

4 October 16, 1946.

4 MEMORANDUM FOR THE ATTORNEY GENERAL

4 Re: Philippine War Crimes Cases
in the Supreme Court

The Supreme Court has granted certiorari in two war crimes cases arising in the Philippines (Uyeki, No. 145; Cantos (Tatishi), No. 264), and has ordered the cases advanced on the calendar.

Solicitor General McGrath is strongly of the opinion that these cases should not be permitted to come to decision in the Supreme Court, and I entirely agree. The cases are exceedingly weak and the prospect is that in deciding them the Supreme Court would seriously limit its decision in the Yamashita case. Accordingly, Mr. McGrath wrote to the Secretary of War under date of July 22, 1946, urging that the prisoners be released so as to render the cases moot. In that event the men would probably be taken into custody by the Philippine authorities and any subsequent trials, by reason of Philippine independence, would no longer be subject to review by the United States Supreme Court.

As time is of the essence, I have strongly urged the War Department to direct the release of the two men. I understand that the Secretary of War and his advisers are agreed on the advisability of this course but hesitate to issue an order to General MacArthur, who has indicated his reluctance to release the prisoners.

I think it is probable that the Secretary of War will get in touch with you in the near future to consult you about the problem. I recommend that he be advised to render the cases moot as quickly as possible. The Government has nothing to gain by keeping the cases on the Supreme Court calendar—and it would have a great deal to lose by a decision against it. Any adverse effect resulting from the release of the men would be very minor in comparison with the effects of a Supreme Court decision criticizing the Government and ordering the Secretary of War to release the two prisoners.

The two cases are discussed in detail in Mr. McGrath's letter of July 22, a copy of which is attached.

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George T. Washington,
Assistant Solicitor General.