

19 November 1947

UNITED STATES

v.

Otto PAULY, et al.

Case No. 11-511

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 24-26 September 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Otto PAULY and Hans SCHNEIDER, German nationals, did, at or near STATTMATTEN, Alsace/Lorraine, France, on or about 21 January 1945, wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, who was then and there an unarmed and surrendered prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On or about 19 January 1945, a badly wounded American soldier, now believed to be Leonard Lapides, was captured by members of the German army in or near the village of Statmmatten in Alsace-Lorraine, France. He was given medical treatment by a German army battalion physician and taken to a house in Statmmatten occupied by civilians. Two days later the wounded American soldier was taken to accused PAULY who was a regimental physician. The wounded American soldier was turned over by accused PAULY to accused SCHNEIDER with instructions to shoot him. accused SCHNEIDER was a medical master sergeant and a clerk for accused PAULY. accused SCHNEIDER took the wounded American soldier to the outskirts of the village and there shot and killed him.

#### IV. EVIDENCE AND RECOMMENDATIONS:

##### 1. Otto PAULY

Nationality:	German
Age:	30
Civilian Status:	Physician
Party Status:	None
Military Status:	Army Regimental Medical Officer; Captain
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused on 21 January 1945 was the physician for the German 21st Parachute Regiment (R 13; P-Ex 6A). On or about 21 January 1945 he was informed by one of his battalion physicians, Captain Lohwasser, that a badly wounded captured American soldier was lying in civilian quarters in the village of Stattmatten, Alsace-Lorraine, France, where both the battalion and regimental headquarters were located. Captain Lohwasser told the accused he could not move the soldier because he did not have transportation and his organization was about to engage in combat again (R 32; P-Ex 11A). It was agreed that the soldier would be delivered to the accused which was done (R 32; P-Ex 11A, p. 2). Accused medical Master Sergeant SCHNEIDER was a clerk for the accused. According to accused SCHNEIDER's extrajudicial sworn statement, the accused ordered accused SCHNEIDER to take the soldier away and shoot him. Accused SCHNEIDER took the soldier who was on a moveable stretcher to the outskirts of the village of Stattmatten and shot and killed him (R 13; P-Ex 6A). Accused SCHNEIDER then returned to the accused and reported what he had done (R 13, 32; P-Exs 6A, 11A). Accused SCHNEIDER subsequently went back and buried the soldier (R 13; P-Ex 6A). At a later date this same body was reburied by three men

living in the villages (R 27; P-Exs 7a, 8a).

Evidence for Defense: The accused testified that he received the wounded American soldier from Captain Lohwasser during the afternoon of 21 January 1945 (R 41, 45), and that during his conversation with accused SCHNEIDER one of them suggested that the American soldier be shot (R 44). The accused claimed that he did not give an order to shoot the soldier, but that he told accused SCHNEIDER that if he did, it would be his own responsibility (R 47). The accused further testified that the American soldiers were killing German prisoners (R 40); that he did not have enough transportation to send the prisoner to the rear and if he had the prisoner would have been killed by the Gestapo as the prisoner was Jewish (R 43); and that he could have ordered Captain Lohwasser to take the prisoner away or could have ordered the civilians to keep him (R 54, 55).

Sufficiency of Evidence: There is credible evidence indicating that the accused issued an order for the killing of the prisoner. In any event, the accused's own testimony sufficiently establishes his encouragement of, and participation in, the illegal killing. He admitted that he had custody of the prisoner; that he discussed the prisoner's fate with one inferior to him in rank; and that he released the prisoner to his inferior knowing or expecting the prisoner to be shot. From these circumstances the accused's consent to the shooting might well be inferred.

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. Hans SCHNEIDER

Nationality:	German
Age:	29
Civilian Status:	Police Official
Party Status:	Deputy of Nazi Party since 1938
Military Status:	Master Sergeant, 21st Parachute Regiment
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: On 21 January 1945 the accused was informed by accused PAULY that a badly wounded American soldier was held by the battalion physician of the 1st battalion (R 13; P-Ex 6A). This soldier was delivered to accused PAULY, the regimental physician (R 13, 30; P-Exs 6A, 11A). Accused PAULY stated in his extrajudicial sworn statement that he and the accused, after talking it over, decided that the soldier should be killed. The accused willingly agreed to do it (R 32; P-Ex 11A). The accused took the soldier on a moveable stretcher to the edge of the village of Stattmatten, Alsace-Lorraine, France, and there shot and killed him (R 13, 31; P-Exs 6A, 10). He then notified accused PAULY of what he had done (R 13, 32; P-Exs 6A, 11A). The accused later returned and buried the soldier (R 13; P-Ex 6A).

Evidence for Defense: The accused testified that accused PAULY told him that he "should take the soldier away and shoot him." The accused said that he would do this (R 95). The accused further testified, on cross-examination, that he did not kill the soldier voluntarily but considered that he acted under orders (R 100); and that he did not act under immediate compulsion at the time of the shooting (R 106). On redirect

Air Corps officer that, if a soldier failed to carry out an order, his family would be killed (R 108). The accused was alone when he shot the soldier (R 96).

Sufficiency of Evidence: The accused admitted that he killed the wounded American soldier while he was lying on a stretcher and that no one was present at the time of the killing. The Court might well have concluded from the evidence that accused PAULY did not give an order to the accused to shoot the prisoner, but that the shooting resulted from an agreement between the two of them. In any event, the evidence falls short of proving that the accused acted under immediate compulsion to any degree and fails to meet the burden of proof required by the 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 defense counsel, Major Olaf J. Tolnas, 27 September 1947. Petitions for Clemency were filed by E. Russ, 30 September 1947; Franzeska Diehl, undated; Johann Schneider and Klara Schneider, parents of the accused, undated; Johann Brandmayer, Community Priest, 25 October 1947; Franz Zeitler, 26 October 1947; Margarethe Wandl, 29 October 1947; Dr. A. Roedel, 25 October 1947; and Dr. E. Schmidhuber, 23 October 1947.

Recommendations: That the findings and sentence be approved.

#### V. QUESTIONS OF LAW:

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

Superior Orders: Accused SCHNEIDER sought to justify his actions 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 612; 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; United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, February 1946; and French Republic v. Wagner, et al., Court of Appeals, 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; FE 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.)

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 sentences be approved.

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

FLOYD M. LUNDBERG  
Major JAG  
Post Trial Branch

Having examined the record of trial, I concur, this 28  
day of JANUARY 1948.

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

NOTE: Hans SCHNEIDER, after approval of his sentence,  
was executed at W.C. Prison No. 1, on 14 January 1948

JM