

LAW AS TO INDIVIDUAL RESPONSIBILITY

As already said, we hold that guilt must be personal. The mere fact without more that a defendant was a member of the Krupp Directorate or an official of the firm is not sufficient. The rule which we adopt and apply is stated in an authoritative American text as follows:

"Officers, directors, or agents of a corporation participating in a violation of law in the conduct of the company's business may be held criminally liable individually therefor. So, although they are ordinarily not criminally liable for corporate acts performed by other officers or agents, and at least where the crime charged involves guilty knowledge or criminal intent, it is essential to criminal liability on his part that he actually and personally do the acts which constitute the offense or that they be done by his direction or permission. He is liable where his scienter or authority is established, or where he is the actual present and efficient actor. When the corporation itself is forbidden to do an act, the prohibition extends to the board of directors and to each director, separately and individually." (1) Corpus Juris Secundum, Vol. 19, pp. 363, 364, American Law Book Co., (1940) Brooklyn, N. Y.

Under the circumstances as to the set up of the Krupp enterprise after it became a private firm in December 1943, the same principle applies. Moreover, the essential facts may be shown by circumstantial as well as direct evidence, if sufficiently strong in probative value to convince the tribunal beyond a reasonable doubt and to the exclusion of every other reasonable hypothesis. 's.