

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

9 June 1947

UNITED STATES )

vs )

Ernst Gotthilf EISENHARDT, )  
Josef NOELL, Friedrich )  
KAEGER, Wilhelm KUMKAR, )  
Hans SPIEGLER, Philipp )  
THEES, Josef VALERIEN )

Case No. 000-50-2-21

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried jointly at Dachau, Germany  
Date: 21 November 1946  
Intermediate Military Government Court

<u>ACCUSED</u>	<u>DATA</u>	<u>SENTENCE</u>
EISENHARDT, Ernst Gotthilf	Age 48 German national SS guard Rank: Pfc.	2 years confinement from 2 May 1945
NOELL, Josef	Age 44 German national SS guard Rank: Corporal	Acquittal
KAEGER, Friedrich	Age 48 German national SS guard Rank: Corporal	2 years confinement from 5 June 1945
KUMKAR, Wilhelm	Age 28 German national SS guard Rank: NCO	2 years confinement from 14 July 1945
SPIEGLER, Hans	Age 23 German national SS guard Rank: Unknown	2 years confinement from 3 May 1945
THEES, Philipp	Age 39 Roumanian national SS guard Rank: Corporal	2 years confinement from 2 May 1945
VALERIEN, Josef	Age 51 German national Guard Rank: Sergeant	21 months confine- ment from 13 May 1945



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

PARTICULARS: In that Ernst Gotthilf EISENHARDT, Josef HOELL, Friedrich KAESER, Wilhelm KUMKAR, Hans SPIEGLER, Philipp THEES, Josef VALERIEN, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding 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, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, 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 then German Reich in exercise of belligerent control.

	<u>Pleas</u>	<u>Findings</u>
EISENHARDT	NG	G
HOELL	NG	NG
KAESER	NG	G
KUMKAR	NG	G
SPIEGLER	NG	G
THEES	NG	G
VALERIEN	NG	G

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

PARTICULARS: In that Ernst Gotthilf EISENHARDT, Josef HOELL, Friedrich KAESER, Wilhelm KUMKAR, Hans SPIEGLER, Philipp THEES, Josef VALERIEN, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at, or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully 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, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

	<u>Pleas</u>	<u>Findings</u>
EISENHARDT	NG	NG
HOELL	NG	NG
KAESER	NG	NG
KUMKAR	NG	NG
SPIEGLER	NG	NG
THEES	NG	G
VALERIEN	NG	NG



2. RECOMMENDATIONS: That the findings and sentences be approved.

3. EVIDENCE:

For the Prosecution. The prosecution's case was based on extrajudicial sworn or unsworn testimony as hereinafter indicated, and the sworn testimony of one witness (R 45 - 51). Exhibit P-1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp Case (U.S. vs Weiss et al., 000-50-2, March 1946, hereinafter referred to as the "Parent Case"; R 7). Exhibits P-2 to 11 inclusive, are extrajudicial sworn statements of each of the accused with the exception of Exhibits P-2 and 7 which are unsworn (R 7 - 16).

For the Defense. The defense's case was based on the sworn testimony of one witness on behalf of the accused VALERIEN (R 17 - 25); the sworn testimony of one witness on behalf of accused SPIEGLER (R 25 - 29); the sworn testimony of one witness on behalf of accused HOELL (R 30 - 44); and the extrajudicial sworn and/or unsworn statements of all the accused introduced by the prosecution (P-Ex 2 - 11)

Accused EISENHARDT joined the Nazi Party in 1933. He was drafted into the Wehrmacht in 1943 and transferred to the Waffen SS on 14 July 1944. On 29 July 1944 he was transferred to Landsberg Camp No. 1 (R 652 - 666, Parent Case) and remained there until 22 or 24 April 1945. There were about 2000 prisoners there, mostly from Lithuania. His duty was to get the prisoners at the gate and accompany them to the working area, then stand in the line of posts with other guards. The prisoners were badly fed. He was sent with the prisoner march from outcamp Landsberg to Camp Dachau on 22 or 24 April 1945, marched for two days and stayed for three days in Camp Dachau. There were 30 guards on the prisoner march (P-Ex 2, R 7). Prosecution witness Frank testified that treatment of prisoners was bad at all Landsberg camps. They were badly clothed and fed. An individual named Tempel (apparently Wilhelm Tempel sentenced to hang in the Parent Case) was hanged for his cruelties and atrocities at Camp No. 1 (R 46).



Prisoners at Camp No. 1 were civilian nationals of the German Reich and other countries (R 51).

In defense, EISENHARDT said that he did not ask for the transfer to the Waffen SS. He never saw prisoners punished or mistreated, nor did he hear that they were. During the two-day prisoner march, he never saw prisoners mistreated, and so far as he knew, all arrived well in Dachau. During the three days he spent at Dachau he did not see any prisoners, as he stayed outside in the guards' camp (P-Ex 2, R 7). Prosecution witness Frank testified that there was no evidence indicating there were prisoners of war at Kaufering No. 1 (R 51) and that outcamp Kaufering No. 1 was the same as Landsberg No. 1 (R 45).

Accused KAESER was sent to Dachau 25 July 1944 and on 26 July 1944 went to Kaufering, Landsberg, Camp No. 1. His first detail was detail "Fix" for about three months. He then went to detail Moll and detail Electro OBL where he had eight Lithuanian male and female prisoners. In November 1944 he was transferred to the SS. He stayed until 26 April 1945. On 26 April 1945 he left for Dachau with the prisoners (P-Ex 4, R 9). He knew of one accident with detail Moll and testified that every day some prisoners fell ill. He was with detail Moll four times, fourteen days each time (P-Ex 5, R 10).

In defense, KAESER stated that prisoners were already sufficiently punished and needed no beating in addition. He never beat or shot prisoners nor heard that any were beaten. The prisoners had a good appearance, and he was friendly with them. No one was sick or died. The food was better than he is getting now. He was transferred into the SS against his will. On one occasion he gave bread to a woman, apparently a prisoner. He stayed with the prisoner march to Dachau for one day and left 27 April 1945. There was no incident and no shooting (P-Ex 4, R 9). On the detail Moll the guards' duty was to lead the prisoners to and from work. During work hours the guards stood near, or sat in, the guard house. No offense occurred at the detail "Fix". Guards had no duty inside the camp (P-Ex 5, R 10).



Accused KUMKAR was transferred by the Luftwaffe to duty in Augsburg. From there he was sent for several days during the week for guard duty at the Messerschmitt works and later was transferred to the Air Force Guard Platoon at Augsburg-Pferrsee. He was taken over by the SS on 1 September 1944 and stood guard daily in the plant as a member of the 17th Company of the Death Head Stuba Dachau. He stayed with this guard company until 15 February 1945 (P-Ex 6, R 11). From February 1944 until February 1945 he was in outcamp Augsburg (R 530, Parent Case) as a guard and stood guard in plants 4 az, 4 a and 1 d (P-Ex 8, R 13).

In defense, KUMKAR stated it was impossible for him to get transferred back to his old unit. The food for the prisoners was sufficient. The plant gave an additional food ration. Each month an order was read that arbitrary punishment of prisoners by guards and detail leaders was strictly forbidden. In case of bigger violations, written reports were to be made by detail leaders. He never saw nor heard that prisoners were physically mistreated, nor did he know of any reports against prisoners. He left for the front on 15 February 1945 (P-Ex 6, R 11). While he was on guard, he had no men under him. He had no trouble with prisoners and frequently spoke to them. He did not belong to the Nazi Party (P-Ex 7, R 12). He was not aware that guards, commando leaders, civilian workers or capes mistreated prisoners. After work the prisoners walked back into camp on their own strength. No one was carried (P-Ex 8, R 13). Prosecution witness Frank testified that in general prisoners were not badly handled at outcamp Augsburg, although several were hanged as a result of reports, especially at the Messerschmitt works (R 47).

Accused SPIEGLER served six to eight weeks as a guard at the Messerschmitt factory at outcamp Lauingen while a member of the Luftwaffe and then was transferred to the Waffen SS and remained there for six more weeks. At the end of October 1944 he was sent to outcamp Augsburg and served as a guard of prisoners until March 1945.



There were Russians, Germans, Poles and other nationalities there. Prisoners slept at the factory. Some of the prisoners had very thin faces. It was his duty to report prisoners for violations of camp rules. Altogether he spent six months as a concentration camp guard. During the month of August 1944 he was a guard at the Lauingen Masserschmitt factory (F-Ex 9, R 14).

In defense, SPIEGLER stated he did not see prisoners beaten at outcamp Augsburg. They looked well. He did not go to the front because he had curvature of the spine. He was transferred to the SS because the Air Corps was being reduced. He did not go into the factory but stood guard outside. Prisoners were allowed to walk in an outer enclosure on Sundays for fresh air. He did not know if any prisoners were punished. It was against the rules for him to speak to them. He never heard of any reports for violations of rules and did not know what would happen in case of a report. He did not know any capos and never talked to them. It was not known to him what the prisoners ate nor how many of them died. He never read of any deaths. He never saw or heard of any prisoners being beaten. Prisoners worked from 7 a.m. to 12 noon and from 1 p.m. to 6 p.m. When he left outcamp Augsburg he went to a military training camp (F-Ex 9, R 14). Defense witness Hoffmann, a former guard at outcamps Lauingen and Augsburg, testified that he served with accused SPIEGLER. SPIEGLER never mistreated any prisoners or ordered them mistreated (R 26). There were Russian, French, Polish and Czech prisoners there. They were not prisoners of war. Accused SPIEGLER never reported prisoners (R 27). Prisoners were not punished at outcamp Lauingen. Their clothing was sufficient. There were no prisoners of war at outcamps Lauingen or Augsburg (R 28). While the witness was at outcamp Lauingen, from 1 September 1944 to 25 November 1944, no prisoners were beaten there or while he was at outcamp Augsburg from 25 November 1944 to 11 March 1945. He was in outcamp Augsburg-Pferrsee (R 29).

Accused THEES was drafted into the Waffen SS and sent to Dachau



as a guard on 28 July 1943. He remained there until April 1945 as a guard in the clothing shop and sat inside and watched prisoners. He worked only at night. From 230 to 280 people worked there. Prisoners worked from 5:30 p.m. to 5 a.m. The clothing shop was inside the camp. There were three departments, each with a capo. Some prisoners were thin, and some looked bad. There were all nationalities including Poles, Russians and Italians. There was an order to shoot if a prisoner attempted to escape and failed to stop after three warnings. He was promoted to corporal on 20 April 1945 (P-Ex 10, R 15).

In defense, THEES stated he was drafted into the SS and sent to Dachau. The capo in the clothing shop was good to the prisoners, and he never saw him slap one. Guards were not permitted to enter camp. He spoke to the prisoners and even went to get food for them with ration points contained in their parcels from home. The prisoners did not mention any beatings going on in the camp, and he himself had never heard of beatings nor of the crematorium. He did not know why the prisoners were there, and, although he often saw prisoners stealing at the factory he did nothing about it, as he was "a God-fearing man", sympathetic toward them and "liked them as much as he liked himself." He never heard the SS or capos use the words "Schweinhund" or "Stenbunker". He was only a corporal for five days (P-Ex 10, R 15).

Accused VALERIEN was transferred to Dachau on 7 October 1944.

At the end of October he transferred to outcamp Kaufbeuren where he performed duty as a detail leader at the work shops of the Bavarian Motor Works from 29 October 1944 to 6 April 1945 (P-Ex 11, R 16).

Defense witness Wittgen testified that accused was a sergeant in charge of the guard chain (R 18, 22). He supervised the guards during air raids (R 20). Wittgen testified that prisoners were beaten secretly at outcamp Kaufbeuren. They received 10, 15 or 20 blows at a time. Between June 1944 and April 1945 there were approximately ten instances when beatings were administered in the kitchen as a result of reports



of the factory administration (R 19). There were Russians, Frenchmen and altogether sixteen nationalities at the camp (R 20). The people employed at Kaufbeuren knew of mistreatments at Camp Dachau because part of them came from there (R 23). Conditions did not improve under Air Corps and Army personnel, as they had been there from the start. Prisoners were not well fed, and there were not enough shoes or underwear (R 24). Prosecution witness Frank testified that several hundred less prisoners left outcamp Kaufbeuren than were sent there. Prisoners there were punished by being struck, kicked, lashed and made to stand at attention for 7-1/2 hours, and otherwise. Two Russians were hanged by their arms tied back of them. "Some were whipped with pistols." There is evidence of mistreatment by SS personnel (R 47).

In defense, VALERIEN stated that he objected to transfer to Dachau. He did not know about or see punishments or beatings. He was not a member of the "Party", SA or Allgemeine SS (P-Ex 11, R 16). Defense witness Wittgen testified he had known the accused VALERIEN from September or October of 1944 (R 17). He was a very decent, quiet man and all the prisoners had a very good impression of him. He was considered a friend of the prisoners upon whom they could rely (R 18). Accused VALERIEN had no SS uniform but wore the uniform of the Infantry. No prisoners were killed or tortured at Kaufbeuren. The punishments given were for theft in the factory or for bad work (R 19). There was never a prisoner of war mentioned as being at the camp. He did not know of any medical experiments there. Transports were sent out from outcamp Kaufbeuren, but they did not affect men unable to work but rather men transferred from factory administration and sent back to the main camp Allach. Men too sick for treatment in outcamp Kaufbeuren were sent to the hospital in the city or to Dachau. Accused had nothing to do with food rations or clothing (R 20). The witness testified that in comparison to other camps, outcamp Kaufbeuren was like a rest camp. He was a prisoner at Posen, Camp Dachau and outcamp



Allach and served as a clerk at Kaufbeuren from October 1944 to April 1945. Defense witness Wittgen testified that in general the guards behaved very well (R 21). While accused VALERIEN was in charge of guard details he did not report guards found sleeping at the tower (R 22). Prosecution witness Frank testified that the incident involving the two Russians possibly happened prior to October 1944 and that it could not be definitely stated that punishment by standing at attention occurred between October 1944 and April 1945 (R 49). He did not know whether there was a lot of change among the prisoners at outcamp Kaufbeuren (R 50). There was no evidence indicating that there were prisoners of war at outcamp Kaufbeuren (R 51).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMMENTS: Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

All of the convicted accused, except VALERIEN who was an infantry guard, were by their own admissions members of the SS at Camp Dachau and/or its outcamps for considerable periods of time between the dates alleged (P-Ex 2 - 11).

Legal Sufficiency of Evidence. The evidence is sufficient to support the findings and sentences of the Court. 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 JAG-AGO, subject "Trial of War Crimes Cases," 14 October 1946, and the Parent Case). All of the convicted accused were 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 proceeding, in



concluding as to them that they not only participated to a substantial degree but the nature and extent of their participation was such as to warrant the sentences imposed.

After weighing all the evidence, the Court acquitted accused HOELL. Artur REUTER named in the charges was not served nor tried.

6. CLEMENCY: Petitions for Review were filed on 30 November 1946 on behalf of accused Ernst Gotthilf EISENHARDT, Friedrich KAESER, Wilhelm KUMKAR, Hans SPIEGLER, Philipp THEES and Josef VALERIEN by Lt. Colonel G. L. Kohloss, their regularly appointed counsel.

Consideration has been given to a Petition for Clemency dated 14 February 1947 on behalf of accused Wilhelm KUMKAR, signed by his wife, Helene Kumkar. No clemency is recommended.

7. CONCLUSIONS:

a. It is recommended that the findings and the sentences be approved.

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

/s/ William C. Craft  
WILLIAM C. CRAFT  
Attorney  
Post Trial Branch

Having examined the record of trial, I concur.

/s/ C. E. Straight  
C. E. STRAIGHT  
Colonel, JAGD  
Deputy Judge Advocate  
for War Crimes