

IRISH POTATO FAMINE AND THE RUSH TO U.S. SHORES

AMERICAN HISTORY

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JAPANESE WAR CRIMES:

THE TRIAL OF THE
"BEAST OF BATAVIA"



FOR THE LOVE OF THE HORSE: COWBOY ARTIST WILL JAMES

SATURDAY EVENING POST'S BOY SALESMEN



BEAST OF BATAAN

BY PETER B. COOK EARLY IN 1946, SIX YOUNG AMERICAN LAWYERS DID THEIR BEST TO DEFEND GENERAL HOMMA MASAHARU FOR WAR CRIMES COMMITTED BY THE JAPANESE DURING THE 1942 "DEATH MARCH" IN THE PHILIPPINES.

PHOTO BY CARL SOCOLOW

THE PHILIPPINES

The Last Word

Wizened, wiry Jimmy Baldassare's parents died when he was eleven. He roamed the streets of Manhattan's East Side, saw many things a little boy should never see. As a Regular Army soldier in World War I, he saw a lot more of the brutal side of life & death. But he never saw, or felt, or even imagined the sort of things that happened after he was captured by the Japanese in the Philippines during World War II. Beaten, kicked, unspeakably abused, he swore to stay alive to see the Japs humbled.

He did—though thousands around him died during the Death March, in a stinking prison ship, in a Manchurian prison camp. Last week he took the witness chair in the big Manila ballroom where cool, suave Japanese General Masaharu Homma is on trial for his life. Talking quietly and precisely, as befitted his 38 years of service, Jimmy Baldassare became the first witness to link Homma to the infamous Death March.

Master Sergeant Baldassare never took his eyes from the mufti-clad general. "I saw Japanese officers riding along the route," he said. "There is one in this place right now that I can recognize who was riding in an official car—Lieut. General Homma. I asked a Japanese guard, 'Who is that man?' He said: 'That is General Homma.'"

But Sergeant Baldassare, bald and toothless, his shoulder awry from a Japa-

nese blow, had kept him alive a little more than that, in tones. He stopped outside and made a fierce little sign.

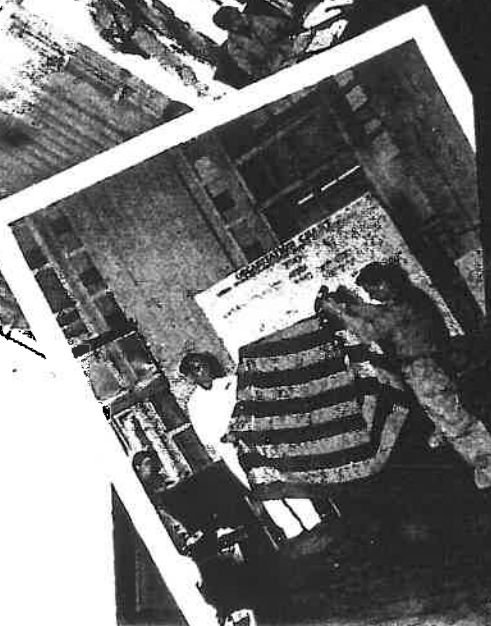
"They should hang him," at words touched by a hint of his youth. "He is a good bitch. I should pull down. To much of a trial. They told him a trial. They wanted killed people like him not him."

Jimmy Baldassare put his hand to his forehead and



GENERAL HOMMA
The sergeant never stopped staring.

TIME, JANUARY 21, 1946



ON DECEMBER 13, 1945, from his post near Manila, in the Philippines, 27-year-old Major John Skeen wrote to his wife Dorothy to say that he finally seemed to have enough points to be rotated home to Baltimore. There was just one hitch: "Headquarters wants me for a three weeks' detail. I pray they are not wrong in their estimate . . . No one has told me what the job is to be, but I did find out it was because I had been a lawyer. I therefore suspect the war crimes trials &

While Lieutenant Robert Pelz was helping to defend General Homma in Manila, a friend back home kept a scrapbook for him of the coverage the case received in local newspapers. On his return to the U.S., Pelz added his own mementos and photographs, creating a unique record of his memorable assignment.

HOMMA IS LINKED TO 'DEATH MARCH'

Veteran Sergeant Tells How He Saw Japanese General Pass Prison Camp in Car

By ROBERT TRUMBULL
By Wire to The New York Times

MANILA, Thursday, Jan. 10. Master Sgt. James Baldassarre, survivor of the Bataan "Death March," gave the prosecution strong hand in putting Lieut. Masanaru Homma's neck in noose when he testified yesterday afternoon that he had seen former Japanese commander of the infamous San Francisco concentration camp in his

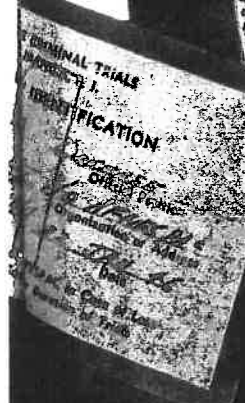
Prison. Sergeant Baldassarre, been in the Army for two years, of which the past 18 months have been spent in the Philippines, was one of that valiant and haggard band of American and Filipino prisoners who reached San Fernando after the cruel march along the nightmare road back from the lost battlefields of Bataan.

Sergeant Baldassarre, born in New York and once a resident of Boston, was a perfect specimen of the "old soldier" type. He was a



you recognize this officer? He was stout, thick, and he was the drip of sweat was a uniform, but I remember friends left to die by the road in the mid-1940s. Finally Sergeant Baldassarre re-

live to say a different courtroom. "he said, Italian accents good son of a . . . This is too old never give me. They him to me. put a cigar in me as cap back and walked out just paid





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Japanese bombing of the Philippines began within hours of their December 7, 1941 attack on U.S. bases at Pearl Harbor. Two days after the Japanese Army landed on Luzon later that month, General Homma, commander of the Japanese invasion of the Philippines (above, left), stepped ashore at Santiago in Lingayen Gulf. Homma reviewed the Japanese Army's victory parade (above, right), held in Manila to celebrate the fall of Corregidor in May 1942.



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shiver at the thought . . .” Two days later, Jack Skeen had the word. “Within one minute,” he wrote Dorothy, “I became ‘essential,’ screwed, and famous.”

During the next two months, the young major, who had never argued a case in court, would play a key role in an episode of legal history that would dominate headlines and newsreels around the world and resonate for decades to come. Jack Skeen had just been made chief defense counsel for the war-crimes trial of General Homma Masaharu, the notorious “Beast of Bataan”—commander of the terrible “March of Death” in April and May of 1942—whose men had caused the deaths of tens of thousands of Filipinos and American prisoners and internees.

“After a few days I will recover from the shock and will give the S.O.B. everything possible in the way of defense,” Skeen wrote his wife. “They tell me he speaks fluent English, which will help.”

But Jack Skeen didn’t have a few days to recover. Major General Leo Donovan, head of the military tribunal, wanted to schedule Homma’s arraignment in two days.

Skeen had not even met his defense team, which included Lieutenant Robert Pelz of New York City, who had also just celebrated his 27th birthday in the Philippines. He, too, was ready to go home; the war was over, and there wasn’t much for a young law-school graduate to do. “I’d been overseas for a year and a half, and I really wanted to get back,” he recalled in a recent interview.

With his assignment to the Homma trial, the New Yorker soon got over his disappointment about the delay in getting home. He was excited by the idea of being part of such a high-visibility courtroom event. “As a matter of fact,” he recalled, “I was pleased . . . as long as I was going to be there, I might as well be doing the most interesting work.”

What would make the work particularly interesting was that war-crimes charges against general officers, as well as the actual perpetrators of specific atrocities, were essentially unheard of before World War II. Allied leaders, however, spurred by reports of unprecedented and wide-ranging patterns of cruelty by German and Japanese invaders, decided that the men at the top would be held responsible. The very highest military and political leaders would be judged by in-

ternational tribunals (eventually convened in 1946 at Nuremberg and Tokyo) for crimes against peace and humanity. Commanding officers in the field would also stand trial in military courts of the aggrieved nations for ordering, permitting, or carrying out atrocities and other violations of the laws of war.

With the Japanese surrender, General Douglas MacArthur, appointed Supreme Commander for the Allied Powers, took over responsibility for the Allied occupation of Japan. The world was watching to see with what toughness and dispatch he would dismantle Japanese militarism; one of his immediate concerns was fulfilling the pledge from the 1945 meeting of Allied leaders in Potsdam, Germany, that “stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners.” MacArthur decided that the first Japanese to be tried for war crimes would be the area commanders in the Philippines at the beginning and the end of the war in the Pacific.

General Homma Masaharu, commander of the Japanese invasion of the Philippines in 1941-2, was high on MacArthur’s list for a speedy conviction. Another priority was General Yamashita Tomoyuki, known as the “Tiger of Malaya” for his stunning capture of Singapore from the British in 1942. He had just surrendered in the Philippines, where he had overseen a doomed Japanese delaying action during the last ten months of the war that had

produced tens of thousands of Filipino civilian deaths.

First Yamashita and then Homma would be tried before military tribunals convened in Manila under MacArthur's authority. Both would be charged with responsibility for atrocities against American prisoners and against thousands of Filipino soldiers and civilians for whom MacArthur felt a special responsibility.

The trial of General Yamashita was underway by October 29 and ended on December 7 with the expected conviction and sentence of death by hanging; the next week a commission was appointed to deal with General Homma.

Not only did Jack Skeen and his Homma defense team lack time for preparation, but as Pelz observed, "General Homma was not getting a team of experienced criminal lawyers to defend him. . . . [T]he reason that Jack Skeen was the head of the team was that he was a major. It had nothing to do with his experience as a lawyer."

In addition to Skeen and Pelz, four other officers were appointed to the team. Lieutenant Leonard Nataupsky was a recent graduate of law school; Captains George Ott and Frank Coder were a few years older and had practiced law before they went into the army, but were not trial lawyers; the sixth member of the team, Captain George Furness, had the most experience, but he had never tried criminal cases.

The inexperience of the Homma defense team was not simply the luck of the draw. MacArthur, under whose orders the judges and the prosecution and defense teams were appointed, the rules of evidence approved, and who would review personally the verdicts and the sentences, had just suffered a setback from the team defending Yamashita; and he was determined not to let it happen again.

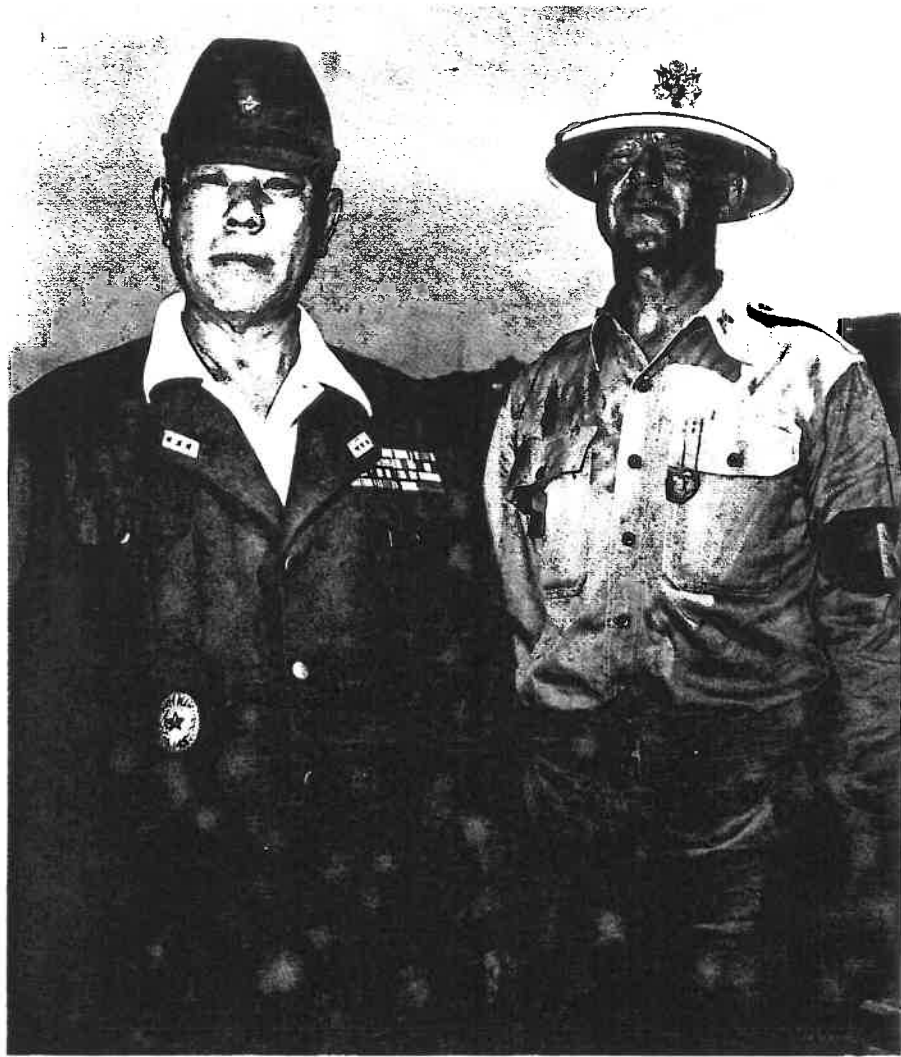
Yamashita had been convicted and sentenced, to be sure; but the experienced, capable defense team, headed by a full colonel, had not only blocked MacArthur's push for a speedy execution, they had appealed the case to the United States Supreme Court.

MacArthur was clearly angry that lawyers working for him took this military matter outside the military system. He was determined that more such legal maneuvers by enthusiastic "legal eagles" not jeopardize his ambitious agenda for rebuilding postwar Japan. He knew that

crucial support for him and his program from Washington and the Allies depended on his ability to discredit and eliminate, quickly and decisively, the remnants of Japanese militarism. MacArthur had gone to great lengths to protect Emperor Hirohito from prosecution as a war criminal; now he required swift, well-publicized convictions and executions in these trials of generals to demonstrate his resolve.

Further, he expected the trials of Yamashita and Homma to be *pro forma* events, given the overwhelming evidence that widespread atrocities had taken place in the Philippines. The prosecution had been working for months lining up witnesses and taking statements. Defense lawyers were expected to realize that these proceedings were designed to punish the guilty, not to engage in a lengthy search for "truth." And, the lawyers were not to get in the way or delay things by questioning procedures or otherwise making things

General Yamashita Tomoyuki (above, left) commanded the Japanese troops who thwarted the retaking of the Philippines by the Americans under General Douglas MacArthur in 1944-45. The first Japanese military leader tried for war crimes, Yamashita claimed no responsibility for the atrocities committed against Filipinos by troops under his command. He was hanged in 1946 following the upholding of his conviction by the U.S. Supreme Court.



AP/WIDE WORLD PHOTOS

complicated for the tribunal commissions. In a wire to General William Styer, who was charged with setting up the tribunals, MacArthur said he did not care who was convicted first, Yamashita or "small fry"; what was important was to get things moving right away and to complete the process with dispatch.

Jack Skeen and Bob Pelz had heard that MacArthur was furious that Yamashita's defense team behaved more like lawyers than like U.S. Army men under his com-



The commission charged with hearing the case against Homma included: seated, Major General Basilio Valdes of the Philippine Army, Major General Leo Donovan, and Brigadier General Robert Gard; standing, Brigadier General Arthur Trudeau and Brigadier General Warren McNaught.

mand. Young Major Skeen, whose father was a respected Baltimore attorney, was outraged. He wrote home that "Everyone concerned in the trial, i.e. commission, prosecution & defense is under Gen'l MacArthur. When the trial is over it is Gen'l MacArthur who reviews the proceedings & approves the sentence. The final straw is that the accused is a man who defeated our Gen'l in battle . . . [N]o man could receive a fair trial under this set-up." He added that he was "glad that I am close enough to getting out of the Army so that I can keep my conscience clear by doing everything possible to see that the true facts are presented."

One of the legal issues that had to be addressed in these trials was that the charges were based on an unprecedented interpretation of command responsibility, one that made a commanding officer responsible for the criminal actions of his men, whether or not those actions were counter to his orders or policy, whether or not he condoned them, and whether or not he knew they had taken place. The prosecution argument was in essence that these criminal actions were so widespread wherever the Japanese Army went that no commanding officer could really be unaware that they were taking place. No one had ever been charged with a capital offense in an American court on such a premise.

As the U.S. Supreme Court reluctantly agreed to hear arguments in the Yamashita case, Skeen, Pelz, and the rest of their team set out to do the best they could to provide a defense for General Homma. They had three days before the arraignment. In describing their first

meeting with their client in his diary for December 16, Pelz noted that Homma "looked like a tired-out grandfather who has girded his loins for a last battle . . . [and] avers he knew nothing of these atrocities. As he put it, only an Oriental can understand that a Jap general does not question the actions of his subordinates . . . [I]f the general hangs, it will be by a sort of ex post facto rule as to proper military ethics."

The 57-year-old Homma was a far cry from the "Japanese warlord" that Pelz had expected. Rather, he appeared to be a complex person, with an unusual world view for a Japanese of his generation. Early in his career, he had spent three years in England as a military attaché. Not only did he speak fluent English, he also was drawn to Western ideas and culture, especially American movies. Homma also had a tumultuous personal life, with moments of romantic excess and depression that called into question his self-discipline to such an extent as to have jeopardized his

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military career. People who knew him said that only his second marriage, to a lovely, level-headed divorcee, saved his career and perhaps his life. Just the same, he was in many ways an "old soldier," recognized as a brilliant tactician and a leader well regarded by his subordinates.

Within a few months of his victory in the Philippines, Homma had been relieved of his command, ordered back to Japan, and removed from combat duty. He and his supporters cited his opposition to the policies of War Minister Tojo Hideki and his "soft" attitude toward the people whose country he was occupying as reasons for this early and sudden retirement.

The Allies' charges against Homma stemmed from the Bataan Death March and conditions in prisoner-of-war camps that resulted in thousands more deaths. He was also charged for bombing Manila in the last days of 1941, after General MacArthur had apparently declared it an open city, and for his refusal

to accept the surrender of General Jonathan Wainwright (left in command after MacArthur's departure) in May, 1942. But it was the mistreatment of Filipino and American prisoners by soldiers under his general command that had earned General Homma his place at the top of the list of those to be tried.

The Japanese invasion of the Philippines was a bloody campaign that began within days of their December 1941 bombing of Pearl Harbor and lasted until early May 1942. Homma's 14th Army eventually defeated the under-prepared and under-equipped U.S. troops of General MacArthur and the hastily incorporated Philippine defense forces whom he had only recently begun to train. At the end of the campaign, which saw the Filipino-American forces backed into the southern tip of the Bataan Peninsula with no hope of reinforcement or resupply, somewhere between seventy and eighty thousand men were surrendered to the Japanese, whose intelligence had led them to

The prosecution called dozens of American and Filipino witnesses to testify to the horrors of the Bataan Death March and the prisoner-of-war camps to which it led. The testimony of Sergeant James Baldassarre (shown with pointer in above photo) of Brooklyn, New York, that he saw General Homma drive by the march route was among the most damaging to the Japanese commander's case.

expect about half that number.

The infamy that followed, during which these prisoners were forced to move, almost entirely on foot, some sixty miles north to the nearest railhead, came to be called the "Death March" of Bataan. Seven thousand Filipino and American prisoners died from exhaustion, insufficient food and water, lack of medical supplies, and brutal treatment—including summary execution—at the hands of their Japanese captors. Once the railhead was gained, the prisoners were shunted to a number



COURTESY OF ROBERT L. PELZ

AUTHOR'S COLLECTION

of camps where appalling conditions and dreadful treatment resulted in thousands more deaths.

Bataan became a rallying cry for Allied forces from the moment General MacArthur, ordered by his superiors to leave the Philippines before the surrender in order to organize the campaign to retake the Pacific, uttered his famous "I shall return." (Each of MacArthur's personal planes throughout the war was named "Bataan.") When scattered reports of the Death March filtered out soon after it had taken place, Homma became known to Allied soldiers throughout the Pacific Theater as "The Beast of Bataan."

The retaking of the Philippines was also a bloody and protracted affair. In late 1944 and early 1945, U.S. forces, with the support of widespread Filipino guerrilla activity, recaptured most of the Philippine Islands, except for a section of northwest Luzon, where newly-assigned General Yamashita and what was left of the Japanese 14th Area Army had taken up defen-

sive positions. Yamashita's mission, with no resources to stage a counteroffensive, was to hold out as long as possible in order to help delay the inevitable Allied attack on the main islands of Japan.

Yamashita had decided to abandon Manila without a fight. But seventeen thousand Japanese naval personnel elected to ignore Yamashita's decision. Instead they carried out orders from the Japanese Naval Ministry to destroy Manila's harbor facilities and fought to the death in a bloody house-to-house battle that ended in the city's devastation. They also committed widespread atrocities—rapes, murders, and summary executions against civilians in the city—that left thousands of Filipinos dead. Many other Filipinos, including 25,000 in Batangas province, had already been killed as part of the Japanese response to repeated guerrilla attacks emanating from communities hostile to Japanese occupation.

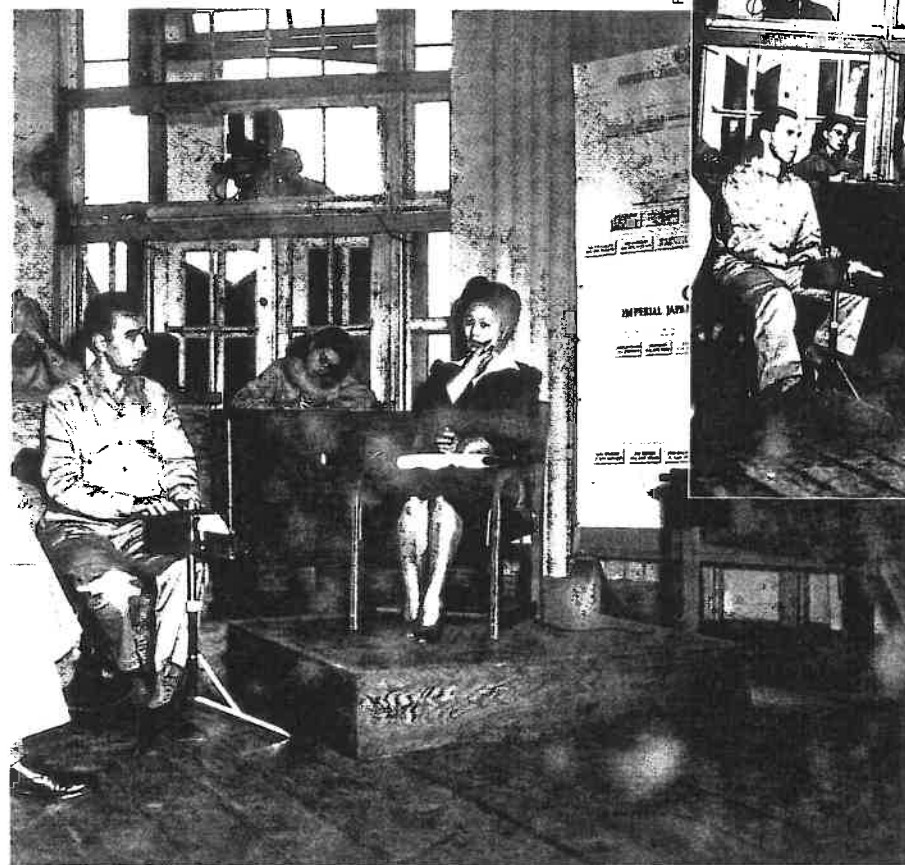
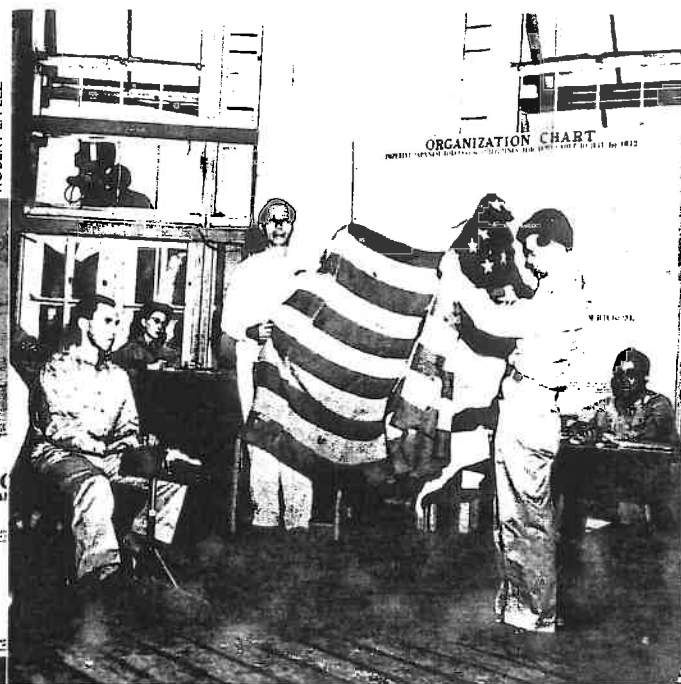
This series of events, added to the appalling treatment of prisoners and in-

ternees throughout the Japanese occupation, raised anti-Japanese feeling in the Philippines to an all-time high.

As the Allies recaptured more and more territory, the evidence from hundreds of Japanese prison camps throughout Asia painted an even worse picture than had been imagined. At the end of the war, images of gaunt figures with dead eyes emerging from behind barbed wire and stockades, unimaginable tales by survivors, and reports of discoveries of mass graves pushed the devastation of Hiroshima, Nagasaki, and Tokyo to the back pages and seemed to provide ample justification for any punishment meted out to people who could have caused or allowed this to happen. Someone had to pay.

War-crimes trials began within weeks of the cessation of hostilities and lasted nearly three years. Many military and government leaders were charged, including Tojo, one of the 29 "Class A" Japanese tried in Tokyo for crimes

ROBERT L. PELZ



AUTHOR'S COLLECTION

Convened in the elegant former High Commissioner's residence in Manila (far left), Homma's trial centered in large measure on the question of chain of command, as evidenced by the organization chart behind the witness stand. Among the many witnesses called by the prosecution were Buenaventura Bell (above, right)—a teacher from San Juan del Monte, who displayed American and Philippine flags taken forcefully from his office after the Japanese troops shot him for refusing to remove them himself—and the tearful Filipino women shown testifying (above).

against humanity by an international tribunal similar to the one convened in Nuremberg, Germany, to hear the charges against Nazi leaders. Almost all the Japanese defendants in the Tokyo trials were convicted; Tojo was hanged with six others in 1948.

The first "Class B" trials of Japanese officers started right away. The American and Filipino press reported with en-

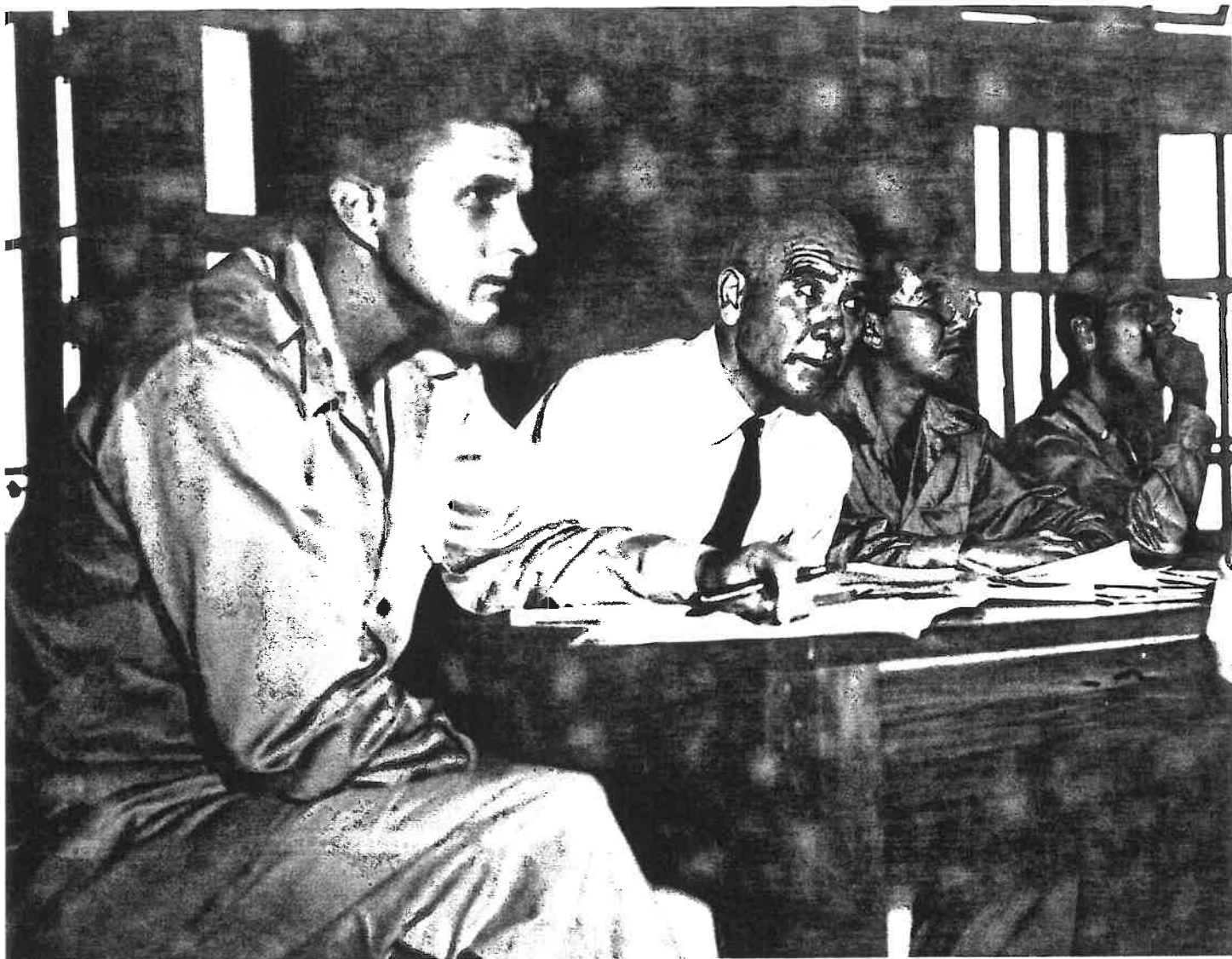
thusiasm that immediately following the Japanese surrender, General Yamashita had been locked up as a war criminal in the Philippines and General Homma had been located in Japan, arrested, and sent to Manila. Neither Japanese general was charged with ordering, condoning, or specifically with knowing about the commission of atrocities. The prosecution's premise that they *should have known*, accepted by both trial commissions as grounds for culpability, provided one basis for appeal.

The Yamashita case reached the U.S. Supreme Court a month after his conviction. His lawyers asked the Court to consider that the interpretation of command responsibility employed in his indictment and trial was not only unprecedented in U.S. or international law, but was inconsistent with the standard employed in the just-beginning Nuremberg trials. The defense argued that the Japanese naval personnel, who undeniably committed atrocities in Manila, were acting against

Yamashita's orders and that the general himself, dug in many miles away without communication with Manila and fighting his losing battle with U.S. forces, had no way of controlling them.

The attorneys for the defense asked the Justices to examine the rules of evidence and the adverse conditions under which the accused was forced to operate. They argued that there was evidence to suggest that Yamashita's trial, conviction, and sentence to an ignominious death by hanging were staged by General MacArthur in order to deliver his own separate messages to the people of the Philippines and those of Japan.

By this time, the trial of General Homma was under way in Manila. Many of the issues of the Yamashita case resurfaced in the Homma trial, as did many of the sentiments with respect to the two Japanese generals. Homma, however, as commanding officer of an invading Japanese force, might have been accorded less benefit of the doubt in the court of



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public opinion than Yamashita, steward of an administration clearly falling apart as the defeat of Japan became imminent.

On December 19, Homma and his defense team appeared before a commission headed by General Donovan, who had served on the Yamashita trial commission. Joining him for the Homma proceedings were Brigadier General Arthur Trudeau, Brigadier General Warren McNaught, Brigadier General Robert Gard, and Major General Basilio Valdes, a former chief of staff to the Philippine Army whose brother was beheaded by the Japanese.

After the charges were read, General Homma rose and entered in English his plea of "not guilty." The trial was then set for January 3, 1946. Skeen, who had requested a month to prepare, wrote home that "the prosecution admitted that it would take longer than the two weeks they asked, but the commission

arbitrarily set the date for trial as Jan. 3. It is almost a physical impossibility to get the work done in that time."

Just the same, the defense team determined to do its best. Coder and Nataupsky went off to Tokyo to search for witnesses, while Pelz worked with Furness to draft a motion to dismiss. Writing in his diary on December 30, Pelz reflected that the "whole tradition of Anglo-American law is to get justice and a fair trial for the individual. Perhaps Homma did not know of and 'permit the atrocities.' That is what we are seeking to learn. Our professional pride could permit nothing other than what we are doing . . ."

The first order of business—the motion to dismiss—stated that MacArthur's control of the proceedings was inappropriate because "no man should be placed in the position of being in essence accuser, prosecutor, defense counsel, judge, jury, court of review and

court of final appeal. He should particularly not be placed in this position where he is a military commander who was *defeated by* the accused in a campaign out of which the charges arose . . ."

The motion caused a furor even before it was published in the newspapers. A superior officer, Pelz wrote, "reamed Skeen and me . . . [He] proceeded to tell us what the Army can do to us; how it never forgets and that it is the most powerful organization in the country."

The commission headed by General Donovan was also not about to let "defeated in battle" get into the final record. A New Year's conference resulted in a compromise, with the defense agreeing, according to Pelz, "to delete the words General MacArthur 'had been defeated by' General Homma to put that General MacArthur 'had unsuccessfully opposed General Homma.' For some reason that satisfied General Donovan and it didn't



COURTESY OF ROBERT L. PELZ



Homma sat transfixed at the defense table (far left) as a succession of witnesses told of the sufferings they endured at the hands of their Japanese captors. Among the few witnesses for the defense was Homma's wife, Fujiko—shown left with attorneys Captain George Furness, Captain George Ott, Lieutenant Robert Pelz, and Major John H. Skeen, Jr.—who testified (above) to his character and his removal from command in August 1942 for being too "soft" in his treatment of the Filipinos.

make any difference to us."

The motion to dismiss did, of course, get into the papers. A short time later Skeen received a letter from retired Colonel William F. Beck of Phoenix, Arizona, that revealed how some Americans felt about what sort of justice Japanese deserved. "Your move for the dismissal of charges against this Japanese fiend" he wrote, "... looks like you were trying to make a cheap play to the galleries by tweaking the nose of the great MacArthur. It smacks of the speckle of the small cur-dog, which from behind the shelter of his master's legs barks defiance at a mastiff. ... As an American you should be spit on and scorned by every good citizen. As a lawyer you should be looked upon by every respectable member of the bar as a disgrace to the legal profession; and barred from practice in American courts of law. ..."

Pelz remembered that "Jack was not a tough guy ... and I'm sure that was a

real blow to him to have a letter from a retired colonel denouncing him as a traitor. ... [H]e was a straight, patriotic American who was proud to be fighting in his way for his country." The young men's families and friends, at least, understood what they were up against with the overwhelming task ahead of them.

On January 3, the Homma trial began in the elegant, if shell-pocked, former High Commissioner's residence that served as the courthouse. From the outset, it was clear that the case against the Japanese commander, at least in terms of sheer volume, was overwhelming.

The prosecution opened by calling members of Homma's 1942 staff to establish that reports had been made to headquarters to the effect that prisoners were dying at a high rate from lack of food and water, and due to insufficient medicine for dysentery, one of the chief

causes of prisoner deaths. One officer testified that Homma received regular reports of prison conditions and that during the march of American and Filipino prisoners of war from Bataan to San Fernando, Homma's headquarters had been only five hundred yards from the road. Questioned by commission member General Trudeau, the officer acknowledged that before the Philippines operation, Homma had issued written orders that prisoners were to be treated in accordance with international law.

Dozens of witnesses offered overwhelming testimony to the widespread violations that had occurred during and immediately after the Japanese invasion and taking of the Philippines. Much of this testimony was by affidavit, despite Pelz's argument, as reported in the *New York Times*, that "We are enraged at the thought that an American or an Allied prisoner was summarily dealt with by



Claiming only moral responsibility for the atrocities recounted during his trial, Homma nonetheless accepted the verdict of guilty and the death sentence handed down by the American tribunal. He expressed his gratitude to the lawyers appointed to defend him for doing their best, under difficult circumstances, to represent him.

our enemies . . . How can we in the next moment deny this accused the right to confront witnesses against him?"

MacArthur's rules of evidence for these trials allowed for anything "a reasonable man" might find "of probative value." Troubled by this, General Trudeau noted that "MacArthur's instructions . . . really said that circumstantial and hearsay evidence may be admitted if you run short of sound evidence." General Donovan ruled that the commission would decide on a case-by-case basis whether to receive affidavits

and depositions. In fact, several already had been accepted.

Dozens of American and Filipino soldiers who had been eyewitnesses to atrocities along the March route and in the prison camps did take the witness stand. The testimony of Sergeant James Baldassarre of Brooklyn, New York, could have carried practically the entire prosecution case. The *New York Times* described him as "a perfect prototype on the stand, of the hard-bitten, sardonic old Army regular."

Baldassarre, wrote the *Times* reporter, "told the gruesome story, now known well to every American, of the long ordeal in the sun, of starvation and thirst and of the callous shooting and bayoneting of his sick, exhausted and footsore comrades who fell behind. 'I saw hundreds killed,' the graying old soldier said grimly."

Under questioning from Lieutenant Abram Raff of the prosecution, Baldassarre declared that from the time he had

left Mariveles until he reached Balanga, a period of about two days, he did not receive any food or water from the Japanese. Recalling the execution of a Colonel McConnell, who was with him during part of the march, the sergeant stated that "On the left side of the road, before we got to Orani, Colonel McConnell went in the direction of a big house. I asked [him], 'Where are you going?' He said, 'I have to take the chance to go there. I can't make the hike any more.' I said, 'What is the reason?' He said, 'My feet hurt me.' I said, 'If you go there you will be shot to death.' He said 'I have to take that chance.' He was shot right in the back before he got to the house" by Japanese guards.

After recounting a similar shooting of a Lieutenant Hayes in Orani, Baldassarre "recalled the day he stood behind the barbed wire that enclosed a peat-hole at San Fernando . . . among his comrades who lay wracked by pains of dysentery,

ABOVE: AP/WIDE WORLD PHOTOS

the weakness and fevers of malaria and beriberi. Then he saw a bright car pass by, with a Japanese officer in the back seat. . . . He was stouter then, and he wore a uniform, but I remember him, and he is in this room," said the old sergeant. "It was Lieut. Gen. Masaharu Homma."

Following his testimony, Jimmy Baldassarre stood outside the courthouse and told a *Time* magazine reporter and others that "They should hang the man. . . . They should never give him a trial. He never gave us no trial. They drilled people like flies. Send him over to me; I'll fix him up." In his story, the reporter wrote that Baldassarre then "put a cigar in his mouth, pushed his overseas cap back off his sunburned forehead, and walked out with the air of a man who has just paid off an old debt."

The next day, Major Eduardo Vargas testified to the massacre of more than three hundred Filipino officers as they were being marched across the Bataan

Peninsula. "About two kilometers from Pantingan River," he recalled, "we were stopped by a group of Japanese soldiers and all officers ordered to separate from the privates, [who were] ordered to pro-

appalling events in question not only ran counter to General Homma's orders and policies, but that he had no knowledge of them. Pelz wrote in his diary that Homma himself was deeply shaken

by the testimony. "I saw [him] this evening" Pelz noted, "and he is becoming a broken man. . . . I truly believe he had no idea of the things that occurred." Homma had told Pelz about "how he took it upon

himself to fly to Nanking after the infamous 'rape' and berated the commander of forces there—a full general—I told him how could you permit these things to happen under your command? and now I find this was happening under my command."

Homma's spirits were greatly improved by the arrival a few days later of his wife, Fujiko, from Tokyo. Although it was highly unusual in Japan for a wife to do so, she had agreed to appear at her husband's trial as a character witness.

continued on page 66

"LEAVING HIMSELF TO THE JUDGMENT of God and future historians, Homma expressed to his lawyers his heartfelt gratitude . . . for the impartial stand you have taken so bravely."

ceed on their way." Taken into the forest, the officers were asked their last wish; they requested and received cigarettes. Then, Vargas continued, "the Japanese started stabbing all the captives with bayonets. . . . [T]he fellow at my side fell on top of me, and the officer beside me was pushed forward [and] covered my legs. A couple of Japanese went around and saw that the officer on my legs was still alive and gave him four thrusts. I didn't move, and even tried not to breathe so they wouldn't notice that I was alive."

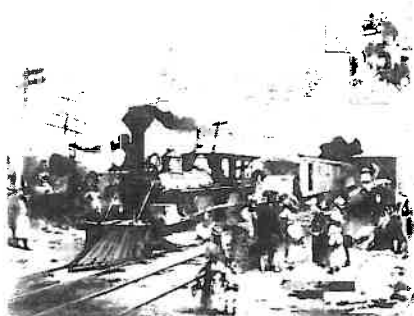
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BEAST OF BATAAN

continued from page 39

The prosecutor, who was in charge of such things, allowed her two visits with her husband.

Fujiko Homma charmed the press at the airport on her arrival and was an instant hit with everybody who caught even a glimpse of her. Her presence as a witness, however, was a major problem for the defense. Practically speaking, no Americans or other Westerners would testify, and, though Homma was considered a benign administrator during his brief tenure, collaboration was still such a sensitive issue that few Filipinos would willingly appear to testify on behalf of the commanding general of the Japanese invaders.

The defense case opened on January 29, with the testimony of Homma's chief of staff, General Wachi Takashi. Wachi declared that there was significant interference from Tojo's Imperial Headquarters in Tokyo, especially on the part of the notorious Colonel Tsuji Masanobu, whom Pelz described as "the man of mystery, [who] was a true villain in Singapore." Wachi told Coder, Pelz added, that "it was he who ordered the execution of 10,000 Chinese there."

But Wachi, described by the *New York Times* as a "sinister-looking little man," made little positive impression on the tribunal. In fact, Pelz felt that Wachi "hurt the cause by his obvious effort to outfox the prosecution and also by desiring to make everything too pat."

Although he had concluded that Wachi was "a smooth liar," Pelz continued to believe General Homma. However, the defense team's belief in its client became, for all practical purposes, a moot point on February 4, 1946, when the U.S. Supreme Court denied the appeal in the Yamashita case. In a six-to-two decision, the Court ruled that it was "not concerned with the guilt or innocence" of General Yamashita, but "only [with] the lawful power of the commission" to try him.

One of the dissenting Justices, Frank Murphy,* wrote that the fact that "there were brutal atrocities is undeniable. That just punishment should be meted out to all those responsible is also beyond dispute. But this does not justify the abandonment of our devotion to justice in dealing with a fallen enemy

*The other was Justice Wiley Rutledge.

commander. To conclude otherwise is to admit that the enemy has lost the battle but has destroyed our ideals. . . . Either we conduct ourselves in the noble spirit of our Constitution . . . or we abandon all pretense to justice, let the ages slip away, and descend to the level of revengeful blood purges."

Nevertheless, the majority of the Court had spoken, and with the way cleared for General Yamashita to be hanged, General MacArthur wrote that the enemy commander had "failed in his duty to his troops, to his country, to his enemy and to mankind. He has failed utterly his soldier's faith; [his life is] a blot on the military profession."

Despite the fact that whatever faint hope he might have had was gone, Homma took the stand in his own defense on the day after the decision came down. For two and a half days, he gave detailed answers to questions by both sides about the Bataan campaign, recalling many decisive moments, including a few when he feared his side would emerge the loser. He confirmed that he had several times been driven along the route that the prisoners marched, but stated that he had noticed nothing to excite his interest. "From testimony I have heard in court," he said "it appears there were many [bodies] along this route, but I don't see how that could be so, for I didn't see any." However, he added, "I was not particularly looking for dead bodies."

Homma also testified that no instances of mistreatment had been reported to him. Cross-examined closely about his stated policy of "kind treatment" for prisoners, he declared that "I came to know for the first time in the court of [the] atrocities, and I am ashamed of myself should these atrocities have happened."

When the chief prosecutor, Colonel Frank E. Meek, asked him if he was responsible for the actions of his men, Homma replied that he was, of course, "morally responsible," which the defense team hoped would be understood as distinct from being culpable for actions outside his direct control. But the next day's headlines read: "Death March Guilt Assumed By Homma."

After the general stepped down, the defense called his wife to the stand. The *New York Times* reported that she "testified that his 'soft' policy toward the Fil-

ipinos had brought him into disfavor with the Tojo war clique and led to his enforced retirement from the army three months after the conclusion of the Philippines campaign. General Homma, she said, had always been in favor of peace and had realized that Japan was heading toward the ruin that has now come upon her."

Remarking on her testimony, Pelz wrote that "Mrs. Homma almost gaily took the stand in defense of her husband. Completely undaunted by the bright lights, the grinding of the movie cameras and the flashing bulbs, she told of her husband's character, their home life and his ideas." Her words, he said, caused listeners to "feel a lump in their throat," and Homma "sobbed as she said 'I wish that my daughter shall marry such a man as the General.' . . . We all had tears in our eyes."

Her sympathetic performance, however, left the general and the defense team with no illusions about the outcome of the proceedings. That night Pelz described in his diary what was probably to be his last meeting with Homma. The general, he wrote, "said he is satisfied that the whole matter, i.e. his life, is now a closed book. . . . [E]verything that could be done has been done. He feels that the record is his explanation to the world, but he did break down when he told us . . . how grateful he was for our efforts." The lawyer concluded by writing that he believed Homma to be "a good man who was placed by fate in an impossible situation."

On February 9, the commission heard closing arguments. Several of the defense team participated. Captain Coder suggested to the generals of the commission that they "would have done exactly what General Homma did." Pelz stated that General Homma was required to move the prisoners away from the tip of Bataan: "He was damned if he did, and damned if he didn't."

Finally, Jack Skeen stood before the five generals and concluded Homma's defense by saying, "This entire case is an indictment not of an individual but of the system and background of the Japanese Army and the Japanese theory of waging war." The defense team, he told them, had "become thoroughly convinced of the sincerity and integrity of General Homma We are proud to

have represented him. Should Homma's life be taken the world will have lost a man who could do so much toward the continuation of peace."

After the defense had their say, Chief Prosecutor Meek made an impassioned demand for the death penalty. The Bataan Death March, he argued, would remain a "blot on history,"

and General Homma was to blame: "His headquarters was 500 yards from the road as 70,000 Americans and Filipinos dragged themselves past. He didn't care . . . If he had cared to listen, he could have heard the screams of the dying."

At least four of the five judges of the military tribunal must have agreed with the prosecution's contention that the general, as commanding officer, should have known what his men were doing. Although he was acquitted of unlawfully refusing to accept General Wainwright's surrender, Homma was convicted on the Death March and other charges. He was sentenced February 11 "to be shot to death by musketry."

Homma was sentenced to a "soldier's death," as opposed to the ignominious hanging imposed on Yamashita. This decision, which a *New York Times* editorial called "confusing," seems to indicate at least some ambivalence among the Homma commission as to the validity of the prosecution's premise, as well as to the tribunal's procedures. In fact, there must have been considerable uncertainty expressed as the commission deliberated, although there was almost no doubt that a conviction and death sen-

"THE DEFENSE *could only argue that the appalling events in question not only ran counter to General Homma's orders and policies, but that he had no knowledge of them."*

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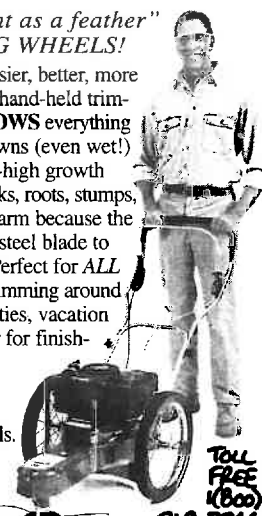
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MESSAGE TO MACARTHUR

On April 9, 1951, President Harry Truman decided to fire General Douglas MacArthur; what followed was one of the biggest communications disasters ever suffered by a U.S. president.

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tence were never in question.

General Trudeau wrote in his *Engineer Memoirs*, published in 1986, that he was deeply concerned by the questions related to command responsibility: "how many echelons above the man actually committing the crime were seniors responsible, or what do proximity and distance and knowledge have to do with it . . ." He was not, he admitted, in favor of condemning Homma to death, "but I could only oppose it to a point that allowed him to be shot as a soldier and not hanged because that took a unanimous verdict, and I would not vote to hang him. I thought he was an outstanding soldier."

Pelz, who had accompanied Mrs. Homma to Tokyo on the eve of the verdict, stated later that "I got a certain thrill that he was ordered executed by firing squad. It sounds silly, but that is a much nobler death for a military man. . . I made sure that Mrs. Homma understood the significance."

Like the lawyers representing Yamashita, the Homma defense team appealed to the U.S. Supreme Court, but with virtually no hope of success. The Justices would obviously follow the Yamashita line in the Homma appeal. Again, Justices Murphy and Rutledge found these examples of military justice incompatible with the rule of law. Murphy said

"that just punishment should be meted out to those responsible for criminal acts is beyond dispute . . . but this does not justify the abandonment of our devotion to justice." Rutledge quoted Thomas Paine's dictum that he who "would make his own liberty secure must guard even his enemies from oppression; for if he violates this duty, he establishes a precedent that will reach himself."

Fujiko Homma went to visit General MacArthur in Tokyo, not to plead for her husband's life, but to ask him to review everything carefully and to thank him for the effort of the people in Manila on behalf of her husband. MacArthur told the press that "Mrs. Homma's visit was one of the most trying moments of my life. . . . No incident could more deeply illustrate the utter evil of war and its dreadful consequences upon those like her who had no part in it. I earnestly hope that a merciful providence may help and sustain her . . ."

In reviewing Homma's sentence, MacArthur reached the conclusion "that

Following an unsuccessful appeal to the U.S. Supreme Court, General Homma, shown here leaving the courtroom, was executed by a firing squad on April 2, 1946.



COURTESY OF ROBERT L. PELZ

no trial could have been fairer than this one. No accused was ever given a more complete opportunity for defense. No judicial process was ever freer from prejudice." Declaring that "the defendant lacked the basic firmness of character and moral fortitude essential to officers charged with high command," he rejected "the minority views presented by two distinguished Justices of the United States Supreme Court . . . [S]uch legalistic arguments must not defeat the fundamental purpose of justice. Justice is a quality. Its purity lies in its purpose, not in its detail."

General Homma never wavered from his strong sense that the trial and its outcome were unjustified. At the same time, his conversations with and final letter to his defense team, as well as his moving correspondence with his wife and children, reveal an old Japanese soldier making his peace with the world. On the eve of the verdict, he wrote to his defense team, acknowledging that they had "tried your very best, leaving no stone unturned to give me a fair trial which I know is denied to me from the outset." He should have, he said, "killed myself many months ago, if I had known it would come to this . . . When I come to think that I am the man wholly misunderstood by the world, I feel sad, but it cannot be helped."

Leaving himself to the judgment of God and future historians, he expressed to his lawyers his "heartfelt gratitude and appreciation for the impartial stand you have taken so bravely. I respect Americans all the more for your sake."

Replying for the defense team, Skeen wrote that they could not "agree that you should have killed yourself . . . Rather we think you showed rare courage when you testified before officers of the Army you had defeated. We feel that you owed it to yourself, your family, your country and the world to tell your story, your side of what happened." The commission's verdict, Skeen assured him, "will not be the verdict of history. Apparently the war still goes on, but some day men's passions will have cooled and the truth will be sought and respected."

On April 2, 1946, General Homma Masaharu was executed by firing squad. The verdict, the sentence, the majority ruling of the Supreme Court, and the ex-

ecution were enthusiastically supported by editorial and public opinion throughout America and the world.

Since the end of World War II, the procedures for conducting war-crimes trials have been modified through the Geneva Conventions. The concept of command responsibility, as Americans saw in the 1974 trial of William Calley for the massacre of civilians at Mi Lai in Vietnam, has been reconsidered.

For Pelz, the issue remains a thorny one. Homma was, he explains, "someone quite different from what we had expected. . . [H]e was a gentleman. . . [H]e believed in all of the ideals and principles that we believed in. . . [H]e would have been and could be a leading force in Japan for democracy and for good. On the other hand, I think it's very important that generals recognize that they will be held responsible for what happens under their command. And knowing the Japanese soldiers, I can argue that General Homma had an obligation to see what the plans were to march the prisoners from the Bataan Peninsula. I can't say with certainty that injustice was done."

Of the members of the defense team, Robert Pelz is the lone survivor. As of this writing, he works in his New York office every day. John Skeen died in 1986 after a long career as an admiralty lawyer in Baltimore. George Furness went on to work as a defense lawyer at the Tokyo trials until 1948; he then married a Japanese woman and lived in Japan the rest of his life.

In 1973, Homma's daughter Hisako wrote to Furness after visiting Manila to place a memorial at the place where her father was shot. She told him that her "last letter from my father says . . . 'Hisako! Never forget there were the honorable gentlemen as the lawyers who fought for me at the Manila trial.'"

The young lawyers who worked so hard in a lost cause certainly never forgot the experience. At the end of the trial, Pelz wrote in his diary: ". . . if nothing else we of the defense have carried the banner of Anglo-American justice. Certainly it has startled the Japanese. There is a good deal of satisfaction to be derived from the effort." ★

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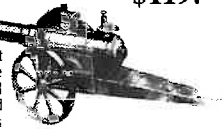
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