

Miss Brookley

Miss Bontecou

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General Tomoyuki Yamashita, Petitioner, v. Lieutenant General Wilhelm D. Styer, Commanding General, United States Army Forces, Western Pacific, decided February 4, 1946. Right of an enemy combatant who is being tried by a military commission for a violation of the law of war to petition for habeas corpus.

In the above case the Supreme Court, in denying petitions for original writs of habeas corpus and prohibition and for a writ of certiorari to the Supreme Court of the Philippines, defined the extent of its jurisdiction to inquire into the case of an enemy belligerent being tried by a military commission. The Court made it clear that although it has no concern with the guilt or innocence of such a petitioner on application for a writ of habeas corpus, it will consider the lawful power of the commission to try him for the offense charged and that habeas corpus will ~~be~~ for this purpose. It further clarified the general question of the right of an enemy belligerent to come into the courts in war time by declaring that when such a person is brought before a commission as a defendant he has the right to take all possible steps in his own defense, among them being the petition for writ of habeas corpus. In exercising the jurisdiction thus defined the Court considered the following questions:

- (1) The authority under which the commission was created;
- (2) The power of a military commission to try the petitioner for violation of the laws of war after cessation of hostilities;
- (3) Whether the charge actually stated a violation of the laws of war;
- (4) Whether the commission by its procedure with regard to admission of evidence, etc., violated provisions of the Constitution or laws of the United States; and
- (5) Whether such a commission lacks jurisdiction if it does not comply with the requirement of the Geneva Convention of 1929 that when a prisoner of war is to be tried the protecting power, in this case Switzerland, must be notified prior to the trial.

In answering these questions the majority of the Court, speaking through Justice Stone, concluded that a commission to try an enemy combatant for violations of the laws of war may lawfully be set up by a military commander in the field. It also declared

that such a commission has the right to try an accused for violations of the law of war at any time after the cessation of hostilities and before the signing of a peace treaty, and even after the peace treaty if the treaty itself specifically so provides. The Court further decided that a charge stating that a commanding officer violated the laws of war because he failed to exercise his duty to control his troops, permitting them to commit a series of atrocities, adequately alleges a violation of the laws of war. The Court also held that Articles 25 and 38 of the Articles of War, which forbid the reception of depositions, hearsay and opinion evidence in a capital case, do not apply to the trial of an enemy combatant by a military commission for violations of the laws of war. Moreover, according to the Court, Article 63 of the Geneva Convention of 1929, which declares that a prisoner of war must be tried only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining power, does not apply to such a trial; nor does Article 60 of the Geneva Convention, which requires the detaining power to give notice of the trial of a prisoner of war to the protecting power. The Court concluded that the Geneva Convention as a whole applies only to offenses committed by prisoners of war after their capture and not to their trial for prior violations of the laws of war committed by them before capture.

Justice Murphy and Justice Rutledge dissented vigorously from the majority opinion. They felt that the charge did not state a violation of the laws of war in that it enunciated a novel principle, namely, that a commander could be made responsible for the excesses of his troops simply because of his failure to exercise his duty to control them, and not because of his actual orders or positive condoning of the actions of the troops. They also felt that the requirements of the Fifth Amendment to the Constitution apply to trials of this sort and that such violations of the due process clause occurred during the trial as to deprive the commission of its jurisdiction.

