

UNITED STATES

: 7708 War Crimes Group

APO 407

v.

Eduard KLERNER, et al

: Trial by General Military Government Court convened at Dachau, Germany during the period 26 November 1947. The court made findings of guilty and sentenced each of the accused as follows:

Case No. 000-50-5-19

KLERNER, Eduard - 5 years imprisonment commencing 1 July 1945.

SCHULZ, Karl Richard - 5 years imprisonment commencing 8 May 1945.

Report of War Crimes Board of Review No. 2

BERMAN, BERG and CRAWFORD

- I The record of trial in the case of the above named accused has been reviewed by the War Crimes Board of Review No. 2.
- II DISCUSSION: The accused in this case were brought to trial on a charge predicated upon participation in atrocities committed at Mauthausen Concentration Camp and its subsidiary camps. The particulars allege that the accused, acting in pursuance of a common design, and as individuals, did wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich and members of the armed forces of such nations who were unarmed and surrendered prisoners of war, to killings, beatings, tortures, starvation, abuses and indignities.

Both of the accused were non-commissioned officers in the SS and each served for over four years at Mauthausen, - KLERNER as a clerk in the political department, and SCHULZ as a clerk in the political department or in the department of vital statistics.

At the outset, when the accused were arraigned, each of them made a qualified plea of guilty. Thereafter, after some discussion, the prosecution amended the particulars by in effect deleting therefrom the language "to killings-- tortures, starvation." In other words the prosecutor stated in open court that he was amending the particulars to read "only beatings, abuses and indignities." Thereafter, each of the accused pleaded guilty without qualification to the amended particulars. Because of the fact that the charge sheet

Itself was not corrected to conform to the amendment made in open court, which amendment was accepted by the court and by the defense, the Deputy Judge Advocate for War Crimes in his review took the position that the court merely accepted qualified pleas, which though frowned upon, resulted in no injustice to the accused. It is believed that the proper interpretation of what transpired is that the particulars were amended properly, after which each accused pleaded guilty unqualifiedly, but that through error the record was not made to conform to what actually transpired. Upon either interpretation no injustice was done.

Reference is also made to the fact that on page 6 of the record the reporter refers to the fact that the six rights of the accused were read to them. There is no evidence as to which, if any, of the rights of the accused were not read to them. It must, therefore, be assumed that the court complied with the legal requirements in this instance. Furthermore, an examination of the record indicates that all the rights were exercised by each of the accused.

It is pointed out that the court did not follow the procedural requirements set forth in Sec. 501, page 416, Manual for Trial of War Crimes and Related Cases, in that the court did not, after hearing such evidence as it deemed necessary to determine that the pleas of guilty were not improvident or unqualified, then determine, by a majority vote, whether such pleas should be entered for the accused. However, the absence of such a vote is considered immaterial and no injustice resulted therefrom.

The Review of Evidence submitted by the Deputy Judge Advocate for War Crimes is accurate and complete and fully sets forth all material facts. Pertinent reference is made to all material facts introduced by the prosecution and the defense.

No Petitions for Review were filed in either case. Petitions for Clemency filed on behalf of each of the accused were appropriately considered by the Deputy Judge Advocate for War Crimes.

This Board concurs in the conclusion that the record of trial fails to disclose any errors or omissions which resulted in injustice to any of the accused and that the evidence is legally sufficient to support the findings of the court. In the opinion of this Board the sentences are not excessive.

III CONCLUSIONS: The court was legally constituted and had jurisdiction of the accused and of the offense. No errors or irregularities were committed during the trial resulting in any injustice to the accused. The evidence

in the record of trial is legally sufficient to support the findings of the court. The sentences recommended for approval by the Deputy Judge Advocate for War Crimes are legal, fair and just. The Review of Evidence submitted by the Deputy Judge Advocate for War Crimes is accurate and complete and fully sets forth all material facts.

IV RECOMMENDATIONS: It is recommended that the findings of guilty as to each of the accused be approved and that the sentence of the accused Edward KLEPNER to 5 years imprisonment and the sentence of the accused Karl Richard SCHULZ to 5 years imprisonment be approved and ordered executed.

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