

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

27 January 1948

UNITED STATES )

v. )

Case No. 000-50-5-44

Paul TREMMEL )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 26 September 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Paul TREMMEL, 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, Gunskirchen, Gusen, Hinterbruehl, 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: The accused, an SS sergeant at Mauthausen Concentration Camp and at Wiener-Neustadt, one of its subcamps, for considerable periods of time between the dates alleged, was shown to have participated substantially in the Mauthausen Concentration Camp mass atrocity. There is also

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evidence that he was responsible for the illegal killing of certain inmates. Prosecution's P-Ex 6 (R 8) is a certified copy of the charge, particulars, findings, and sentences in the parent Mauthausen Concentration Camp Case (United States v. Altfuldisch, et al., 000-50-5, opinion DJAWC, February 1947, hereinafter referred to as the "Parent Case"; see Section V, post.

IV. EVIDENCE AND RECOMMENDATIONS:

Paul TREMMEL

Nationality:	Austrian
Age:	38
Civilian Status:	Bricklayer
Party Status:	Member Nazi party since 1938
Military Status:	Sergeant Waffen SS
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: After serving from 5 February 1942 to August 1944 in Mauthausen Concentration Camp, the accused was assigned to subcamp Wiener-Neustadt, Austria, as roll call leader (R 9, 10, 22, 30, 38, 47; P-Ex 7A), where he remained until the end of March 1945 (R 9, 10, 22, 31, 38).

An evacuation of subcamp Wiener-Neustadt to Steyr Concentration Camp was undertaken at the end of March 1945 (R 10, 22, 31, 38, 47; P-Ex 7A). This inmate evacuation march lasted about 10 to 12 days (R 10, 23, 31, 30). Approximately 400 to 600 inmates of all nationalities including French, Poles, Russians, Italians, Yugoslavs and a few Germans participated in this evacuation march (R 10, 23, 31). The accused was chief (R 31) or commander of the evacuation column (R 39). On the third day of the march the witness Aldo Biancheri saw the accused shoot and kill an Italian inmate (R 11, 12). This witness was about 15

to 20 meters from the accused when he shot the inmate (R 11). The body of the dead inmate was buried in a ditch (R 12). On another occasion during the march this witness saw the accused kill two Polish inmates with revolver shots in the neck (R 12). Their bodies were then buried in a common grave (R 14).

The witness Englehardt testified that during the evening of the second day of the march two non-German inmates, who could not march anymore, were taken by the accused into a meadow where he shot and killed them (R 23, 24). The accused, using a pistol, had shot these men in the neck. The victims' clothing was then burned and they were buried (R 24). On another occasion during the march this witness was about 50 meters from the accused when he saw him shoot and kill six men behind a shed (R 24, 25). These inmates were sick and were unable to continue the march (R 25).

Two other witnesses testified that, during the inmate evacuation march from Wiener-Neustadt, the accused acted as chief (R 31) or commander of the evacuation column (R 39). One of these witnesses saw the accused shoot and kill one Italian and three Polish inmates (R 31, 32). The other witness saw the accused shoot and kill one Italian and two Polish inmates (R 39). The bodies of these victims were then buried (R 32, 39, 40).

During October 1944, while at Camp Wiener-Neustadt, the witness, an Italian named Aldo Biancheri, and a Russian were beaten by the accused (R 13) and then turned over to the camp eldest for the usual 25 strokes (R 13, 14). Two other witnesses stated that the accused beat inmates with his hands (R 25, 41) and at times with a rubber hose (R 25) or he kicked them (R 41).

In his extrajudicial sworn statement the accused stated that he was at Camp Wiener-Neustadt from 20 August 1944, until the evacuation of the camp at the end of March 1945. On the second or third day of the march one inmate died because of exhaustion or illness. From then on, in the course of the march, about 10 inmates gradually died in this manner. Other inmates

who were unable to keep marching and who could not be dragged along were shot to death. The accused admitted shooting two non-German inmates with a pistol. About three or four inmates were shot to death by guards upon order of the camp commander. The accused estimated that between 14 and 16 inmates died or were shot to death on this march (R 47; P-Ex 7A).

Evidence for Defense: Witness Frisch, a former camp eldest at Concentration Camp Steyr (R 48), knew the accused at Mauthausen Concentration Camp for a few months in 1943 (R 48). In February 1944, he saw the accused for 14 days. Then in April 1945, he again saw the accused when the latter came to Camp Steyr from Wiener-Neustadt with a transport of about 400 inmates (R 48, 49). Some of the inmates told the witness they had had a good journey. Their physical condition was good (R 50-52). It was in the best condition of any of the evacuation transports to arrive at Camp Steyr (R 50). In Mauthausen this witness spoke to many inmates and all had a good opinion of the accused (R 51).

A former block eldest at Mauthausen, who knew the accused for about seven months beginning in February 1944, stated that he often put in a good word for the inmates (R 59).

The accused, after being informed of his rights as a witness, declined to take the stand (R 60). In his extrajudicial sworn statement he related that shortly before the beginning of the inmate evacuation march from subcamp Wiener-Neustadt in March of 1945, the camp leader notified him of an order to shoot to death all inmates who could not continue marching. He denied that, during his tour of duty at Mauthausen Concentration Camp or any of its subcamps, he shot any inmate for attempting to escape, or that he ever killed or mistreated inmates (R 47; P-Ex 7A).

Sufficiency of Evidence: Austria was a co-belligerent of Germany. With regard to the evidence offered in support of superior orders, the accused failed to meet the burden of proof, particularly with respect to evidence regarding immediate

compulsion, 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 was filed by Major Samuel P. Roach, defense counsel, 14 October 1947. Petitions for Clemency were filed by Alexander Scherlacher, 13 October 1947, and 17 October 1947; Sigmund Hafenscher, 13 October 1947, and one undated; Mrs. Maria Tremmel, wife of the accused, 15 October 1947, 16 November 1947, 25 November 1947, and 4 January 1948; the accused, 15 October 1947, and 13 November 1947; Otto Angermann, 8 November 1947; Hans Bidler, 21 November 1947; Friedrich Tschirk, 2 January 1948.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the person 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 OOO.5, JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). The accused was 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 that he not only participated to a substantial degree, but that the nature and extent of his participation were such as to warrant

the sentence imposed.

Superior Orders: The accused sought to justify his actions on the inmate evacuation march by offering evidence to show that he was acting in compliance with "superior orders". Compliance 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; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, opinion DJAWC, December 1945; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, February 1946, and French Republic v. Wagner, et al., Court of Appeals (France), July 1946). This rule is followed in Anglo-American jurisprudence (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 in fact, 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 345.1, 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 Rules of the Law", by Ernst Fraenkel; United States v. Bury, et al., opinion DJAWC, September 1945, United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWC, 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.

JOHN J. RYAN  
Capt., CMP  
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