

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

30 January 1948

UNITED STATES

v.

Case No. 600-50-5-34

Horst GOENNEMANN, et al.

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 27 October 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Gotthardt HANKE, Johann BOGAR, Frank BERKINGSTAD and Horst GOENNEMANN, German nationals or persons serving with German nationals, acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses, and indignities, aid, abet or in the vicinity of the Mauthausen Concentration Camp, at Gattls Harthelm, and at or in the vicinity of the Mauthausen Sub-camps, including but not limited to Ebensee, Ems-Baming, Gusakirchen, Gusen, Hinterbrasil, Marchach, Pains, Murbach, Gels, Jockstadt, St. Georgen, St. Lambrecht, St. Valentin, Steyr, Vienna, Mieser-Neudorf, all in Austria, at various and sundry times between January 1, 1943, and May 5, 1945, wrongfully encourage, aid, abet, and participate in the subjecting of Poles, Frenchmen, Greeks, Yugoslavs, Citizens of the Soviet Union, Norwegians, Danes, Belgians, Citizens of the Netherlands, Citizens of the Grand Duchy of Luxembourg, Finns, British Subjects, Catalans, 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 Third German Reich, and members of the armed forces of nations then at war with the Third German Reich who were then and there surrendered and interned prisoners of war in the custody of the Third German Reich, to killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating thousands.

(Surname of GOENNEMANN actually spelled GÖNNEMANN (R 13; F-Ex 10).)

III. SUMMARY OF EVIDENCE: The accused pleaded guilty to the charge and the particulars thereunder. The accused was a criminal inmate of Camp Ebensee, a subcamp of Mauthausen Concentration Camp, from the spring of 1943 to 5 May 1945. At subcamp Ebensee, Austria, 1944 and 1945, the accused acted as assistant capo on a tunnel construction detail and in such

capacity participated in the Mauthausen Concentration Camp mass atrocity. He personally participated in the mistreatment of non-German nationals, inmates of subcamp Ebensee. There was some evidence indicating that he mistreated many inmates so severely that they died as a result. Prosecution's P-Ex 6 (# 10) is a certified copy of the charges, particulars, findings, and sentences in the Mauthausen Concentration Camp case (United States v. Altfuldisch, et al., 880-50-5, opinion DWAC, 23 February 1947, hereinafter referred to as the "Parant Case"; see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Gotthardt TANZMEIER

This accused was neither served nor tried.

2. Johann HOGNER

This accused was neither served nor tried.

3. Frank BORKENSTEIN

This accused was neither served nor tried.

4. Herst GOMMERMANN

Nationality:	German
Age:	41
Civilian Status:	Merchant and Theologist
Party Status:	None
Military Status:	None
Place:	5
Findings:	5
Sentence:	5 years, commencing 27 October 1947

Evidence for Prosecution: The accused pleaded guilty to the charge and the particulars thereunder (P-9, 10). The prosecution introduced extrajudicial sworn statements of three witnesses and the extrajudicial sworn statement of the accused in support of the charge and particulars (# 10-13, 17).

The accused stated in his extrajudicial sworn statement that he was a principal inmate at Camp Ebensee, a subcamp of Mauthausen Concentration Camp, from the spring of 1943 to 6 May 1945 (R 13; P-Ex 10, pp. 1, 2).

Peizer, a former inmate of subcamp Ebensee, stated in an extrajudicial sworn statement that during the years 1944 and 1945, the accused acted as his assistant camp on a tunnel construction detail at subcamp Ebensee. There were occasional complaints that the accused had beaten an inmate (R 15; D-Ex 3).

Witness Kizikovic, a former inmate at subcamp Ebensee, stated in his extrajudicial sworn statement that he heard the accused make reports against inmates for being lazy and for sabotage. The reported inmates were severely punished by receiving 25 blows with a stick, three days in the bunker and other punishments. The punishments often caused the death or permanent crippling of the inmates. The accused beat inmates severely and also threw them into the quarry (R 11; P-Exs 7, 7a).

Witness Jenko, a former inmate of subcamp Ebensee, stated in his extrajudicial sworn statement that the accused forced inmates with a high fever to work. These inmates died because of such mistreatment. He saw the accused kick nine inmates in the groin and stomach and step on their faces. One of these inmates, a Slovakian national, died immediately, and the others died the next day at the hospital, as a result of said mistreatment. The witness heard from fellow inmates that the accused killed an additional 30 inmates. The accused was very brutal. He took cigarettes away from inmates and confiscated all their food parcels (R 12; P-Exs 8, 8a).

The witness Feklinic, also a former inmate at subcamp Ebensee, stated in his extrajudicial sworn statement that at the quarry he saw the accused beat inmates in his detail with sticks, rubber and other things. He kicked the inmates when they fell as the result of these beatings (R 12; P-Exs 9, 9a).

The accused admitted in his extrajudicial sworn statement that he once slapped an inmate for taking bread from him when he was sick, and on another occasion struck an inmate with a stick over his head. He admitted that the SS men at subcamp Ebensee gave him six or seven cigarettes a week and sometimes a cigar. The accused stated that at subcamp

Ebenssee he was "a kind of foreman" (R 13; P-Ex 10, pp. 2, 3). Captain Bennett, an army psychiatrist, who examined the accused before trial, stated in his unsworn pretrial statement that the accused was not insane, could differentiate between right and wrong, adhere to the right, and aid in the preparation of his defense. He further stated that the accused was able to answer questions intelligently and showed no impairment of memory (R 15; D-Ex 1).

Evidence for Defense: The accused pleaded guilty to the charge and particulars (R 9, 10). He did not testify in his own behalf but, as evidence in mitigation, introduced the extrajudicial sworn statement of witness Pelzer and the unsworn pretrial statement of an army psychiatrist who had examined him before trial. The army psychiatrist, who examined the accused before trial, stated in his unsworn pretrial statement that the accused was a severe neurotic with a cyclothymic and emotional instability basis (R 15; D-Ex 1).

Witness Pelzer stated in his extrajudicial sworn statement that at subcamp Ebensee he was senior capo on tunnel construction work and that the accused was his assistant capo. He observed the accused daily, from the beginning of winter 1944 until February 1945, and the accused "never beat a prisoner brutally in my presence". In a few instances where the accused had beaten inmates he did so "to protect life and health of the other prisoners". The accused suffered from a leg ailment and always walked with a cane. He was basically a good man (R 16; D-Ex 2).

The accused, in his extrajudicial sworn statement, stated that he never mistreated inmates. (R 13; P-Ex 10, p. 2).

Sufficiency of Evidence: The accused's plea of guilty and the evidence offered establish the fact that he participated in the Mauthausen Concentration Camp mass atrocity, as an assistant capo at subcamp Ebensee, for a considerable period of time between the dates alleged. In addition thereto, it was satisfactorily established that the accused personally mistreated and beat a number of inmates.

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.

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 Mauthausen 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 OOO-5 JAG-AGG, subject: "Trial of War Crimes Bands", 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 the nature and extent of his participation were such as to warrant the sentence imposed.

Plea of Guilty: The Court received prosecution evidence as part of "its prima facie case and to show that the plea is not an improvident one" (E 10-13; F-Exe 1-10). The Court then accepted the plea of guilty and found the accused guilty of the charge and particulars (E 14).

The plea of guilty by the accused was properly accepted by the Court (E-9, 14).

Section 5-328, Title 5, "Legal and Panel Administration", of "Military Government Regulations", published by Office of Military Government for Germany (US), Change 1, 27 March 1947, provides in part as follows:

"the procedure in Intermediate and General MG Courts shall be the same as that provided herein for Summary MG Courts except that: * * *

"c. A plea of guilty to an offense punishable by death

may be accepted provided the court is satisfied from the nature of the case that the punishment of death would be clearly excessive and that a lesser punishment which it is within its power to impose would suffice."

Section 5-325. a. Title 5, supra. provides in part, with respect to the procedure in Summary MG Courts, as follows:

"Upon a plea of guilty of all offenses charged, a Summary Court will hear such statements for the prosecution and the defense and such evidence as it requires to enable it to determine the sentence to be imposed. * * *"

Mental Capacity of the Accused: Defense counsel offered Defense's Exhibit D-Ex 1, a psychiatrist's report, as evidence in mitigation (R 16). The defense did not contend that the accused was insane at the time of the offense or at the time of the trial. The view was expressed in the report, made about three weeks before the trial, that the accused was sane. That the Court concluded that the accused was sane at the time of the offense and at the time of the trial, is inherent in its proceeding with the case and sentencing the accused. There is nothing to indicate that the Court improperly evaluated the evidence. It correctly exercised its judicial power and there is no requirement in the applicable procedure requiring a special finding as to sanity (United States v. Wegmann, 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.

ABRAHAM PASSMAN
1st Lt AC
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