

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

12 February 1948

UNITED STATES )

v. )

Case No. 000-50-2-106

Ludwig GRUND, et al. )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 24 October-6 November 1947 before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Ludwig Grund, Sebastian Stemberger, Johann Wirth acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the German Reich in exercise of belligerent control.

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

Particulars: In that Ludwig Grund, Sebastian Stemberger, Johann Wirth acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of 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 cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: Accused GRUND was a member of the SS with duties of guard, dog leader, detail leader and roll call leader at Camp Dachau and subcamps Friedrichshafen, Raderach and Ueberlingen from 1940 to April 1945. In addition thereto, the accused personally beat and mistreated

of the charges, particulars, findings and sentences in the Parent Dachau Concentration Camp Case (United States v. Weiss, et al., Case No. COO-50-2, opinion DJAWC, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Ludwig GRUND

Nationality:	German
Age:	55
Civilian Status:	Waiter and factory worker
Party Status:	Nazi Party since 1939
Military Status:	SS Technical Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	10 years, commencing 6 May 1945

Evidence for Prosecution: The accused was an SS Sergeant with duties of guard at Dachau Concentration Camp from February 1940 to August 1943. From August 1943 to April 1945 he was at subcamps Friedrichshafen, Raderach and Ueberlingen, camps subsidiary to Dachau Concentration Camp, as an SS Technical Sergeant with duties as dog leader, detail leader and roll call leader (R 179-181, R 19; P-Ex 8).

Kamp, who was a former German inmate at Camp Dachau from 18 September 1942 to 30 June 1943; from 1 July 1943 to April 1944 at subcamp Friedrichshafen, and from April 1944 to September 1944 at subcamp Raderach (R 21); testified that he knew the accused at subcamps Friedrichshafen and Raderach and that the accused was an SS Technical Sergeant with duties of roll call leader. The witness identified the accused in Court (R 22, 23). In December 1943 at subcamp Friedrichshafen the accused struck the witness in the face and kicked him on his knee (R 23) so severely that for 8 days his face and knee were swollen (R 24). Inmates who were caught trying to escape were taken into a room and kept there 3 or 4 days and when they were released, their bodies were black and blue. He saw the accused lead the inmates in and out of the rooms. Later these inmates were sent

to an extermination concentration camp (R 24, 25). He further testified that he saw the accused beat inmates at least 20 times with his hands and fists (R 25, 26). At subcamp Friedrichshafen he saw the accused set his dog on inmates and they were bitten by the dog (R 27). In September 1944 at subcamp Raderach, he saw the accused chase an inmate into a moat which surrounded the camp and was filled with water (R 26, 27). He heard from other inmates that the accused had caused 3 inmates to be shot at subcamp Raderach. The inmates were either Russian or Polish (R 28, 35).

Brem, a former German inmate who was at Camp Dachau from 1941 to 1 July 1943, at subcamp Friedrichshafen from 1 July 1943 to 30 April 1944, and at subcamp Raderach from 30 April 1944 until the fall of 1944 (R 37), testified that he knew the accused. The witness identified the accused in Court (R 38). He further testified that almost daily he saw the accused beat inmates with his fists and kick them with his feet (R 39). The witness was also beaten by the accused (R 39). In 1943 at subcamp Friedrichshafen he saw the accused beat an Austrian inmate to the ground and then jump on him with his feet. This inmate was bleeding from the nose and mouth (R 39, 40). During the summer of 1944 at subcamp Friedrichshafen several Polish inmates escaped. They were recaptured and returned to subcamp Raderach. They were severely mistreated and had to stand handcuffed to the fence for several days. At night they were handcuffed together and had to sleep that way. The accused was the one who handcuffed them together (R 40, 41, 49, 50). At subcamp Raderach the inmates received packages of food and in the evening after roll call they would cook the food on the stoves. Twice he saw the accused upset the pots and dishes, spilling the food and then chase the inmates away (R 43, 52). In the summer of 1944 at subcamp Raderach he saw the accused beat many inmates who had complained about their old shoes (R 44).

Schoen, a former German inmate at Camp Dachau and subcamps Friedrichshafen and Raderach from 1943 to 1944 (R 55), testified that he knew the accused and that he was an SS Technical Sergeant with duties of roll call leader. The witness identified the accused in Court (R 56). He saw the

accused kick many inmates who had not lined up properly on the roll call square. They were beaten to the ground by the accused and if they could not get up he continued beating them while they were lying on the ground (R 57, 58).

Huerner, a former Austrian inmate at subcamp Friedrichshafen from July 1943 to February 1944 (R 72), testified that he knew the accused and that he was a detail leader, dog leader and roll call leader. The witness identified the accused in Court (R 72, 73). He saw the accused at official punishments of inmates but the accused did not participate in the beatings; he only checked the inmates against the list that he had in his possession (R 73-75). He saw the accused during roll calls strike the inmates or beat them with a club (R 75). The club was a light stick (R 76). He heard that many of the inmates that had been beaten by the accused had to be taken to the dispensary for treatment (R 82).

This witness stated in his extrajudicial sworn statement that at subcamp Friedrichshafen he saw the accused beat inmates with a dog whip or a club almost daily. He also saw the accused kick the inmates with his feet. He saw the accused administer 25 lashes to inmates as official punishment. He heard from other inmates that the accused tied the hands of inmates behind them and then hung them up by their wrists (R 277; P-Ex 15).

Kameter, a former German inmate at subcamp Friedrichshafen from May 1943 to May 1944 and at subcamp Raderach from May 1944 to September 1944 (R 87), testified that he knew the accused as a dog leader and roll call leader. The witness identified the accused in Court (R 87, 88). He testified that he had nicknamed the accused "Bone Karl" because the accused derived great pleasure out of kicking the inmates on the shins (R 88). On Easter Monday 1944, 9 Polish inmates escaped from subcamp Friedrichshafen. Two months later two of them were recaptured and brought to subcamp Raderach. Three weeks later 4 more were recaptured. He saw them at subcamp Raderach and saw the accused handcuff them together at night and how he repeatedly kicked them on their shin bones (R 88-90, 97). He saw the accused beat a German inmate in the face and threaten him with his pistol (R 90, 91).

Sattler, a former Austrian inmate at subcamp Friedrichshafen from July 1943 to May 1944 and at subcamp Raderach from May 1944 to September 1944 (R 126, 127), testified that he knew the accused who was a roll call leader at both subcamps. The witness identified the accused in Court (R 127, 128). In December 1943 he was beaten by the accused for handing another inmate a ruler through the wire fence. He was knocked to the ground and after the beating he was bleeding from his nose and mouth (R 128, 129). This testimony corroborates the testimony of witness Brem. He further testified that he saw the accused beat inmates for asking for new shoes (R 129).

Pibal, a former Austrian inmate at subcamp Friedrichshafen from June 1943 to May 1944 and at subcamp Raderach until 28 September 1944 (R 132), testified that he knew the accused as a dog leader and roll call leader. The witness identified the accused in Court (R 133). The accused was known and feared by the inmates because of his brutality and attitude toward the inmates (R 133). In the spring of 1944, a Russian prisoner of war escaped. He was recaptured 6 weeks later. At a later date this Russian prisoner of war told this witness that the accused had severely beaten him by giving him 50 blows with a crop. He testified that, before he had learned this information from the Russian, the witness had seen that his face was swollen (R 134). In the summer of 1943 he saw the accused beat and kick a Polish inmate who had just been released from the hospital so severely he had to be taken to the dispensary (R 135). He further testified as to the handcuffing of six Polish inmates nightly by the accused, thus corroborating the testimony of other witnesses as to this episode (R 135, 136).

Schultheiss, stated in his extrajudicial sworn statement that he was a civilian employee at the Zeppelin factory in Friedrichshafen; that from 1943 until the end of the war he saw the accused there and saw the accused beat many inmates with a stick for no apparent reason (R 164; P-Ex 13).

Evidence for Defense: The accused testified that when he was the

dog leader his duties were primarily those of a caretaker for the dogs, which included feeding them. The dogs were not vicious. He was at the same time also the roll call leader (R 181, 182). While he was a guard, the only weapon he carried was his pistol. At subcamp Friedrichshafen the SS personnel were strictly forbidden to carry weapons or sticks (R 184). During the time he was a guard at subcamp Friedrichshafen he never beat an inmate with any kind of weapon (R 184, 185) nor did he ever kick one (R 185). There were certain regulations in the various camps that had to be enforced and if the inmates violated them or permitted acts of sabotage, stole or fought amongst themselves, he would slap them with his open hand (R 185, 186). None of the inmates he slapped were injured nor required any treatment at the dispensary (R 186). He slapped an inmate two or three times for passing a ruler through the electrically charged barbed wire fence as he was afraid the inmate would be electrocuted or cause a short circuit (R 186, 187). After this slapping the inmate immediately returned to work (R 187). He testified that his action in the incident when inmates were handcuffed together by him, was on an order of his commanding officer, and was done to keep the inmates from escaping again (R 187, 188, 190). He denied the truth of the testimony of witness Pibal, and testified that he never beat or kicked Pibal, and that he did not beat a Polish inmate that had just been released from the hospital as testified to by the witness; that he in fact was trying to help the inmate after he had fallen on the icy ground; that in doing this they both slipped and the inmate again fell to the ground and he again helped the inmate get up (R 192, 193). During the time he was at subcamp Friedrichshafen, Raderach and Ueberlingen, he heard that inmates were beaten with a club or kicked by SS personnel, but he never saw it happen. This mistreatment took place on the various outside work details (R 208). He further testified that he was present a number of times when inmates were given official punishment on orders from Camp Dachau. The capos did the beating under the direct supervision of the camp commander and he was present only for the reason that he had collected the inmates and led them to the place

where the punishment was to be given (R 208, 209).

Prosecution witness Kamp admitted on cross examination that he did not know whether the accused was the one who beat the inmates that were locked up in the room for trying to escape; that the accused may have been present to prevent more punishment being given than had been ordered by higher authority; that a Lieutenant Gruenberg was Camp Commander and the responsible officer of the camp at the time; and that he never saw the accused beat an inmate with any instrument. The inmates that were struck by the accused with his hands had violated some camp regulation (R 29-31).

Sufficiency of Evidence: The evidence clearly established that the accused was an SS Sergeant and an SS Technical Sergeant with positions of responsibility in the Dachau Concentration Camp and camps subsidiary thereto, and that as such he participated in the mass atrocity, and that he personally beat and mistreated many inmates. In regard to the reliance on superior orders, the Court might well have concluded that the accused acted willingly and not under immediate compulsion and that he 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: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. Sebastian STEMBERGER

This accused was not served and was not before the Court (R 1).

3. Johann WIRTE

This accused was acquitted (R 295).

V. QUESTIONS OF LAW:

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

Admission of Extrajudicial Statements: The Court's ruling in denying the defense's objection to admitting into evidence certain extrajudicial

statements was proper (R 84, 85, P-Ex 10; R 159, P-Ex 11; R 160, 161, P-Ex 12; R 161-164, P-Ex 13; R 274-278, P-Exs 15 & 16). Such statements by an accused or witnesses are always admissible regardless of the presence or absence of those who made them. A Military Government Court shall, in general, admit oral, written and physical evidence having a bearing on the issues before it and may exclude any evidence which, in its opinion, is of no value as proof (Section 5-329, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Office of Military Government for Germany (U.S.), 27 March 1947, and Section 270, c (1), (2) "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended).

Superior Orders: Accused GRUND sought to justify his actions in participating in the beating and mistreatment of some inmates 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; Llandowery 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 Llandovery 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.)

Application of the Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Dachau Concentration Camp 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). Accused GRUND 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 the nature and extent of his participation were such as to warrant the sentence imposed.

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.

ELMER MOODY  
1st Lt Inf  
Post Trial Branch

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

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