

DISSENT

The following is submitted pursuant to reservations made by me at the time I signed the judgment.

Upon the question of the guilt or innocence of the defendants under Counts II and III of the indictment, I concur in the result reached by the Tribunal. As to the punishment, I concur in that fixed for the defendant Kupke. As to the defendant Alfried Krupp, I concur in the length of the prison sentence, but dissent from the order confiscating his property.

As to all other defendants, I feel bound to disagree with respect to the length of the respective sentences imposed. In general, the basis of my disagreement is this: Having in mind that the defendants were heretofore acquitted of crimes against the peace, I think there are many circumstances in mitigation not mentioned in the judgment which should be given more weight.

In my view the evidence as to the defendant Loeser presents a special case. Apart from the fact that during the war he resigned his position with the Krupp firm due to a disagreement with respect to certain policies and apart from other circumstances which seem to me proper to be considered in mitigation, I am convinced that before he joined the Krupp firm in 1937, and continuously thereafter, Dr. Loeser was identified with the underground movement to overthrow Hitler and the Nazi Regime; and that having been arrested by the Gestapo in connection with the plot of 20 July 1944, he escaped the death penalty meted out to others similarly involved only through a delay in his trial as a result of which he was liberated by the allied troops.

were I not convinced as a matter of principle that a finding of guilt or innocence by a court or tribunal enforcing criminal laws is not a discretionary matter, I would vote to acquit Dr. Loeser. But even though I feel obliged as a matter of principle to concur in the conclusion as to the fact of his guilt, I think, when all circumstances which, from my viewpoint, should be considered in mitigation are weighed, the period for which he has already been confined in prison is ample punishment.

HU C. ANDERSON
Presiding Judge