisoners were killed in one air raid. A covered ditch was then built for their protection. Before that they had to remain in the factory and lie on the floor during such raids. Prisoners were required to make up the time lost during air raids and were not compensated therefor. When a prisoner violated the camp rules he was reported for punishment by the factory manager, Schulz (who was sentenced to death in the Parent Case, later commuted to 20 years imprisonment), and it was possible that the prisoner would get 25 strokes (P-Ex 16, R 197).

Prosecution witness Chmielnik, a former inmate of Camp Dachau, testified to the effect that an average of 800 people were employed at the DAW and that accused ULRICH was the first superior and chief of the DAW Works. He saw accused ULRICH kick prisoners who spent too much time in the latrine (R 20 - 22). ULRICH held the rank of 1st Lieutenant (R 39). Witness Cieslik, a former inmate of Camp Dachau, testified to the effect that ULRICH, so far as he knew, was responsible for the whole plant and the punishment reports went through his hands. At the DAW Works one had to accept a punishment report practically every day (R 106). The men working at the DAW who were selected to go on transports from Camp Dachau came to Cieslik's knowledge as clerk in the DAW' workers' block, as they were not allowed to go on another detail while awaiting transport. These selectees were made by accused ULRICH and they were then removed to a block reserved for those who were earmarked for transport where clothing and rations for the transport were issued. The worst clothing, rations, and shoes with wooden soles were issued to the prisoners for the trip by the camp administration. The number of prisoners in the transports varied from 500 to 2000. The number on each transport from the DAW Works varied from 10 to 150 prisoners (R 109, 110). Prosec-

ulation, worked in the shoemakers' shop, a part of the DAW, and knew both accused MERKLE and ULRICH. He testified to the effect that ULRICH was responsible for the failure to provide protection for the prisoners during the air attacks and that slit trenches were not dug for this purpose until the winter of 1943-44. Some prisoners lost their lives in an air attack when the walls of the cable factory caved in (R 122-125). Witness Simone, a former inmate of Camp Dachau, worked as an electrician at the DAW and knew both accused MERKLE and ULRICH. He testified to the effect that in April 1943, when he first arrived at Camp Dachau, he, with three other new electricians, was standing at the work bench when ULRICH with others came in. ULRICH said to them, "You sons-of-bitches, you have nothing else to do. I will teach you how to work." ULRICH kicked Simone with his foot and made a report about all of them at the DAW Works which resulted in the withdrawal of their extra bread ration for fourteen days (R 134). Witness Blazczynski, a former inmate of Camp Dachau, testified to the effect that ULRICH put prisoners on punishment reports for infractions such as cutting wood a few centimeters too long in the carpentry shop where they were supposed to cut wood in accordance with the length specified on the drawings. ULRICH searched the toy factory for unauthorized work being done by the prisoners and threw everything on the floor, including bread, and mixed it up on the floor with his feet (R 156 - 158). Witness Chrabaszczavski, a Polish National, was a prisoner at Camp Dachau and worked at the DAW Works in the shoemakers' shop. He knew both accused ULRICH and MERKLE. He testified to the effect that he saw ULRICH beat Russian prisoners in the lumber yard, that he was quite often drunk and that it was in that condition that he did most of his beating. From another prisoner, a clerk in the office, whom he knew, he learned that ULRICH sent three prisoners whom he did not like on transports (R 173 - 175). Witness Brederer, a German National, was a political prisoner at Camp Dachau from 1936 until 1944 and a capo in the locksmith shop at the DAW Works under MERKLE and ULRICH. He testified to the effect that every day ULRICH came to him and said, "Capo, the work must be increased. If the Russians do not work, there is a means to make them work because every capo has a good handwriting." (Handwriting, as used here, is a colloquialism meaning to slap somebody). In one case ULRICH said to Brederer, "If the gang does not work, I shall take a cable and beat them until they

Biederer should write a report that the prisoner had died as a result of an accident (R 210 - 212).

In ULRICH's defense, witness Siegländer, a former inmate of Camp Dachau who worked in the labor command office from November 1944, until the end of the war, testified to the effect that all reports regarding workers from the DAW had to come to the labor commitment office and if the prisoner were released from work at the DAW, the report showed first the reason for his release and second, if in the mind of the SS something punishable had been committed, the report had to be passed on to the investigator. He did not remember ever having seen the signature of accused ULRICH on a report from the DAW (R 215 - 218).

Accused ULRICH took the stand in his own defense. He joined the Nazi Party in 1932, the general SS in 1932, and the Waffen SS in 1940. He came to Dachau Concentration Camp in 1933 as leader of the butchery and to arrange the kitchen. The DAW was a government corporation with limited liability, the administration of which was in Berlin. He became work leader of the DAW in April 1943 on appointment by the SS Economic Administration, Berlin. The DAW was not a part of the Dachau Concentration Camp, but prisoners were provided by the camp to perform the work, and wages for their work were paid by the DAW to the Concentration Camp. When ULRICH took over the DAW in April 1943, that organization consisted of the carpentry shop, locksmith shop, cable factory, belt weaving shop, tailor shop, shoemakers shop and saddle shop (R 230 - 234). The prisoners worked eleven or twelve hours a day, on orders from SS General Pohl of the SS Economic Administration, Berlin. Once upon being asked by SS General Pohl why he was not working the prisoners on Sundays, ULRICH told him the men had to have time to take care of themselves or otherwise there would be an epidemic and more working hours would be lost. Pohl looked the factory over and finally told ULRICH he would prefer it if they would work on Sundays, but as it was not an order, ULRICH did not require the prisoners to work on Sundays (R 235 - 237). The order, that time lost by the prisoners during air attacks had to be made up, came from Berlin. After a few weeks it was found that the output of work was not any greater when men worked overtime and the practice was discontinued (R 238). ULRICH denies pouring water on prisoners from the roof of the latrine. The DAW

or the transfer of men to the transports. The prisoners from the DAW works who were put on the transport to Lublin were all skilled workers requested by name from Berlin. ULRICH obeyed the order and sent 100 to 120 prisoners. Objection was made to this procedure by ULRICH to the main office in Berlin, but he was informed that nothing could be done about it. The whole report system was in charge of SS 2nd Lieutenant Schulz and he made all decisions and reports of punishments for the prisoners to the camp commander of the Concentration Camp. ULRICH denied that punishment reports passed through his hands (R 230 - 245). ULRICH was appointed by Berlin authority, his superior being in Berlin, and he had no superior in Dachau. The Concentration Camp was paid for providing the workers at the rate of six marks a day for skilled workers and four marks a day for unskilled workers (R 253). ULRICH denied knowing that prisoners were reported for punishment from his factory or that prisoners were beaten at Camp Dachau, but he saw prisoners beaten in other camps. He never heard of the punishment called "hanging by the wrists." He denied having anything to do with putting prisoners on transports because once a worker was released from the DAW to the labor command, he was no longer an employee of the DAW. He knew about the crematory, but he was so far away he could not smell the stench. He did not know how many bodies were burned there, as he had nothing to do with the crematory (R 255 - 258). Upon questioning by the Court, ULRICH stated he knew that at Camp Dachau priests were interned and, upon an order of the SS Reich leader Himmler, these priests were to be removed from the offices and given manual labor. They were not removed from the offices (R 261, 262). ULRICH denied ever having reported any prisoner for punishment or kicking or hitting any prisoner (P-Ex 16, R 197).

Legal Sufficiency of Evidence: The evidence is sufficient to support the findings and sentence of the Court.

The evidence offered on behalf of the accused ULRICH by way of mitigation of punishment because of the element of superior orders is not believed to be sufficient to merit any reduction in the sentence in the light of the rule set forth at page 10, paragraph 5, of this Review and Recommendation.

ACCUSED MERVLE:

Prosecution witness Chielnik testified to the effect that he knew accused

He saw MERKLE beat prisoners at the locksmith shop (R 36). MERKLE held the rank of M/Sgt. (R 39). Witness Szrajber, a former inmate of Camp Dachau, testified in effect that he saw accused MERKLE beat prisoners, "not one time, but ten times. On one occasion he saw MERKLE beat a Russian prisoner, who did not work, until he bled. MERKLE then, "wrote a slip" and the Russian was never seen again in the shop. He also saw MERKLE kick prisoners and knew that he punished them by withdrawing food. Prisoners never got enough to eat. MERKLE threw food into the ashes which was being cooked by the prisoners on the shop forge. He kicked and beat prisoners in the latrine. Prisoners who took sick during the day were not allowed to report to the hospital until the end of the day's work (R 51 - 52). Witness Pabuczynski, a former inmate of Camp Dachau, testified that MERKLE beat prisoners every day, that when he was drunk he beat prisoners more, and that he always carried a gun. Punishment meted out to prisoners on reports by MERKLE consisted of 25 strokes with a club (R 63, 64). Witness Keim, a former inmate of Camp Dachau, testified that he was once reported to the prison compound commander for punishment by MERKLE and got "one hour of standing at the fence." On another occasion he got "one hour on the pole," punishment wherein the prisoner was suspended on a pole approximately three meters high by his hands (R 92). Witness Cieslik, a former inmate of Camp Dachau, was a clerk in the block from 1940 to 1944. He did not know either MERKLE or ULRICH. He testified to the effect that prisoners who were sick were forced to work, notwithstanding the fact that they had certificates showing they were sick, and that he had some cases in 1943 where sick prisoners at the DAW Works were called to work at the insistence of MERKLE who was known to the prisoners as Hannibal. There were people suffering from tuberculosis who were forced to move out. Many punishment reports which he saw were signed by accused MERKLE (R 104 - 106). The normal camp ration in the block where the DAW prisoners lived consisted of one-fourth loaf of bread per day, one half liter of coffee substitute in the morning. At noon not quite a liter of soup which consisted of water, cabbage and potatoes was served. On Sunday at noon the meal consisted of noodles and pieces of meat. In the evening the prisoners received one half liter of tea, the full bread ration for the day, and 50 grams of bologna or margarine. The additional ration for workers, the so-called bread time, consisted of one-tenth of a loaf of bread.

eters in size. Up to 80 beds were placed in each room and five men slept in two beds (R 108). The beds were apparently single beds (R 115). The DAW was one of the worst details and prisoners working there often came to Gieslik asking him to change their details (R 118). Witness Simone, a former inmate of Camp Dachau and an electrician in the DAW plant, testified to the effect that on one occasion a Polish prisoner who worked with him received a slap in the face as well as four days in the standing bunker and 25 blows as a result of a report by MERKLE for having been found with three lumps of margarine in his possession (R 135, 136). Witness Blossoynecki, a Polish National and former inmate of Camp Dachau for five years, testified to the effect that he worked in the DAW Works from November 1940 until Christmas 1943, and that he knew both accused MERKLE and ULRICH. MERKLE beat Blossoynecki and others while he was working in the locksmith shop and also reported prisoners for punishment for which they got 25 blows and three days in the standing bunker (R 152 - 154). Witness Chrabaszynski, a former inmate at Camp Dachau who worked at the DAW Works in the shoemakers shop, testified that he knew both ULRICH and MERKLE. The shoemakers shop and the locksmith shop were in the same building and the prisoners in both shops used the same latrine, there being only one. He saw MERKLE pour water from the roof on prisoners in the latrine (R 178). Witness Joachimiak, a Polish National and former inmate of Camp Dachau, was a worker in the locksmith shop and knew both MERKLE and ULRICH. He testified to the effect that MERKLE kicked or beat him every second or third day from the first day that he came to work at the DAW plant. On one occasion MERKLE beat a French prisoner of war on the head with a board for the destruction of one of the cans being manufactured, which was considered sabotage. When the Frenchman leaned against his machine MERKLE came out of his office again and hit him on the head and shoulder. The Frenchman went into the latrine and remained about fifteen minutes. When MERKLE saw that he wasn't at his machine, he went into the latrine and beat and kicked the Frenchman so that when he returned to the shop he was numb. He was not allowed to go to the infirmary for treatment. MERKLE reported the Frenchman to the camp commander for which he got 25 strokes and three days in the bunker. After that he stayed in the block a few days and was later sent away on a transport (R 178, 179).

lar, and from the beginning of 1942 he was employed in the locksmith shop at the DAW plant. Accused MERKLE beat him repeatedly for such infractions as washing his hands too soon before the end of working hours. He also beat Wiewiorowski's comrades in the same manner, especially Russian, Polish and Czech internees. In all MERKLE turned in six punishment reports on him which resulted in his receiving 25 strokes on three occasions, one hour hanging from a tree on one occasion, and fourteen day's withdrawal of extra bread ration were imposed upon witness Wiewiorowski. These punishments were inflicted upon him for such offenses as making a small knife for his own use cutting bread, coming to work late because of going to the toilet before reporting, or not reporting for work on Sunday when his detail was supposed to work. On one occasion MERKLE took a seventeen-year-old Russian to the iron-cellar and beat him. His shouts from the cellar could be heard and when he came back to the shop his face was bloody. MERKLE then stood over the Russian all afternoon and beat him with a stick when he was slow while working on an air raid trench with a handcart. The same evening the Russian reported for sick call and died 1 1/2 days later. He was in the same block with Wiewiorowski (P-Ex 18, R 204).

In defense, witness Miebach, then a prisoner in Camp Dachau and an SS P/Sgt., who was an orderly in the officers quarters, testified to the effect that he saw accused MERKLE every day from the window of the officers quarters which were just across the street from the locksmith shop. Trucks were rebuilt, repaired and new ones built there and MERKLE supervised the work. Miebach sent leftover food from the officers quarters to the prisoners in the locksmith shop every day and the person who took the food had to pass MERKLE on the way. He could not say anything about the relationship between MERKLE and the prisoners (R 223 - 228). In his statement accused MERKLE said he had nothing to do with the concentration camp, knew nothing of the number of inmates there, nor what food they received there. None of the prisoners in his locksmith shop took sick during the typhoid epidemic in the camp in 1943, as he took precautions by burning rags and he had all the handles of the tools disinfected. He left Camp Dachau before the arrival of the American troops and did not know what happened to the prisoners left behind at the concentration camp. He said he was not doing his work right.

(P-Ex 13, R 193). He did not see any executions, nor take part in them, (P-Ex 14, R 195). He denied ever having reported anyone for punishment himself or knowing who made the reports for punishment on his men. (P-Ex 15, R 195).

Legal Sufficiency of Evidence: 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 omission which resulted in injustice to the accused.

Both of the accused were, by their own admissions, members of the SS at Camp Dachau for considerable periods of time between the dates alleged (P-Ex 16). The fact that an accused acted pursuant to order of a superior or government sanction does not constitute an absolute defense but may be considered either in defense or in mitigation of punishment if the tribunal before which the charges are being tried determines that justice so requires (London Agreement of 8 August 1945, "Concerning Prosecution and Punishment of Major War Criminals of the European Axis"). Individuals and organizations who violate the accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, in mitigation of punishment. The person giving such orders may also be punished (FM 27-10, War Department, U.S. Army, "Rules of Land Warfare," paragraph 345.1, Change No. 1, 15 November 1944).

An accused who alleges superior orders 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 reasonably prudent person, could 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.

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

European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases, (October 1945, and the Parent Case). Both of the accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence presented, 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 was such as to warrant the sentences imposed. Defense counsel was assigned six days before trial and a five day adjournment was granted the defense during the trial.

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

CONCLUSIONS:

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

b. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto.

It would it meet with approval.

/s/ LOUIS T. TISCHER
/t/ LOUIS T. TISCHER
Attorney
Post Trial Branch

Having examined the record of trial, I concur.

/s/ C.E. STRAIGHT
/t/ C.E. STRAIGHT
Colonel, JAGD
Deputy Judge advocate
for War Crimes

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757

Jul 17 1947

SUBJECT: Execution of Sentence in the Case of the United States vs.
Hans ULRICH and Otto MERKLE (Case No. 000-50-2-17)TO : Commanding General
First Military District
APO 1, U.S.Army

Reference is made to letter, No. USMPT, file AG 383 JAG-AGG.
subject: "Designation of Prisons for War Criminals," 26 February 1947 and to
the inclosed copies of the Order on Review in the above entitled case as to
accused Hans ULRICH.

Upon compliance with the Order on Review the certificate below will be
completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War
Crimes Group, APO 178, U.S.Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. BERGIN
Wm. E. BERGIN
Lieutenant General, USA
Adjutant General1 Incl:
1 Form No. 13 (in dup)

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

31 July 1947, at 0830
(Date) (Hour)

GEORGE T. LAGISH
(Signature and Rank)

GEORGE T. LAGISH, Maj. Inf.
Prison Officer
War Criminal Prison Landsberg
(Organization)

LLOYD A. WILSON
(Countersignature and Rank of
Witnessing Officer)