

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

19 February 1948

UNITED STATES)

v.)

Case No. 000-50-5-49

Paul WOLFRAM)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 15-16 October 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Paul WOLFRAM, a German national or person 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, 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.

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

Particulars: In that Paul WOLFRAM, a German national, did, at or in the vicinity of Gusen, Austria, in or about October 1941, wrongfully encourage, aid, abet and participate in the killing of two unknown non-German nationals, inmates of Gusen I Concentration Camp, who were then in the custody of the then German Reich.

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

Particulars: In that Paul WOLFRAM, a German national, did, at or in the vicinity of Gusen, Austria, in or about October 1941, wrongfully encourage, aid, abet and participate in the

killing of an unknown non-German national, an inmate of
Gusen I Concentration Camp, who was then in the custody
of the then German Reich.

III. SUMMARY OF EVIDENCE: The accused was a first lieutenant of the SS
and was in charge of the stone quarry at Gusen I, a subcamp of Mauthausen
Concentration Camp, from 4 December 1940 to 2 May 1945.

The offenses alleged under Charges I, II and III and the particulars
thereunder will hereinafter be referred to as the "common design" and
incidents Nos. 2 and 3, respectively.

Common Design. As manager of the stone quarry in subcamp Gusen I,
the accused participated in execution of the Mauthausen Concentration
Camp mass atrocity. Prosecution's Exhibit P-Ex 6 is a certified copy of
the charge, particulars, findings and sentences in the parent Mauthausen
Concentration Camp Case (United States v. Altfuldich, et al., 000-50-5,
opinion DJAWD, 25 February 1947, hereinafter referred to as the "Parent
Case", see Section V, post).

Incident No. 2. In the fall of 1941, at subcamp Gusen I, the accused
hit a Spanish inmate, who did not work fast enough, with his fist and then
kicked him, causing the victim to fall one meter on to a Polish inmate
working below. Both inmates then fell about 15 meters on to the sharp
stones at the bottom of the stone quarry. Both victims were instantly
killed.

Incident No. 3. In the winter of 1941-1942, in subcamp Gusen I,
the accused kicked a Polish inmate from the top of the ledge of the stone
quarry, causing him to fall 30 to 50 meters. The victim died instantly.

IV. EVIDENCE AND RECOMMENDATIONS:

Paul WOLFRAM

Nationality:	German
Age:	47
Civilian Status:	Technical merchant
Party Status:	None
Military Status:	Waffen SS 1st Lieutenant
Plea:	NG Charge I; NG Charge II; NG Charge III

Findings: G Charge I; G Charge II;
G Charge III

Sentence: Life Imprisonment

Evidence for Prosecution:

Common Design. The accused was the general manager and representative of the operators of the stone quarry in subcamp Gusen I from 1940 to 1945. The stone quarry was owned and operated by the German Earth and Stone Works Company, which firm was owned and controlled by the SS (R 10, 20, 28, 39, 46, 48, 73, 76, 98, 104, 114). At first the accused was a civilian and wore civilian clothes. In 1944 the accused wore the uniform of an SS first lieutenant (R 11, 19, 31, 67, 69).

He controlled and directed all the work in the stone quarry (R 10, 11, 20, 29, 46, 50, 61, 66, 81, 99, 100). All inmates who worked in the stone quarry were dependent upon the accused for ^{their} clothes, food and work assignments (R 24, 25, 28, 31, 33, 50). He was responsible for maintaining discipline (R 36, 50). He had an office near the stone quarry (R 20), and was in the stone quarry every day (R 48, 69, 71, 76). The accused was the terror of the inmates and the capos (R 66). Everyone was afraid of him and started to work as fast as they could when he appeared (R 49, 67). He sent weak inmates back to camp to be exterminated (R 25, 47, 49). He gave instructions to the capos and SS men and held daily meetings with the capos. He exhorted the capos to get more work out of the inmates (R 57, 60, 61).

The work in the stone quarry was very arduous and many inmates died from exhaustion (R 29, 31, 44, 88, 89). False entries were made in the death books at subcamp Gusen I as to the causes of death of those inmates who were killed by beatings and shootings in the stone quarry and by being kicked down into the stone quarry (R 92-94). The accused reported inmates for punishment as a result of which they were beaten and hanged (R 25, 26, 33, 34, 58, 61, 62, 81, 99, 107, 111, 120, 121). He personally beat and killed inmates (R 11, 23, 40, 41, 58, 59, 83). At various times there were from 1500 to 2500 non-German inmates working under the accused in the stone quarry (R 11, 32, 63, 115, 116, 119).

Marciniak, a former inmate of subcamp Gusen I, testified that in 1943 on a stone quarry detail, the accused saw a Russian inmate doing poor quality stone cutting work. The accused then ordered the inmate to bend over and gave him 25 blows on the buttocks with a board. The inmate could not stand the blows and when he tried to avoid them, the accused beat him over the head. The victim was taken to the dispensary. A few days later the witness was told by other Russian inmates that the victim had died (R 16). Also in 1943 at the stone quarry, the accused took the numbers of 150 inmates who were too weak to work and caused them to be locked in an unfinished building for about a month. During this period they were given only one eighth of the normal ration. All but 15 of them died (R 16-19, 26-29). As the accused wrote down the numbers he said, "all the cripples have to die" (R 17, 29). A similar incident involving approximately 150 inmates occurred in 1943 with similar consequences (R 19, 17, 47, 52, 53, 56, 104).

Jaroszewicz, a former inmate of subcamp Gusen I, testified that in October or November 1943, while he was working on the sewer construction detail, from a distance of three or four meters he saw the accused hit a Polish inmate in the face with his fist causing him to fall to the ground. The accused then kicked the inmate for several minutes, stood on his throat for one or two minutes and strangled him to death (R 39-44). Immediately after the incident the accused left the scene (R 41). The dead body of the victim was carried away by the witness and a cape and placed on the concrete floor next to the stone mill (R 41). The victim was dead; he saw that the body was stiff and cold (R 44). At 1700 hours, inmates carried the dead body back to the victim's stone quarry detail (R 42).

Glowadski, a former inmate of subcamp Gusen I, testified that in 1941 the accused reported two of his Polish inmate friends to the camp administrator for allegedly being lazy and idle. On roll call square in the camp, the two Polish inmates were given 25 blows each. They died about 10 minutes after receiving the punishment. The witness saw the beatings and saw the dead bodies after they were taken off the scaffold

on which they were beaten (R 40, 35). The victims suffered a heart stroke according to the diagnosis after their death (R 48).

Glowadski further testified that in January 1945, in subcamp Gusen I, the accused, wearing the uniform of an SS first lieutenant, shot and killed three inmates one of which was a Russian prisoner of war. At the time the victims were outside of the tunnels, immediately after an air raid which lasted from 1100 to 1500 hours, in violation of an order which required inmates to remain in the tunnels during air raids and which specified that if found outside of the tunnels they would be treated as spies and shot (R 48, 49, 51). The witness observed the shooting from a distance of 15 meters. He helped carry the dead bodies away (R 49).

Urbanik, a former inmate of subcamp Gusen I, testified that before noon on a day in March or April 1944, in the stone quarry, the accused beat three French Jews on the witness' detail with a pickaxe handle until they were bloody. They had diarrhea and could not work and were first beaten by a capo with a cable. In the afternoon the accused took these three inmates to the top of the quarry excavation and kicked them off into the quarry pit (R 58, 59, 62, 63). The witness actually saw the accused kick the last of the three off the ledge. They fell about 50 meters on to stones and were killed instantly. Inmates carried the dead bodies away. The witness observed this incident as he was pushing cars out of the stone quarry (R 59, 62, 63).

Larwa, a former inmate of subcamp Gusen I, testified that in September or October 1942, in the stone quarry, the accused reported a weak Yugoslav inmate, who was working on the witness' detail, to the senior capo for punishment. The senior capo, in the presence of the accused, gave the Yugoslav 25 blows with the handle of a shovel. As the result of the beating the Yugoslav inmate fell to the ground and showed few signs of life. The accused approached the Yugoslav and said, "You lazy dog, you are still alive?". The accused then stood on the neck of the inmate for several minutes until he died. Thereafter the accused kicked the body several times. Later the witness and others carried the dead body to the camp (R 67, 68). The incident took place in the shack of the chief

cape about 180 to 230 meters from the stone quarry (R 71) and was seen by the witness from a distance of two and one half to three meters. The witness, a Polish national, was also beaten in the same shack by the senior capo because he worked too slowly (R 68).

Incident No. 2. Witness Marciniak testified that in the fall of 1941 he was working in the stone quarry loading earth into small gauge railroad cars, when he saw the accused observing the progress of the work. The accused came down to the level on which the witness and a Spanish inmate were working. The accused remarked that the two of them were working too slowly and hit the Spanish inmate several times with his fist and kicked him. The victim fell one meter down to the next level, landing on a Polish inmate working there. Both inmates then fell about 10 meters on to the sharp stones at the bottom. They both died almost immediately. Their dead bodies were brought back to the block (R 12-14, 21, 22).

Incident No. 3. Kowalski testified that in the winter of 1941-1942, at the top of the ledge of the stone quarry in subcamp Gusen I, he saw the accused beat a Polish inmate and kick him off the ledge causing him to fall 30 to 50 meters on to stones in the bottom. The victim landed seven to eight meters from where the witness was standing. The victim was dead immediately. The dead body was carried to a shack and placed with some other dead bodies (R 34, 35, 37, 38).

Evidence for Defense:

Common Design. Wierzechowski, a former inmate of subcamp Gusen I, testified that he worked in the stone quarry from 6 June 1940 to 1942 and in the camp hospital from 1942 to 1945. The witness never saw or heard of any mistreatments of inmates by the accused (R 73, 74).

Lutterbach, a former inmate of subcamp Gusen I, testified that he worked as a typist in the stone quarry office from approximately 1941 to 1942. He saw accused nearly every day and never saw him mistreat inmates. The accused was in charge of the entire management of the stone quarry, but was a civilian and as such had no authority to take any disciplinary action against or mistreat inmates. The witness admitted that the accused had authority to report inmates in case of irregularities. He also admitted

that the accused made such punishment reports. The accused did not have a bad reputation among the inmates (R 70, 73, 81).

Bogdanski, a former inmate of subcamp Gusen I, never saw the accused mistreat inmates during the period April 1944 to 1945. The witness admitted that he heard that the accused was supposed to have beaten a Russian in the stone quarry. The witness never worked in the stone quarry (R 82-85).

Cpresnigg, a former inmate of subcamp Gusen I, testified that he worked in the Pathological Institute from July 1941 to November 1942 when he was transferred to Berlin. He never saw or heard of the accused mistreating any inmates. The accused's reputation during that time was good. The witness frequently visited the stone quarry and he saw the accused inspecting the work. The witness was required to register the death of inmates who died in Gusen I, including those who died in the quarry. During some weeks four to six inmates were beaten to death or shot and killed in the stone quarry, but it never came to the knowledge of witness that the accused participated in these killings (R 86-89). The witness was not permitted to put the true cause of death in the death book in instances where inmates working at the stone quarry were shot and killed, kicked off the ledge into the quarry, or beaten to death (R 92-94).

Kunz, a former inmate at subcamp Gusen I, testified that he was in charge of the accused's office from September 1940 to 5 May 1945, with the exception of one year, 1943 to 1944. During the year 1943 to 1944 he worked as a stone cutter in the quarry. The accused was a civilian until a few months prior to the liberation when, for technical reasons, he was given the honorary rank and uniform of an SS first lieutenant. The accused was an employee of and manager of the company which owned the stone quarry. The company was founded by the SS and its purpose was to utilize inmate labor in concentration camps (R 96-98). The accused made punishment reports on inmates in instances where a reason for punishment existed. The SS and not the accused were responsible for the discipline of the inmates working in the stone quarry (R 99, 100). The witness never saw

or heard of accused mistreating prisoners. Cruelties were something completely alien to the accused. The accused always wanted to show the SS that he could carry on the work with inmates only and without help of civilian workers (R 100, 101).

The accused testified that he never beat or killed an inmate (R 107, 112). During the six years he was manager of the stone quarry he made complaints about mistreatment of inmates by capos and detail leaders. He could do nothing to stop such mistreatments other than make such protests (R 108). The accused further testified regarding his alleged participation in the common design that it was not true as Marciniak testified that he gave a Russian 25 blows and then hit him on the head (R 108, 109). He never said all cripples had to die (R 109). He never beat three French Jews. Witness Kowalski was incorrect because there was no cliff 50 to 60 meters high. There was no cliff, but only a gradual incline of some 40 degrees (R 110). In 1943 he never beat, or strangled a Polish inmate to death as testified to by witness Jaroszewicz. Civilians were prohibited from touching or beating inmates and, if he had done so, he would have been reported by the detail leader (R 111). In January 1945 he never shot and killed, with a pistol, three inmates as testified to by Glowadski. At that time he did not have any uniform or a pistol. He got his uniform on 16 February 1945 (R 112). In 1942 he did not kill a Yugoslav by beating and strangulation as testified to by Larwa (R 112). The accused admitted that he made punishment reports against inmates for which they were punished, but he did not know whether any such reports were followed by the inmate reported upon being beaten to death (R 111, 120, 121). He was compelled to submit reports as to stealing and other serious incidents (R 111, 112). He denied that he ever gave instructions to capos or detail leaders to beat inmates. He could not give them such orders (R 109, 110). Following 1 May 1942 the camp commander was also works director (R 109). He distinguished between his detail and other details working in the quarry (R 118). No accidents or killings ever occurred in the procurement detail that worked directly under the accused. However, they did occur in parts of the operation not under his jurisdiction (R 119, 120).

He was not allowed to go into the camp (R 125). A high rate of production was required, but he did not try to get every possible amount of work out of the inmates (R 116, 124). The accused was in the SS following 1942. Following 1941 he knew that the SS owned the stone works, but was ordered to keep^{it} secret (R 115, 121). He could not say that the inmates working in the stone quarry had sufficient food. The food was poor (R 124). The inmates in the stone quarry could accomplish considerable work without danger to their health, if they received the proper ration (R 125). The accused observed that the physical condition of inmates deteriorated and attempted to take remedial steps. He did not see inmates beaten to death, but he did see mistreatments (R 116). The accused, in April 1945, at the risk of death and by various arguments and ruses, failed to carry out his assignment of blowing up the entrance of the tunnels at subcamp Gusen I, which would have caused the death of inmates by suffocation. The mass extermination was to be done pursuant to orders from Himmler. The accused escaped from subcamp Gusen I on about 2 May 1945 (R 123; D-Ex 1).

Incident No. 2. In his testimony, the accused denied the killing alleged in Charge II (R 106). The wall was not 30 to 50 meters in height, but was precisely 18 meters. He worked below and not on top. The charge was inconceivable (R 113).

Incident No. 3. The accused also denied the killing alleged in Charge III (R 109). There was a wall approximately one meter 80 centimeters in height on both sides of the small gauge track. Inasmuch as witness Kowalski was only one meter 85 centimeters in height, he could not have looked over the wall and seen what the accused was doing on the other side (R 109, 110). There was no steep cliff of some 50 to 60 meters in height but only a gradual incline of some 40 degrees (R 110).

Sufficiency of Evidence: As to Charge I the Court was warranted from the nature and extent of his participation in the execution of the common design in its findings of guilty. Also, the guilt of the accused under Charges II and III is satisfactorily established. The sentence is not excessive.

Petitions: A Petition for Review was filed by Major Homer Kasser-
man, defense counsel, 31 October 1947. No Petitions for Clemency were
filed.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: A question not raised during the course of the trial
is whether the Court had jurisdiction of the offenses alleged in Charges
II and III which occurred prior to the entry of the United States into
the war. A validly constituted court of an independent state derives
its power from the state. A state is independent of all other states in
the exercise of its judicial power, except where restricted by the law of
nations (S.S. Lotus, France v. Turkey, 2 Hudson World Court Reports 23).
Concerning punishment for a crime of the type involved in the instant
case, it has been stated that the sovereign power of a state extends "to
the punishment of piracy and other offenses against the common law of
nations, by whomsoever and wheresoever committed" (Wheaton's "Inter-
national Law", Sixth Edition, Volume I, page 269). Recognition of this
sovereign power is contained in the provision of the Constitution of the
United States which confers upon Congress power "to define and punish
offenses against the law of nations," (Winthrop, "Military Laws and Pre-
cedents", Second Edition, Reprint 1920, page 831).

Any violation of the law of nations encroaches upon and injures the
interests of all sovereign states. Whether the power to punish for such
crimes will be exercised in a particular case is a matter resting within
the discretion of a state. However, it is axiomatic that a state, adher-
ing to the law of war which forms a part of the law of nations, is inter-
ested in the preservation and the enforcement thereof. This is true,
irrespective of when or where the crime was committed, the belligerency
or non-belligerency status of the punishing power, or the nationality of
the victims. ("Universality of Jurisdiction Over War Crimes", by Cowles,
California Law Review, Volume XXXIII, June 1945, No. 2, pages 177-218;
"Law Reports of Trials of War Criminals", by United Nations War Crimes
Commission, 1947, hereinafter referred to as "Law Reports" Volume I,

pages 41, 42, 43, 103, United States v. Klein, et al., Hadamar Murder Factory Case, opinion DJAWC, February 1946; United States v. Weiss, et al., Dachau Concentration Camp Case, opinion DJAWC, March 1946; United States v. Becker, et al., Flossenbürg Concentration Camp Case, opinion DJAWC, May 1947; United States v. Brust, opinion DJAWC, September 1947; and United States v. Otto, opinion DJAWC, July 1947.) A British court sitting in Singapore tried Tomono Shimio of the Japanese army and sentenced him to death by hanging for illegally killing American prisoners of war at Saigon, French Indo-China (Law Reports, Volume II, page 128).

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

Time for Preparation of Defense: The defense in its Petition for Review asserts that it did not have sufficient time to prepare its case. However, the record of trial shows that the defense counsel was appointed 18 days before the trial; that seven days intervened between service of the charges upon the accused and the trial; that the defense counsel when asked at the outset of the trial as to whether the defense was ready for trial responded, "Yes, sir, we are"; that following the remark the President of the Court stated, "The court will always entertain a proper application for an adjournment" (R 6); and that neither the defense counsel nor the accused sought a continuance during the course of the trial. The defense in its Petition for Review does not indicate that it knew during the trial, or at the time of the submission of the Petition for Review, of a witness not present at the trial who would have been helpful to the accused. Consequently, it does not appear that the defense was deprived of adequate time to prepare its case nor that an injustice resulted to the accused in this connection.

Interviewing Witnesses: Without a prefatory remark or reference to the subject by the defense, prosecution or the court, there appears in the record of trial, immediately preceding the close of the case for the defense, the following (R 126):

"DEFENSE COUNSEL: The prosecution and the defense counsel and the accused have stipulated that the record may show that there is a rule existing herein in Dachau, issued by the Chief

of Counsel Section, that the defendant is not permitted to talk or speak with any of his own witnesses.

"PROSECUTION: That is correct.

"PRESIDENT: The court is also aware of that rule.

"DEFENSE COUNSEL: The defense rests".

During the course of the interrogation of the accused the defense counsel asked the accused whether he had been permitted to talk to any of his witnesses. In response the accused stated that his defense counsel had called for him the day before because he, the accused, wanted to talk to witness Kunz, but "a guard prohibited this and I was immediately sent away again" (R 112). The record does not disclose whether the defense counsel was supposed to be or actually was present to accompany the accused in the proposed interview.

The operation of the War Crimes Enclosure in which the trial was held and in which the accused was being detained was the function of the Commanding General, First Military District, who assigned the immediate responsibility therefor to the Munich Military Post. It is obvious that security to prevent escapes, plans therefor, delivery of weapons or instruments for use therein or in self-destruction, etc., was an ever present problem for those responsible for the detention and guarding of the war criminal suspects.

In its Petition for Review the defense states concerning this matter that, if the accused "should elect to conduct his own defense he would not even be allowed to interview his own witnesses." There is no indication that had the accused elected to conduct his own defense that appropriate arrangements would not have been made for him to interview his witnesses. In the instant case the accused did not so elect. He was represented by an American defense counsel and was also specially asked by the Court whether he desired counsel in addition to the regularly appointed defense counsel to which a negative answer was given. There is no showing that the accused was deprived of an opportunity to interview witnesses through his defense counsel or in his presence. Moreover, there is no showing that the defense of the case was in fact impaired by requiring the accused, who was represented by counsel, to interview witnesses through his counsel. Under these circumstances it does not appear that any injustice resulted.

to the accused in this connection.

Application of Parent Case to Charge I: 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 JAW-AGO, subject: "Trial of War Crimes Cases", 14 October 1948, 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.

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, JAGC
Deputy Judge Advocate
for War Crimes