

Supreme Court of the United States
Washington, D.C.

January 22, 1946.

Dear Chief:

Re: Nos. 61 Misc. and 672, Yamashita.

Yamashita is a fine piece of work and I am heartily with you on the theory upon which it has been decided.

My chief difficulty is with "The Commission's rulings on evidence," p. 11. It seems to me that Articles 25 and 38 do apply. This is not because they specifically refer to prisoners of war but because Article 63 of the Geneva Convention makes the Articles of War apply to prisoners of war. It seems to me, therefore, that the question of evidence should be treated as you treat the question of notice in the last paragraph beginning on page 13. I refer particularly to the sentence saying "that failure to give notice did not . . . deprive the commission of authority to proceed with the trial."

I think American soldiers could have been tried by a military commission for the acts for which Yamashita is convicted. Winthrop, Military Law, 836, 838 (4), 841.

The following are minor suggestions:

Where you refer to the zeal of counsel for Yamashita, I feel that readers might blame the officers for their zeal and therefore suggest that the last phrase read: "and their proper zeal to carry out the obligations for defending the prisoner with which they were charged."

I think there is a wrong citation on p. 4, 28 U.S.C. 452. This should be either 451 or 453.

On page 4 you say, "unless by suspension of the writ"--referring to the Executive. To avoid the implication that there is any power of the Executive generally to suspend such a writ, would it not be better to say, "unless there was suspension of the writ."

I am wondering, too, whether the first complete paragraph on p. 13 is entirely consistent with what you have before said. I suppose you will catch this anyway.

Yours,
Stanley Reed