

13 January 1948

UNITED STATES )

v. )

Philipp KLEIN )

Case No. 000-Nordhausen-5

REVIEW AND RECOMMENDATIONS

I. TRIAL DATE: The accused was tried at Dachau, Germany, 1 December 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Philipp KLEIN, a German national, did, at or in the vicinity of Nordhausen, Germany, in or about January 1945, wrongfully encourage, aid, abet and participate in the killing of an unknown Polish national, an inmate of Nordhausen Concentration Camp, who was then in the custody of the then German Reich.

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

Particulars: In that Philipp KLEIN, a German national, did, at or in the vicinity of Nordhausen, Germany, in or about January 1945, wrongfully encourage, aid, abet and participate in committing an assault upon an unknown French national and an unknown Italian national, inmates of Nordhausen 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 Philipp KLEIN, a German national, did, at or in the vicinity of Nordhausen, Germany, in or about February 1945, wrongfully encourage, aid, abet and participate in committing an assault upon a Polish national, believed to be Tadeusz Garczyuski, a non-German national, believed to be Josef Zalinski and an unknown Russian national, inmates of Nordhausen Concentration Camp, who were then in the custody of the then German Reich.

At the outset of the trial the prosecution moved to dismiss Charge I. The defense indicated that it had no objection. The Court granted the motion (R 4).

At the beginning of the trial the prosecution moved to amend Charge II by inserting in lieu of the words, "an unknown French national and an unknown Italian national", the words, "a non-German". The defense indicated its assent and the Court granted the motion (R 4). Charge III was

dismissed during the trial at the suggestion of the prosecution (R 11).

III. SUMMARY OF EVIDENCE: The accused, an SS sergeant, severely beat a non-German inmate of the Nordhausen Concentration Camp with a piece of wood in January 1945. The inmate's injuries were so serious that he required medical care and hospitalization. The accused entered a plea of guilty to Charge II, as amended.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Philipp KLEIN

Nationality:	German
Age:	57
Civilian Status:	Finance Official
Party Status:	Nazi Party since 1933
Military Status:	SS Sergeant
Pleas:	G Charge II; NG Charge III
Findings:	G Charge II
Sentence:	4 years, commencing 18 June 1945

Evidence for Prosecution: The accused entered a plea of guilty to Charge II and particulars as amended (R 6, 11, 12).

Alfred Kurzke testified that he was an SS medical second lieutenant in the Nordhausen Concentration Camp and knew the accused while he was there (R 7). In January 1945, he was informed by his chief medic, a capo in his dispensary, that an injured inmate had been brought to the dispensary (R 8). Kurzke examined the injured inmate and found that he had a hemorrhage and a broken hernia. The inmate complained of pain. He ordered that the inmate be sent to the surgical department (R 9). The inmate told Kurzke that an SS sergeant gave him a beating inside the tunnel with a piece of wood. By investigation Kurzke ascertained that the inmate received the beating from the accused (R 8). Kurzke reprimanded the accused for this (R 9). He later talked to surgeon Klebanowsky who told him that the injured inmate was alive but not in a very good condition (R 9). After Kurzke had been excused as a witness the prosecution and defense stipulated that, if recalled, he would testify that the injured inmate was non-German and was

either a Polish or Czech national (R 12).

Evidence for Defense: The accused after being informed of his rights as a witness, stated that he did not desire to testify (R 13). No testimony was introduced by the defense.

Sufficiency of Evidence: The accused entered a plea of guilty which was accepted by the Court. In addition, evidence was introduced supporting the charge.

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.

Plea of Guilty: The plea of guilty by the accused was properly accepted by the Court (R 14).

Section 501, "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended, provides that the Court may impose a sentence on a plea of guilty without further proof. Similarly, Paragraph 88 (a), TM 27-255, "Military Justice Procedures", provides that an accused may be convicted on the basis of a plea of guilty without any evidence being presented.

Section 5-328, Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947, hereinafter referred to as "Title 5", 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: \*\*\*

"e. 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 Military Government 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. \*\*\*"

The Court complied with the above prescribed procedure in accepting the plea of guilty.

Amendment of Charges:

Section 5-330, Title 5, provides in part as follows:

"An MG Court may amend a charge at any time before finding, provided that an adjournment is granted if necessary, and that no injustice is thereby done to the accused."

A similar provision is contained in Section 501, page 409, of the "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended. The amendments to the charges (R 4) and their acceptance resulted in no injustice to the accused. Counsel for the defense was aware of the proposed amendments prior to trial and informed the Court that there was no objection to the amended charges (R 4).

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.

FLOYD M. LUNDBERG  
Major JAGD  
Post Trial Branch

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

C. W. PHIFER  
Lieutenant Colonel, USAF  
Acting Deputy Judge Advocate