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Reel: THE CASE OF GENERAL YAMASHITA

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RECENT BOOKS

This department undertakes to note or review briefly current books on law and materials closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

THE CASE OF GENERAL YAMASHITA. By A. Frank Reel. Chicago: The University of Chicago Press. 1949. Pp. vi, 324. \$4.

General Tomoyuki Yamashita, commander of Japanese forces in the Philippine Islands, surrendered himself and his troops to the United States Army on September 2, 1945. Within a month, pursuant to orders of Generals MacArthur and Styler, Yamashita was charged with violating the laws of war and was brought to trial before an American military commission consisting of five professional soldiers. Found guilty, he was hanged on February 23, 1946, last minute appeals to the Philippine and United States Supreme Courts having failed. The author, Captain A. Frank Reel, who bitterly condemns both the justice and legality of the Yamashita trial, appeared with others, as defense counsel in all the various proceedings. While he assails many aspects of the case, the procedure employed at the trial level is particularly censured as being completely alien to all recognized safeguards of Anglo-American judicial practice. For example, the Judge Advocates appearing for the prosecution were given many months in which to prepare a bill of one hundred and twenty-three atrocity particulars, while the defense had three weeks in which to answer and was refused any continuance. General MacArthur's procedural directive specifically allowed the court to consider any ex-parte affidavits, depositions, hearsay or opinion evidence which were felt to have probative value—a practice which made effective cross-examination largely impossible. Not one member of the commission was a lawyer and none had any legal experience or familiarity with trial technique. Aside from the various procedural aspects, however, Captain Reel further contends that Yamashita was charged with no recognized crime. The indictment specified a failure to control the acts of his troops, but neither the indictment, the bill of particulars, or the evidence adduced at the trial linked Yamashita himself with any specific atrocities or military orders resulting in atrocities. The author takes the position that because of the disorganization among Japanese forces at the time of Yamashita's arrival from Japan, just shortly before the American landings on Leyte, the commander was at all times unable to communicate with the bulk of his forces. In other words, allied military operations made it physically impossible for Yamashita to control his subordinate officers or troops, yet our own success in this respect led to his indictment. Finally, Captain Reel questions the constitutionality of trial by military commission, acting under military law, after the cessation of hostilities. In the 1942 case of the German saboteurs, the United States Supreme Court

had seemed to say that a state of active warfare justified summary military methods in the prosecution of belligerents, but this issue was dismissed by Justice Stone, in the Yamashita appeal, on the technical ground that we were at war with Japan until peace was officially recognized by the political branch of our government. The author fears that this position will allow military tribunals to ride roughshod over fundamental constitutional rights long after a war, for all practical purposes, has ended. In the final analysis, this book, in spite of its narrow treatment of a single case, calls for a critical appraisal of the underlying aims and philosophy of all the so-called "War Crimes" trials. The reader is always aware of the question of ultimate justice, as opposed to mere revenge, and of the danger of creating precedents which may one day turn against us. In the sober days which follow the primitive impulses of war, we may confidently expect a wealth of literature on the various aspects of this highly controversial subject.