

Chapter 13

The Dachau Trial, November 1945

The indictment in the Dachau concentration-camp case is served on most of the 40 defendants on November 2 and on the remaining seven defendants on November 4. The case is set for trial on November 15. While Dachau was the first concentration camp established in Germany and in existence from March 1933 to April 1945, the indictment covers only the period from January 11, 1942, to its liberation on April 19, 1945.

The beginning of the trial is devoted to a summary by the prosecution and to acting upon motions of the defense in attacking the charges in the indictment. I sit at the wall behind the prosecution table to watch. The arrangement of the court is identical to that for the Endress case that I participated in earlier.

Lt. Col. William D. Denson of the prosecution summarizes the main facts. He says that the Germans in Dachau were civilians, the re-

mainder prisoners of war. None of them was tried by a court before incarceration. In April 1945, about half were Slavs (mainly Russian, Poles, and Czechs). The other half of the total of 41 nationalities in Dachau included citizens mainly of Italy, Hungary, and Germany.

The camp was equipped for 8,000, but in April 1945 it contained 33,000 prisoners. With its subcamps, it could accommodate 65,000 more in April 1945. A typhus epidemic raged in the camp from December 1944, killing approximately 15,000 prisoners, due to a lack of quarantine, latrines being constantly blocked, and hospitals being overcrowded. Nothing was done to combat the epidemic.

Food was grossly inadequate for workers laboring more than 11 hours a day. The additional cleaning of barracks, roll calls, and marches to work made for 17-to-18-hour workdays. When American troops came into the camp, a great majority of the prisoners were starving.

Clothing was insufficient to protect the prisoners from the cold; clothing was not washed for periods up to three months. But a large warehouse full of clothing was found on April 29, when the camp was liberated.

Medical experiments consisting of immersing prisoners in cold water for up to 36 hours, puncturing the lungs of healthy prisoners, and injecting them with malaria bacteria and phlegmon (diseased blood) so as to observe their reactions, were carried on constantly. Numerous prisoners died as a result of these experiments.

Invalids and emaciated prisoners were periodically gathered in large convoys to be gassed at the Hartheim Castle and cremated at the Mauthausen concentration camp, both near Linz, Austria. Prisoners were subjected to strict discipline, enforced by severe

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A freezing-water experiment at Dachau, conducted at the request of the Luftwaffe, determined how long a pilot could live wearing a certain type of clothing should he have to bail from a disabled plane over the English Channel, for example.

punishments such as working longer hours, hanging by their wrists tied behind their backs, lashings, solitary confinement, and death.

In 1942, 8,000 Russian prisoners were killed. In 1944, 90 Russian officers were hanged. The total death toll is unknown.

All concentration camps were administered by Himmler's Central Security Office in Berlin. The Dachau group of camps contained 85 subcamps, all under the camp kommandant. The accused, under him, all participated in a common design to run the camps in a manner so that great numbers of prisoners would die or suffer severe injuries. Each person accused took a vigorous and active part in the execution of this plan. (See appendix.)

The defense is headed by Lt. Col. Douglas T. Bates, who makes a motion in which the defense raises a plea to the jurisdiction of the court, and in support makes three arguments:

1. the accused are not described as enemy nationals and the indictment discloses no offense that the court is competent to try,
2. neither the names and nationalities of the victims nor whether the nations of the victims were at war with Germany at the material time have been disclosed, and
3. the accused are prisoners of war.

Colonel Bates is vociferous in making the motions. The court denies the motion and summarizes to the effect that:

- the accused have admitted to being enemy nationals,
- none of the victims was an American, and

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- a sentence may be pronounced against a prisoner of war for an offense committed while a prisoner of war and not while he is a combatant.

Colonel Bates also argues for the defense that:

- the indictment is so vague that it fails to inform each accused with sufficient certainty of the case he will have to answer, and
- the charges are bad for duplicity of each of the accused, and the charges should be particularized sufficiently to identify the place, time, and subject matter of the alleged offense.

Colonel Denson for the prosecution states in effect that:

- the charges are of a continuing nature and that common design in which the accused willingly participated clearly apprised in what they are called upon to defend, and
- the charges allege their participation in the running of the camp, pursuant to a common design, which included the subjection of described persons to stated wrongful acts at stated treatment places. (See appendix.)

The defense also makes a motion for severance of charges, based upon calling codefendants as witnesses, because the antagonistic testimony offered by some of them could prejudice all of the accused. The prosecution answers this by stating that the charges allege that all of the accused participated willingly and that the defenses of each of them could not be antagonistic.

Colonel Denson states that the charges allege the accused acted in pursuance of a common design. The charges thus allege that *all* ac-

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cused acted in a common design to ill-treat the prisoners. This is a question of substantive law.

The court denies the motion for the severance of charges.

Colonel Denson adds that in Hitler's dictatorship there can be no agreement as in a conspiracy, and ultimately the defense of superior orders is not applicable because in that case only Hitler himself could be found guilty. Hence, the basic charge is that of common design in which all the accused willingly participated.

Once all the turkey plumage is plucked from the motions and arguments of the defense, nothing is left but the carcass of a hummingbird.



The defendants grow more sober as the trial moves forward.



The author works into the dusk at Dachau.