

10 July 1947

UNITED STATES)
 v.)
Kurt OTTO)

Case No. 000-Mauthausen-5

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 12-13 March 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

PARTICULARS: In that KURT OTTO, a German National, did, at or near Steyr, Austria, in or about October 1944, wrongfully encourage, aid, abet and participate in the killing of three unknown citizens of the Soviet Union, inmates of Steyr Concentration Camp, who were then in custody of the then German Reich.

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

PARTICULARS: In that KURT OTTO, a German National, did, at or near Steyr, Austria, in or about January 1945, wrongfully encourage, aid, abet and participate in the killing of Richard Grill, an Austrian, and Albo Wallner, a Czech, inmates of Steyr Concentration Camp, who were then in custody of the then German Reich.

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

PARTICULARS: In that KURT OTTO, a German National, did, at or near Steyr, Austria, in or about April 1945, wrongfully encourage, aid, abet and participate in the killing of an unknown citizen of the Soviet Union, an inmate of Steyr Concentration Camp, who was then in custody of then German Reich.

III. SUMMARY OF EVIDENCE: During October 1944, at Steyr Concentration Camp, Steyr, Austria, an outcamp of the Mauthausen Concentration Camp, three unknown Russian prisoners were hanged. Later, during January 1945, two other inmates, an Austrian and a Czech, were also hanged after apprehension following their escape from the camp. In April 1945, another unknown Russian inmate was forcibly shoved into the electrically charged wire encircling the camp and was electrocuted. OTTO,

Rapportführer and third in command of Steyr, participated actively in each of these events which resulted in death to the prisoners involved.

IV. EVIDENCE AND RECOMMENDATIONS:

KURT OTTO

Nationality:	German
Age:	40
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS
Plea:	NG Charge I; NG Charge II; NG Charge III
Findings:	G Charge I; G Charge II; G Charge III
Sentence:	Death by hanging

Evidence for Prosecution: During the fall of 1944, the prisoners at Camp Steyr, Austria, an outcamp of the Mauthausen Concentration Camp (R 9), apparently now located in the Russian Zone (R 19), included Poles, French, Jews, Russians, Dutch (R 8), Austrians, and Czechs (R 11, 31), among other nationals (R 8). In general, from September 1944 until liberation in May 1945, with only slight exception, food and treatment of inmates were bad (R 9).

Accused was third in the chain of command at Steyr (P-Ex 1, R 19, 33) in which capacity he performed two principal functions, viz.: 1) Roll call leader; and, 2) Labor Commitment Leader (R 10). It was his duty to receive the camp punishment reports and punish the prisoners (R 10, 11). Complaints against his treatment of inmates were canalized through him and brought only more punitive measures if used (R 48, 77, 78). His methods of punishment were graded from slaps and beatings to hanging (R 11, 30, 37, 38). His overt conduct was so ostensibly motivated that he was called "The Sadist" among the inmates (R 84). After a prior conditioning in the Waffen SS, Mauthausen Concentration Camp, and outcamps Wiener Neustadt and Schlier, his career at Steyr began on 3 September 1944 and continued until 3 May 1945 (P-Ex 4a, R 49).

During October of 1944 (R 30), three Russian inmates who had been

apprehended while attempting to steal articles from the mail or food items (R 30, 43) were placed in washroom fourteen by accused OTTO who, ten to fifteen minutes later, emerged therefrom, closed and locked the door (R 31, 43). It was sworn that accused had hanged them (R 43, 47). Next morning, at 10:00 o'clock, accused, with the help of six inmates, removed in three coffins the three bodies which were observed by others to be those of the three Russian prisoners (R 31, 40, 44, 47), the blueness of their faces showing mistreatment before hanging (R 44). Another witness testified that OTTO furnished the ropes for this hanging (R 47). The camp eldest, Grill, commented at the time, "OTTO has done a good deed." (R 47).

In order that the three Russian prisoners could hang themselves, accused OTTO obtained the rope and also the benches upon which they stood until accused removed the latter from under them (R 38) so that their feet were suspended approximately 2¹/₂ feet from the floor (R 25). A witness testified he had had a direct view of the entire hanging episode from block five into the washroom some fifty meters away (R 38). A prosecution witness stated that, when he approached accused at Dachau with the assertion that OTTO had hanged his three comrades, OTTO replied, "Yes, I gave them the rope." (R 45).

After identifying OTTO (R 10), prosecution witness, Boleslaw Sokolowski, former inmate and block eldest (R 8), testified that eleven prisoners escaped at one time from Camp Steyr on a day in January 1945 (R 11). Among them were the camp eldest, Richard Grill, an Austrian (R 11, 31), and Albo Wallner, Czech capo (R 11, 12, 31). In the afternoon, a few days later, Grill and Wallner were apprehended (R 11, 32) and returned to camp after the inmates had gone to bed. Next morning their bodies were hanging in the washroom (R 11) from which the block eldests removed them and placed them in a coffin after accused OTTO said, "Now you can liberate your friends." (R 12). The men were dead; the corpses appeared swollen and as if they had been beaten (R 12, 33, 41). Upon discovery of the escape, block eldests had been assembled on roll call square where accused cried to the

77). An eye witness saw (R 32) accused beat the captured prisoners "with the rope that he used to hang with---hang them with" (R 33), in the presence of the camp commander and the chief of the kitchen, in washroom number one (R 32, 37, 38).

One evening in April 1945, witnesses saw accused chase a Russian inmate, who had been previously standing against the wall of the orderly room (R 27), a place which spelled punishment to all who stood there (R 13), along the electrically charged wire encircling the camp * * * "and Kurt was trying to push him against the wire. All of a sudden I saw how the prisoner went down on his knees in front of Kurt. From this distance you could see that he was pleading with him, and as an answer he was kicked by Kurt. The prisoner got up again and continued running. A few minutes afterwards I saw again how they came to the center section of the wire and I saw how Kurt was standing in front of the prisoner, reached for his pistol and pulled it out like this (indicating). Afterwards he got hold of the prisoner and threw him against the wire. Afterwards we heard how Kurt was calling for the Dispensary Cape; that means from this order the Dispensary Cape had the detail of carrying corpses had to come and take the corpse over to "the morgue" (R 13, 27). Accused admits in his sworn statement that he, with reluctance, participated in executing the camp leader's order by pushing a recaptured, escaped prisoner into an electrically charged fence, causing the death of the inmate (P-Ex 3, R 49).

Another similar instance of electrocution occurred in Camp Steyr (R 13, 14, P-Ex 3, R 49); but, though a prosecution witness identified accused as similarly executing another prisoner shortly after the April episode in a "most terrible and sadistic manner" (R 13, 14), accused denied any further participation in electrocutions although he admitted their occurrence (P-Ex 3, R 49).

Prosecution witnesses swore that accused OTTO had a reputation as a sadist and a murderer in the camp where everyone was afraid of him (R 78, 81, 84). He slapped (R 11) and beat prisoners with his fists or with a rubber hose or pick handle (R 11, 20, 30, 43, 77, 79, 80, 81).

83, 84) until some died (R 30, 77, 79, 83, 84) despite orders from the camp leader that there would be no further beating of prisoners (R 20, 48, 77); he hanged other inmates (R 15, 83); he suggested that a block eldest smother an ill inmate (R 16); as a form of punishment, he tied the arms of a prisoner behind his back and suspended him from the rafters (R 24); and, on a cold December night in 1944, he punished prisoners by having them remove snow for two hours from roll call square while they were barefooted and while he beat them (R 83).

"He was the worst SS man of the whole camp." (R 84).

Evidence for Defense: Two witnesses testified that a camp report was to the effect that the three escaped prisoners of January 1945 hanged themselves (R 53, 54, 72) under orders from the camp leader (R 72) to avoid punishment (R 56). No beatings or rumors of such punishment occurred at Camp Steyr (R 56, 75).

Accused made two pre-trial statements (P-Ex 3, 4, R 49) and gave sworn testimony. He admitted beatings despite contrary orders from the camp leader (R 64, 65). He denied hanging three inmates who escaped in January 1945 (R 59, 69, 70) although he procured the ropes (R 49, P-Ex 3, R 59) under orders from the camp leader (R 60) after the prisoners announced their intention of hanging themselves "because we don't want to be transferred to Mauthausen" (R 59, 70), which had a bad reputation for punishment (R 58). Similarly, he accounted for the hanging of three Russian inmates in October 1944, attributing their deaths to the same motivation and denying his participation (R 58).

He admits that he participated, with two others, in the electrocution of an inmate upon orders of the camp leader (R 49, 60, 61, P-Ex 3); but he denies having anything to do with any other electrocutions (P-Ex 3, R 49).

OTTO categorically denies any of the following activities: suggesting suicide (R 61); terrorizing prisoners (R 66); hanging an inmate (R 67, 68, 87); stating he would hang 1500 prisoners with his own hands (R 67); ordering inmates to clean snow off roll call square on a night in December 1944 (R 68); beating a witness (R 71); and

knowing of his reputation as a sadist, tyrant, and a murderer at Camp Steyr (R 66). Rather, he asserts he was good to prisoners (R 62) and gave bread to many, as well as cigarettes and tobacco (R 62).

Sufficiency of Evidence: With regard to the evidence offered in support of superior orders, the accused failed to meet the burden of proof required by pertinent authorities discussed in Section V, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review, dated 14 March 1947, was filed by defense counsel, Major Olaf J. Tolnas, containing a reference to accused's plea to the jurisdiction of the court, an allusion to low mental capacity of the accused and his obedience to superior orders, the probable effect of his execution upon his ill, aged mother, and his general repentance.

A Petition for Mercy, 1 May 1947, by Frau Frieda Otto, mother of the accused, and a Testimony of Reputation, dated 13 April 1947, by Artur Mirau, an acquaintance of the accused, were filed.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: The jurisdiction of the Court to try Kurt OTTO, a German national, was questioned on behalf of the defense by plea, on the ground that Camp Steyr, Austria, where the offenses charged were committed allegedly, lies outside of the American Zone. War Criminals, brigands, and pirates are the common enemies of all mankind and all nations have an equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated in "Wheaton's International Law," Volume I, Sixth Edition, at page 269, that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever and wherever ever committed." Nationals of other United Nations were sentenced, which sentences have been approved and carried into execution in the Mauthausen Concentration Camp case

(United States v. Altfuldisch, et al., February 1947), and in the Bol-
sen Concentration Camp case, British Army of the Rhine, December 1945.
Apparently, all concerned with the reviews and approvals in those cases
considered the universality of jurisdiction over war crimes to be so
well recognized that discussion was not necessary. Military Govern-
ment Courts have jurisdiction over the nationals of any country who
are in the United States Zone of Occupation, except as to certain
classes of American and other nationals, e.g., military personnel,
which are not pertinent to the jurisdictional question here involved.
Concerning jurisdiction over war crimes, no limitation is imposed.
(See Sections 5-300.2 and 5-300.3, Title 5, "Legal and Penal Adminis-
tration," of "Military Government Regulations," published by Head-
quarters, US Forces, European Theater, 30 November 1945). Concerning
the general question of universality of jurisdiction over war crimes
see "Universality of Jurisdiction over War Crimes," by Cowles, Calif-
ornia Law Review, Volume XXXIII, June 1945, No. 2, pp. 177-218.

It is clear that the Court had jurisdiction of the person of
the accused and of the subject matter.

Superior Orders: Accused OTTO, as shown in Section IV, para-
graph 1, supra, sought to justify his actions by offering evidence
to show that he was acting in compliance with "superior orders." Com-
pliance with superior orders does not constitute a defense to the charge
of having committed a war crime (Trial of Henry Wirz, 40th Congress,
2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol.
II, Sixth Edition, Oppenheim, "International Law," paragraph 253,
page 453; Blandover Castle Case, 16 American Journal of International
Law, page 708; United States v. Dominikus Thomas, December 1945; and
United States v. Alfons Klein, et al., (Hadamar Murder Factory Case),
February 1946). This rule is followed in Anglo-American jurispru-
dence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-
Martial, U.S. Army," 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances,
be considered in mitigation of punishment. However, an accused who

seeks relief on such grounds 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, would 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. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U.S. Army, "Rules of Land Warfare," paragraph 845.1, Change No. 1, 15 November 1944; Oppenheim, "International Law," supra, and the Llandoverly Castle Case cited therein; "Manual for Courts-Martial," supra; "Report to the President of United States," 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies," found in footnote, page 53, "Military Occupation and the Rule of the Law," by Ernst Fraenkel; and opinions of the Deputy Theater Judge Advocate for War Crimes in U.S. v. Albert Bury and Wilhelm Hofner, September 1945, U.S. v. Dominikus Thomas, December 1945, and U.S. v. Gerd Beck and Otto Weinreich, December 1946).

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

/s/ Richard C. Hagan
RICHARD C. HAGAN
Major JAGD
Attorney
Post Trial Branch

HEADQUARTERS
EUROPEAN COMMAND
OFFICE OF THE JUDGE ADVOCATE

UNITED STATES)
))
 v.)
))
Kurt OTTO)

RECOMMENDATION OF THE
JUDGE ADVOCATE

No. 000-Mauthausen-5

I have examined the record of trial and I concur in the views expressed by the Deputy Judge Advocate for War Crimes in his Review and Recommendations to the effect that the findings and the sentence as to accused OTTO should be approved.

30 September 1947
(Date)

/s/ J. L. Harbaugh, Jr.
J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate

I concur

/s/ M. G. White
M. G. WHITE
Major General GSC
Deputy Chief of Staff

I concur

/s/ C. R. Huebner
C. R. HUEBNER
Lieutenant General GSC
Chief of Staff

Having examined the record of trial, I concur.

/s/ C. E. Straight
C. E. STRAIGHT (18 Sept '47)
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes.