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**Records of
United States Army
War Crimes Trials
*United States of America v.
Ernst Dura et al.*
June 9-23,
1947**



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Record Group 338

RECORDS OF UNITED STATES ARMY WAR CRIMES TRIALS
UNITED STATES OF AMERICA v. ERNST DURA ET AL.
JUNE 9-23, 1947

On the two rolls of this microfilm publication are reproduced the records of case 000-50-5-2, the Wiener-Neudorf outcamp case (*United States of America v. Ernst Dura et al.*), which was tried by a general military government (U.S. Army) court at Dachau, June 9-23, 1947.

In this trial, eight individuals associated with the administration and operation of the Wiener-Neudorf subcamp of the Mauthausen Concentration Camp were prosecuted subsequent to the Mauthausen parent case. They were charged with violations of the laws and usages of war, including wrongful and unlawful subjugation of camp inmates to killings, beatings, tortures, starvation, abuses, and indignities.

Included in this publication are finding aids, court and attorney appointment records, a charge sheet, transcripts of trial proceedings, prosecution and defense exhibits, documents relating to review and execution of sentences, and individual case records. With a few exceptions all records are in English or are accompanied by English translations. The case records generally date from December 11, 1945, through August 12, 1957, when the last defendant was released from prison, but a few documents date as early as 1943 and as late as June 1959.

Most of the records of European and Japanese war crimes cases tried by the U.S. Army are part of one or more of the following four record groups (RG): Records of the Office of the Judge Advocate General (Army), RG 153, which includes case records and other files pertaining to war crimes trials maintained by that office in Washington, D.C.; Records of the United States Army Commands, 1942- , RG 338, which contains the records generated by Army war crimes agencies subordinate to the Office of the Judge Advocate General in Europe; and Records of the Allied Operational and Occupational Headquarters, World War II, RG 331, which contains the war crimes records created by the Supreme Commander Allied Powers and subordinated units in the Far East. In addition to these record groups, the National Archives Collection of World War II War Crimes Records, RG 238, consists of war crimes records produced by war crimes agencies other than those of the U.S. Army. All of the records of this case are part of the records of the Judge Advocate General of the European Army Command and are part of RG 338. Many of these records are duplicated in RG 153.

Background

Jurisdictions and Cases

In Europe, the United States participated in war crimes trials under three jurisdictions: that of the International Military Tribunal (IMT), that of the U.S. military tribunals at Nuernberg, and that of U.S. Army courts. General authority for the proceedings of all three jurisdictions derived from the Declaration of German Atrocities (Moscow Declaration), released November 1, 1943, which expressed Allied determination to arrest and bring to justice Axis war criminals.

International Military Tribunal

The IMT tried 24 major war criminals and a number of organizations in 1945 and 1946. Specific authority for U.S. participation in the IMT is found in Executive Order 9547 of May 2, 1945, which authorized Supreme Court Justice Robert H. Jackson to represent the United States in war crimes matters and to act as Chief of Counsel; the London Agreement of August 8, 1945 (as amended by the Berlin Protocol of October 6, 1945), in which the United States, France, the United Kingdom, and the Soviet Union agreed to hold the IMT; and the IMT Charter (an annex to the London Agreement), which outlined the rights and obligations of defendants, judges, and prosecutors.

U.S. Military Tribunals at Nuernberg

From 1946 to 1949, U.S. military tribunals at Nuernberg tried 185 individuals in 12 separate proceedings grouped according to type of crime or organization as follows:

<u>Case No.</u>	<u>United States v.</u>	<u>Popular Name</u>	<u>No. of Defendants</u>
I	<i>Karl Brandt et al.</i>	Medical Case	23
II	<i>Erhard Milch</i>	Milch Case (Luftwaffe)	1
III	<i>Josef Altstoetter et al.</i>	Justice Case	16
IV	<i>Oswald Pohl et al.</i>	Pohl Case (SS)	18
V	<i>Friedrich Flick et al.</i>	Flick Case (Industrialist)	6
VI	<i>Carl Krauch et al.</i>	I. G. Farben Case	24
VII	<i>Wilhelm List et al.</i>	Hostage Case	12

Case No.	<u>United States v.</u>	<u>Popular Name</u>	<u>No. of Defendants</u>
VIII	<i>Ulrich Greifelt et al.</i>	RuSHA Case (SS)	14
IX	<i>Otto Ohlendorf et al.</i>	Einsatzgruppen Case (SS)	24
X	<i>Alfried Krupp et al.</i>	Krupp Case (Industrialist)	12
XI	<i>Ernst von Weizsaecker et al.</i>	Ministries Case	21
XII	<i>Wilhelm von Leeb et al.</i>	High Command Case	14

Specific authority for the U.S. tribunals, which tried these 12 cases, is found in Allied Control Council Law 10 of December 20, 1945, which outlined trial procedures patterned after those of the IMT; Executive Order 9679 of January 16, 1946, which authorized the establishment of U.S. military tribunals; Office of Military Government for Germany (U.S.) (OMGUS) Ordinances 7 and 11 of October 18, 1946, and February 17, 1947, respectively, which spelled out details of trial procedures outlined by Allied Control Council Law 10; and United States Forces, European Theater (USFET), General Order 301 of October 24, 1946, which appointed Brig. Gen. Telford Taylor as Chief of Counsel for War Crimes for the 12 U.S. military tribunals at Nuernberg.

U.S. Army Courts

From 1945 to 1948, U.S. Army courts (military commissions and special or general military government courts) tried 1,672 individuals in 489 proceedings. Specific authority for these proceedings is found in Joint Chiefs of Staff Directive 1023/10 of July 8, 1945, which placed responsibility for certain war crimes trials in Germany on the Commander, USFET. The Commander, in turn, empowered the commanding general of the Western Military District (territory occupied by the U.S. 3d Army (Bavaria)) to appoint military courts, predominantly at the site of the former concentration camp Dachau, for the trial of war criminals not heard at Nuernberg. This was done in a letter on the subject of "Trial of War Crimes and Related Cases" of July 16, 1945. The commanding general of the Eastern Military District (territory occupied by the U.S. 7th Army (Hesse, Baden-Wuerttemberg, and Bremen)) was similarly authorized to commence war crimes trials, mainly at Ludwigsburg. In order to streamline operations, the Commander, USFET, revoked this division of authority in a letter of October 14, 1946, and assigned responsibility to prosecute war criminals to the Deputy Judge Advocate for War Crimes, USFET. Henceforth, all cases were tried at the site of the former concentration camp

Dachau because centralization of war crimes activities appeared necessary in view of the large body of cases and investigations.

The 489 cases tried by the U.S. Army in Germany can be divided roughly into four categories: main concentration camp cases, subsequent concentration camp cases, flier cases, and miscellaneous cases. The first category comprises 6 cases with about 200 defendants, mainly staff members and guards of Dachau, Buchenwald, Flossenburg, Mauthausen, Nordhausen, and Muehldorf concentration camps. The second category (to which this case belongs) includes about 250 proceedings against approximately 800 guards and staff members of the outcamps and branch camps of the major camps. The third category encompasses more than 200 cases in which about 600 persons, largely German civilians, were prosecuted for the killing of some 1,200 U.S. nationals, mostly airmen. The fourth category consists of a few cases including the Malmedy Massacre Trial, in which more than 70 SS men were tried for murdering large groups of surrendered U.S. prisoners of war; the Hadamar murder factory case (see National Archives and Records Service Microfilm Publication M1078), in which a number of Hadamar Asylum staff members stood trial for the killing of about 400 Russian and Polish nationals; and the Skorzeny case, in which some members of the German Armed Forces were charged with wearing U.S. Army uniforms while participating in the Ardennes offensive (Battle of the Bulge).

On June 5, 1947, the Wiener-Neudorf outcamp case was referred for trial by the Deputy Judge Advocate for War Crimes to the general military government court that had been appointed under authority of Special Order 76, paragraph 1, dated May 29, 1947, Headquarters European Command (EUCOM; formerly USFET), as amended by Special Order 83, paragraph 1, of June 5, 1947.

The Wiener-Neudorf Outcamp Case

Wiener-Neudorf was an outcamp or branch camp, also known as a bycamp, subcamp, or work camp (Arbeitslager), of the Mauthausen Concentration Camp complex. The Mauthausen group consisted of Mauthausen itself; the large subcamps of Gusen, Ebensee, and Melk; and about 30 smaller camps, including Wiener-Neudorf. Established September 6, 1943, near Vienna, Wiener-Neudorf housed between 2,000 and 2,400 inmates, consisting of Hungarian, Polish, Czech, Yugoslav, Italian, Dutch, French, Russian, British, and German nationals. Included among the inmates were prisoners of war, deserters from the German Armed Forces, common criminals, and others who had been arrested for their religious or political beliefs, or because they were Jewish. Many of the prisoners at Wiener-Neudorf were employed at an aircraft engine manufacturing plant, Flugmotorenwerk Ostmark, and an automobile repair facility located within the camp.

The camp was managed by members of the SS (Schutzstaffel). Originally the elite bodyguard of Adolf Hitler, under Heinrich Himmler the SS evolved into an enormous organization operating in all areas of the Third Reich. SS units served as security police, fought as frontline combat troops, and operated the concentration camp system. In April 1944, a Luftwaffe unit was transferred to Wiener-Neudorf to supplement the SS contingent.

The case of the *United States v. Ernst Dura et al.* was the second proceeding subsequent to the parent case, *United States v. Hans Altfuldisch et al.*, involving violations of the rules of war in the operation of Mauthausen Concentration Camp. In the parent case the court had found 60 defendants guilty and sentenced most to death by hanging for "acting in pursuance of a common design" that resulted in the death, torture, and mistreatment of prisoners in their charge. The court found that, because of the purpose of Mauthausen and its branch camps, all of its employees and officials shared criminal responsibility for its operation. Therefore, the court instructed military government courts trying accused persons in the subsequent cases to take judicial notice of the decision rendered in the parent case--especially the court's findings on the criminal nature of mass atrocity operations--and apply the principles therein without further examination of the parent case.

The following defendants pleaded not guilty and stood trial:

- Ernst Dura, SS Corporal (Rottenführer): a dog handler; later a guard of the camp commandant's quarters. Supervisor of the convalescent detail, both at the camp and on the evacuation march.
- Johann Kroener (Kröner), SS Sergeant (Unterscharführer): a detail leader in a factory hall but not a participant in the evacuation march.
- Alfred Kuhnert, SS Sergeant (Unterscharführer): a detail leader in a factory hall but not involved in evacuation march.
- Fritz Nitschke, SS Mastersergeant (Hauptscharführer): a dog handler in charge of breeding guard dogs. Transported dogs on the evacuation march.
- Otto Schrader, SS Mastersergeant (Hauptscharführer): transferred from the Luftwaffe. Controlled work details at the camp and was a group leader on the evacuation march.
- Ludwig Stier, Wehrmacht Captain (Hauptman): commander of the guard, both at the camp and during the evacuation.
- Kurt Emil Schmutzler, SS Captain (Hauptsturmführer): camp commandant. Present during part of the evacuation.
- Alois Hoellriegl (Höllriegl), SS Sergeant (Unterscharführer): a deputy block leader at the camp and a guard during the evacuation march.

Alfred Krausz, one of the individuals named in the original indictment, was not prosecuted in this case because he had

already been indicted in another proceeding (Dachau Subsequent Proceeding 000-50-2-101). On June 17, 1945, Krausz was found guilty by a military government court and sentenced to 15 years in prison.

The general military government court that tried the Wiener-Neudorf case designated the following court members to try the defendants: Col. Joseph W. Benson, president; Lt. Col. Frank A. Hunter, legal member; Col. Frank S. Boruski; Col. Russell R. Loudon; Col. Victor Wales; Col. John H. Keatinge; Lt. Col. George S. Wilson; Lt. Col. Harry P. Holz; and Maj. John C. Boyd. James L. Greenhill was chief prosecutor, and Maj. Olaf Tolnas served as chief defense counsel. Dr. Karl Gick, a German attorney, represented defendants Schmutzler and Stier.

The prosecution presented trial data from the parent case as prosecution exhibit 2. Because the defendants had admitted being members of the staff of an outcamp of Mauthausen, the prosecution argued that they were coperpetrators in a mass atrocity. Additionally, the prosecution attempted to show particular instances of mistreatment and murder by the defendants, especially on an evacuation march from Wiener-Neudorf to Mauthausen on April 2-12, 1945. During this 10-day evacuation, prompted by the approach of Soviet forces from the East, guards purportedly shot a number of prisoners who were unable to keep up with the others.

The defense alleged that inmate conditions at Wiener-Neudorf were less harsh than at other camps. Punishments were characterized as relatively light and rations larger than elsewhere. The defendants claimed that their superiors at Mauthausen had criticized them for their purportedly mild treatment of prisoners at Wiener-Neudorf. The defense portrayed the defendants as hard-working men of good character, most of whom had been pressed into SS service and had involuntarily become part of the concentration camp system. Defense counsel asked the court to view the events of the evacuation march in light of the approach of the Red Army and the ensuing confusion. Gick, counsel for Schmutzler and Stier, argued that the two officers had merely passed along orders from their superiors at Mauthausen to kill straggling prisoners.

On June 23, 1947, the court announced its findings. Dura was acquitted and released. All of the other defendants were found guilty. The court sentenced Stier, Schmutzler, and Hoellriegl to be hanged. Kroener and Nitschke each received sentences of 20 years imprisonment; Kuhnert, 3 years; and Schrader, 31 months.

The Post Trial Branch of the Deputy Judge Advocate's office reviewed the sentence and recommended approval on January 7, 1947

War Crimes Board of Review No. 2, in a report dated January 30, 1948, upheld the hanging sentences but recommended disapproval of the prison sentences because the court had not apprised those defendants of their right to testify in their own behalf at the close of the proceedings. The Chief of the War Crimes Board of Review Branch, Col. Howard Breese, disagreed, finding that the court had discharged its obligation to the defendants by listing their rights at the outset of the trial. Col. J. L. Harbaugh, EUCOM Judge Advocate, agreed with Col. Breese and upheld the original decision of the court. Gen. Lucius D. Clay, EUCOM Commander in Chief, gave final approval for all of the sentences on February 13, 1948.

Several clemency petitions were filed on behalf of the defendants by their lawyers, friends, or themselves. War crimes review boards considered each petition and found them all without merit. Schmutzler and Hoellriegl were hanged at Landsberg Prison on October 29, 1948. Stier, in poor health during the trial, died of natural causes in confinement on September 5, 1947, before his sentence could be carried out. Schrader was released December 4, 1947, after serving his 31-month sentence, and Kuhnert finished serving his 3 years on May 4, 1948. Their sentences were measured from May 5, 1945, and included credit for time served as prisoners of war and for pretrial confinement.

The War Crimes Modification Board reviewed the sentences of Nitschke and Kroener, the two remaining prisoners, in March 1951. It reduced Nitschke's sentence to time served as of January 1952 and shortened Kroener's sentence to 15 years. Kroener was granted parole in 1954, and the remainder of his sentence was remitted in 1957.

Records Description

Records relating to the Wiener-Neudorf outcamp case consist of three groups, which were filmed in the following order: pre-trial documents, trial transcripts and exhibits, and post-trial documents. The records are arranged chronologically for the most part. File folder covers were filmed preceding the records only in instances where they bear identifying information. Insert sheets have been prepared and filmed in place of folder covers in those instances where the covers bore no information. English translations of records generally precede the German originals where both were available. Duplicate copies of documents were not filmed if they appear consecutively with the original. Copies of the same document appearing in separate tabbed files were filmed with the files in which they appear.

The trial authorization documents, which appear at the beginning of the first roll, include the principal documents authorizing U.S. Army courts. Filmed with these documents is

European Theater of Operations, United States Army (ETOUSA: the predecessor of USFET) Organization Order 270, which organized War Crimes Investigation Team #6827 (the team assigned to this case) on April 24, 1945. Immediately following these documents of authorization are finding aids to be used with the trial record. These documents consist of copies of the transcript covers, a chronological list of defense and rebuttal witnesses that provides a cross-reference to testimony according to type (direct, redirect, cross, recross, and court examination), and a chronological list of exhibits.

Pretrial Records

Pretrial documentation consists of orders assigning prosecutor and defense counsel, orders appointing a court, and a charge sheet.

Trial Records

The trial records begin with transcripts of trial proceedings in English, arranged chronologically in three volumes, with pages numbered consecutively 1-600. A cover sheet, which contains the names of witnesses, date and location of trial, and a list of exhibits introduced, begins each volume. The first volume also contains the arraignments, pleas, and brief interrogations of the accused. Following the transcripts in the last volume appear commitment orders for those convicted, arranged alphabetically by each defendant's surname. The prosecution and defense exhibits also appear at the end of volume 3 of the trial transcripts, immediately following the commitment orders. They are arranged numerically instead of chronologically because each exhibit was given a number in sequence when presented to the court (1-28 for the prosecution exhibits and 1-4 for the defense exhibits). Title sheets were filmed preceding each exhibit introduced into evidence. The first prosecution exhibit consists of one Accused Identification Sheet for each defendant, labeled as follows: 1-Dura, 1A-Kroener, 1B-Kuhnert, 1C-Nitschke, 1D-Schrader, 1E-Stier, 1F-Schmutzler, and 1G-Hoellriegl. Other exhibits include affidavits, questionnaires completed by defendants, trial data from the Mauthausen parent case, and excerpts from the Mauthausen death record books. English translations of exhibits appear after the German (or, in two cases, French) originals and carry the same number as the original with the addition of the letter "A."

Posttrial Records

Posttrial records are filmed in five categories of documents. The first--Documents Relating to Review and Implementation--contains the following documents: Petition for Review, June 24, 1947; Review and Recommendations of the Deputy Judge Advocate for War Crimes, January 7, 1948; reports of war crimes boards of

review; memorandums; internal routing slips; case summaries and recommendations; sentence review forms signed by Gen. Lucius D. Clay, EUCOM Commander in Chief; certificates of execution of sentence; war crimes trials status reports for May 1948; and a file relating to charges of perjury by a defendant against a witness.

Most of the Clemency Petitions and Related Documents category consists of petitions for clemency, together with supporting affidavits filed on behalf of defendants Stier, Schmutzler, Hoellriegl, Nitschke, and Kroener. Following these documents are records of the war crimes boards of review--acknowledgements of the petitions, memorandums and correspondence related to the petitions, and reports of rulings on the validity of the petitions.

The third category--Arrest, Prison, and Execution of Sentence Case Records-- are arranged alphabetically by surname of convicted defendant rather than chronologically. These prison records are included to document more fully the total legal processes involved in war crimes proceedings. While contents vary from file to file, each folder usually contains a case record form, an arrest report, prisoner of war documents, a commitment record, and a final record for each convict. The following Documents Relating to Actions of the Modification Board consists of two files recording the board's consideration of cases of Kroener and Nitschke in March 1951 and the reconsideration of Kroener's case in December 1952. Arranged alphabetically by surname of the prisoner, these files contain correspondence and memorandums to and from the board, statements by the prisoners, recommendations of the board, and related documents.

The Parole and Release Records for Johann Kroener, the only defendant paroled, contain Kroener's application for parole, the records officer's summary of the case, the recommendation of the Interim Mixed Parole and Clemency Board, a good conduct time release order, the recommendation of the Mixed Parole and Clemency Board, an order for the remission of the unexecuted part of the sentence, and related correspondence for the period January 1953 to June 1959.

Prison, parole, and medical records that did not serve to further illuminate the legal processes involved in this case were not included in this publication.

Related Records

Microfilm publications of related records in RG 153 and RG 338 include:

United States of America v. Alfons Klein et al. (Case Files 12-449 and 000-12-31), October 8, 1945-October 15, 1945, MI078;

United States of America v. Kurt Andrae et al. (and Related Cases), April 27, 1945-June 11, 1958, M1079;
German Documents Among the War Crimes Records of the Judge Advocate Division, Headquarters, United States Army, Europe, T1021.

The records of the Wiener-Neudorf outcamp case are closely related to other microfilmed records in National Archives Collection of World War II War Crimes Records, RG 238, specifically:

Prosecution Exhibits Submitted to the International Military Tribunal, T988;

Records of the Office of the United States Chief of Counsel for War Crimes, Nuernberg Military Tribunals, Relating to Nazi Industrialists, T301;

Records of the United States Nuernberg War Crimes Trials:

NOKW Series, 1933-1947, T1119;

NG Series, 1933-1948, T1139;

NM Series, 1874-1946, M936;

NP Series, 1934-1946, M942;

WA Series, 1940-1945, M946;

Guertner Diaries, October 5, 1934-December 24, 1938, M978;

Records of the United States Nuernberg War Crimes Trials, United States of America v.:

Karl Brandt et al. (Case I), November 21, 1946-August 20, 1947, M887;

Erhard Milch (Case II), November 13, 1946-April 17, 1947, M888;

Josef Altstoetter et al. (Case III), February 17, 1947-December 4, 1947, M889;

Oswald Pohl et al. (Case IV), January 13, 1947-August 11, 1948, M890;

Friedrich Flick et al. (Case V), March 3, 1947-December 22, 1947, M891;

Carl Krauch et al. (Case VI), August 14, 1947-July 30, 1948, M892;

Wilhelm List et al. (Case VII), July 8, 1947-February 19, 1948, M893;

Ulrich Greifelt et al. (Case VIII), October 10, 1947-March 10, 1948, M894;

Otto Ohlendorf et al. (Case IX), September 15, 1947-April 10, 1948, M895;

Alfried Krupp et al. (Case X), August 16, 1947-July 31, 1948, M896;

Ernst von Weizsaecker et al. (Case XI), November 4, 1947 April 13, 1949, M897;

Wilhelm von Leeb et al. (Case XII), November 28, 1947-October 28, 1948, M898;

Records of the United States Nuernberg War Crimes Trials Interrogations, 1946-1949, M1019.

In addition, the record of the IMT at Nuernberg has been published in *Trial of the Major War Criminals Before the International Military Tribunal* (Nuernberg, 1947), 42 vols. Excerpts from subsequent proceedings have been published as *Trials of War Criminals Before the Nuernberg Military Tribunal Under Control Council Law No. 10* (U.S. Government Printing Office, 1950-53), 15 vols. Detailed finding aids with computer-assisted indexes for the microfilmed records of the Ohlendorf Case (Special List 42) and the Milch Case (Special List 38) have also been published. The National Archives and Records Service holds motion pictures and photographs of many sessions of the IMT and of the 12 U.S. Nuernberg proceedings as well as sound recordings of the IMT proceedings.

Charles F. Downs II arranged the records of the Wiener-Neudorf outcamp case for microfilming and wrote these introductory remarks.

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