

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 407

5 February 1948

UNITED STATES)

v.)

Paul FENNER, et al.)

Case No. 000-50-5-15

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 21-22 July 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Paul FENNER, Otto KOETZLE, Josef MARAKOWITZ, German nationals or persons acting with German nationals, acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses, and indignities, did, at or in the vicinity of the Mauthausen Concentration Camp, at Castle Hartheim, and at or in the vicinity of the Mauthausen Sub-camps, including but not limited to Ebensee, Gross-Raming, Ganskirchen, Gusen, Hinterbrühl, Lambach, Linz, Loiblpass, Melk, Schwechat, St. Georgen, St. Lambrecht, St. Valentin, Steyr, Vienna, Wiener-Neudorf, all in Austria, at various and sundry times between January 1, 1942, and May 5, 1945, wrongfully encourage, aid, abet, and participate in the subjection of Poles, Frenchmen, Greeks, Yugoslavs, Citizens of the Soviet Union, Norwegians, Danes, Belgians, Citizens of the Netherlands, Citizens of the Grand Duchy of Luxembourg, Turks, British Subjects, stateless persons, Czechs, Chinese, Citizens of the United States of America, and other non-German nationals who were then and there in the custody of the then German Reich, and 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 killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating thousands.

III. SUMMARY OF EVIDENCE: Accused FENNER was an SS Master Sergeant in charge of Camp Aafa, a small outdetail or subcamp of Mauthausen Concentration Camp. Accused KOETZLE was a capo and block leader at various subcamps of Mauthausen Concentration Camp.

Both accused were shown to have engaged in the mistreatment of inmates at these subcamps between the dates alleged and to have participated in the Mauthausen Concentration Camp mass atrocity. Prosecution's Exhibit P-Ex 2 is a certified copy of the charges, particulars, findings and sentences in the parent Mauthausen Concentration Camp case (United States v. Altfuldich, et al., 000-50-5, opinion DJAWG, 25 February 1947, hereinafter referred to as the "Parent Case"; see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. PAUL FENNER

Nationality:	German
Age:	52
Civilian Status:	Factory Worker
Party Status:	None
Military Status:	Waffen SS Master Sergeant
Plot:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused was an SS master sergeant and camp commander (R 36, 41, 42, 43, 56) of outdetail or subcamp Vienna-Aafa, sometimes referred to simply as Aafa, from October 1944 to April 1945 (R 36, 78). This was a detail of about 400 (R 36) inmates employed at the Aafa Works in Vienna (R 78). Prior to that, the accused had served one month at Mauthausen in April 1943 and 17 months at St. Lambrecht, a subcamp of Mauthausen Concentration Camp (R 78). Nothing is shown in the record regarding his duties or activities at these two camps.

One witness testified that following an air attack in the beginning of 1945 the "whole squad" had to stand on the yard while the accused, who was the camp commander, and a few other people, went into some of the huts; that shouts were heard from the sick inmates who had remained in the huts; that when he was

allowed to return to his hut he saw there one of the inmates suspended from the roof with his hands manacled behind his back (apparently suspended by his hands); and that this inmate was found hanged in the lavatory the next day (R 37, 44). (Apparently the witness saw the accused go into the hut, R 37)

A second witness testified with regard to this incident that following the air raid the accused ordered that five inmates, including one German, and the others Poles and Russians, be suspended from an overhead support for stealing bread; that he and other inmates saw them suspended there as they marched past them; that the accused was there; that the inmates were pulled up with their hands behind their backs till their feet were off the floor; and that the accused and another, beat these inmates before letting them down (R 57, 58). This witness also testified that in 1945, following the escape of seven Russians, the accused brought three other Russians into camp and gave an order to suspend them in the building in Aafa with their backs against a wooden support; that he saw them beaten by the accused and another; and that the accused released them when it developed that they were unable to give information with regard to the escape of the seven Russians (R 56, 57).

The first witness testified there were about 400 inmates in subcamp Aafa when the accused was camp commander (R 37).

Both of these witnesses also testified that in April 1945, subcamp Aafa was evacuated by an inmate evacuation march to subcamp Steyr; that the accused was in command of this march (R 37, 58); that he gave orders that stragglers were to be shot (R 38, 47, 58, 64, 65); and that between 50 and 120 inmates were missing (R 38, 50, 60, 65) after the 12 day march (R 59, 82). The first witness testified that the accused selected a special firing squad for the purpose of shooting such stragglers (R 39). This witness admitted that the accused spent part of his time

with the advance party (R 45) but insisted that the accused was the ranking person and gave all orders on the march (R 39). The witness testified that from a distance of eight meters he heard a conversation about what should be done with a weak inmate and heard the accused say, "No, they are going to be shot". Later the inmate was shot, but the witness did not say he saw the shooting (R 37, 38). The witness was told inmates were shot but did not see any himself (R 48, 49). However, he heard shots (R 48, 50).

Evidence for Defense: It was stipulated that three former concentration camp inmates would testify, if present, to the good behavior and character of the accused (R 88). The accused testified that he served in World War I and was drafted into the Waffen SS in April 1943 (R 77, 78); that at subcamp Aafa he was only in charge of the troops; that the roll call leader was in charge of the subcamp (R 78); and that he never killed, beat, hanged, or ordered the beating of any inmate (R 78, 79).

The accused further testified that on the inmate evacuation march, Sergeant Boessel (R 79) or Sergeant Bucher (R 85, 86) was in charge of the main column and that he was only over him regarding "guard matters" and had no authority over him in regard to "prisoner affairs" (R 80), although he admitted that the sergeant was under him before they left the camp (R 86). He traveled exclusively with the advance guard in order to find roads, billets, and to carry food and that this advance party was four hours ahead of the inmate column and was not in touch with them (R 79). He denied that he ordered sick inmates shot on the march (R 80) and testified that only 50 were missing when the column reached subcamp Steyr, all of whom had escaped (R 82). He further testified that stragglers were turned over to the police to be placed on the first car that came by, although he admitted that he did not know whether they ever reached camp (R 84, 85).

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. Otto KOETZLE:

Nationality:	German
Age:	27
Civilian Status:	Mechanic
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 5 May 1945

Evidence for Prosecution: The accused was a block eldest at outdetail Moedling, which was a part of Schwechat (R 17) a subcamp of Mauthausen Concentration Camp, from late 1942 or early 1943 (R 16) to the summer of 1944 (R 6). He also served as a capo at subcamp Schwechat during part of this time (R 18). He was then transferred to Floridsdorf, another Mauthausen Concentration Camp subcamp, where he remained until the liberation (R 24, 30, 74).

The accused served as a capo in the kitchen detail at subcamp Schwechat (R 10, 13; P-Ex 3; R 15; P-Ex 4, R 18) and as a block eldest at subcamp Schwechat and outdetail Moedling at various times during the period alleged in the particulars (R 8, 13; P-Ex 3; R 15; P-Ex 4; R18, 69). As block eldest he had charge of the rationing and of the supervision of the inmates (R 6). He was generally known as a beater (R 8, 13; P-Ex 3) and beat ^{many} inmates, placing them over a stool for this purpose (R 9). He used a stick, a rubber hose (R 9), his hands and feet, or an extail whip for these beatings (R 13; P-Ex 3). Kwiedinski stated in a pretrial unsworn statement that the accused beat inmates whom he had

previously knocked to the ground (R 15; P-Ex 4). Nowak, a former Polish inmate, stated in an unsworn pretrial statement that he received several beatings administered by the accused, from which he still suffers (R 13; P-Ex 3). One witness testified concerning the beating of two Russian inmates by the accused who gave them 50 lashes with a leaded rubber hose for stealing bread (R 9, 18, 19) at outdetail Moedling in March or April 1945 (R 24). This witness saw the corpses of both of these inmates at the dispensary a few days later (R 19, 20). This same witness testified that in March 1945 the accused gave a French inmate 40 to 50 lashes and that later he heard that this inmate had died at the dispensary (R 20, 21).

Kwiedinski stated in an unsworn pretrial statement, that the accused was reputed to be one of the capos who exterminated inmates (R 15; P-Ex 4). Nowak stated in an unsworn pretrial statement that the accused stole food from the inmate rations (R 13; P-Ex 3). There was evidence that the accused also mistreated inmates by reason of the fact that he was a homosexual and compelled young Polish inmates to submit to his perversion (R 13; P-Ex 3; R 15; P-Ex 4; R 21, 23).

Evidence for Defense: It was stipulated that four former concentration camp inmates would testify, if present, to the good character and behavior of the accused (R 88). One witness testified that he knew the accused at subcamp Floridsdorf for three months in the summer of 1944 (R 30, 31); that as an inmate clerk all camp records went through the witness' hands; and that none showed the death of any inmate by reason of any action of the accused (R 30-32). He further testified that the accused did slap inmates, as did all capos, but that his reputation was good (R 32).

A second witness, a former capo, testified that he knew the accused at subcamp Schwechat and, while the accused may have slapped some inmates, he never struck anyone hard enough to send them to the hospital; that the accused had a good reputation (R 70);

that the accused was himself beaten by the camp roll call leader for letting inmates rest; and that the accused also permitted inmates to steal potatoes with his knowledge and connivance (R 71).

A third witness, a former member of the SS and block leader ^{subcamp} at Floridsdorf, testified that no inmate ever complained about the accused, and that he never saw him beat nor ever heard that the accused beat in such a manner as to send anyone to the hospital (R 75).

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

Petitions: No Petitions for Review were filed. A Petition for Clemency was filed by Alois Riml, 28 November 1947.

Recommendation: That the findings and sentence be approved.

3. Josef MARAKOWITZ

This accused was served but was not tried (R 6).

V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the persons of the accused and of the subject matter.

Application of Parent Case: 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 pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5, JAG-AGO, subject: "Trial of War Crimes Cases," 14 October 1946, and the Parent Case). The convicted accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceedings, in concluding as to them that they not only participated to a substantial degree but that the

nature and extent of their participation were such as to warrant the sentences imposed.

An 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 sentences be approved.

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

ROBERT E. BACHMAN
Captain, AG
Post Trial Branch

Having examined the record of trial, I concur, this _____ day
of _____ 1948.

G. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes.