UNITED STATES OF AMERICA	)	
	)	Government Targeted Brief
v.	)	On Receipt of Intelligence
	)	as a Requirement of
Manning, Bradley E.	)	Aiding the Enemy
PFC, U.S. Army,	)	Enclosure 8
HHC, U.S. Army Garrison,	)	
Joint Base Myer-Henderson Hall	)	29 March 2013
Fort Myer, Virginia 22211	)	

Encl 8 to
APPELLATE EXHIBIT 510
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WAR DEPARTMENT

OFFICE OF THE JUDGE ADVOCATE GENERAL

Army

U. S. Judge-advocate general's

3

A DIGEST OF OPINIONS

OF THE

JUDGE ADVOCATES GENERAL OF THE ARMY

1912

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WAR DEPARTMENT,
OFFICE OF THE CHIEF OF STAFF,
Washington, February 17, 1912.

The following Digest of Opinions of the Judge Advocates General of the Army, prepared under the direction of the Judge Advocate General, United States Army, by Capt. Charles Roscoe Howland, Twenty-first Infantry, Assistant to the Judge Advocate General, is published for the information of the Army and Organized Militia of the United States.

By order of the Secretary of War:

LEONARD WOOD,
Major General, Chief of Staff.

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XLV B. During the War of the Rebellion all inhabitants of insurrectionary States were *prima facie* enemies in the sense of this and the succeeding article.[1] *R. 14, 266, Mar., 1865.* A citizen of an insurgent State who entered the United States military service became of course no longer an enemy. So *held* of a lieutenant of the First East Tennessee Cavalry. *R. 29, 206, Aug. 1869.*

XLV C. It is no less a *relieving* an enemy under this article that the money, etc., furnished is *exchanged* for some commodity, as cotton, valuable to the other party. *R. 12, 385, Mar., 1865; 14, 266, Mar., 1865; 16, 446, Aug., 1865.*

XLV C 1. The act of "relieving the enemy" contemplated by this article is distinguished from that of trading with the enemy in violation of the laws of war; the former being restricted to certain particular forms of relief, while the latter includes every kind of commercial intercourse not expressly authorized by the Government. *R. 14, 266, Mar., 1865.* (See War.)

XLVI A. *Held* that the offense of *holding correspondence* with the enemy was completed by writing and putting in progress a letter to an inhabitant of an insurrectionary State during the War of the Rebellion; it not being deemed essential to this offense that the letter should reach its destination.[2] *R. 4, 370; 5, 274 and 291, Nov., 1863; 10, 567, Nov., 1864.*

XLVI B. It is essential, however, to the offense of *giving intelligence* to the enemy that material information should actually be communicated to him; the communication may be verbal, in writing, or by signals. *R. 14, 273, Mar., 1865.*

XLVIII A. *Held* that when a deserter is returned to duty without trial there is an implied admission on his part of the desertion. This admission establishes the desertion and entails the requirement in the forty-eighth article of war that he shall make good the time lost in desertion.[3] *R. 53, 276, Apr., 1887, P. 26, 487, Sept., 1888; C. 16306, Apr. 11, 1908; 16814, Sept. 3, 1904 and Nov. 13, 1906; 20690, Nov. 28, 1906; 21117, Feb. 15, 1907.*

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wise made manifest. No such intent is so expressed or made manifest. Persons not belonging to the military establishment may be proceeded against for the acts mentioned in the article, but it is by virtue of the power of another jurisdiction, namely, martial law; and martial law does not owe its existence to legislation but to necessity. The scope of these articles under the legislation of 1776, apparently extending their application to civilians, seems to have become modified on the adoption of the Constitution.

Possibly the sixty-third article of war should be construed as making "retainers to the camp," etc., part of the military forces for the time being. But see the case of B. G. Harris, M. C., tried by court-martial in 1865. (H. Ex. Doc. 14, 39th Cong., 1st sess.)

[1] See the opinion of the United States Supreme Court (frequently since reiterated, in substance), as given by Grier, J., in the "Prize Cases," 2 Black, 635, 666 (1862); and by Chase, C. J., in the cases of Mrs. Alexander's Cotton, and The Venice, 2 Wallace, 258, 274, 418 (1864). In the latter case the Chief Justice observes: "The rule which declares that war makes all the citizens or subjects of one belligerent enemies of the Government and of all the citizens or subjects of the other, applies equally to civil and to international wars." That an insurrectionary State was no less "enemy's country," though in the military occupation of the United States, with a military governor appointed by the President. (See Opinion by Field, J., in Coleman v. Tennessee, 7 Otto, 509, 516, 517.)

[2] O'Brien, 147; Hensey's Case, 1 Burrow, 642; Stone's Case, 6 Term, 527; Samuel, 580.

[3] 26 Op. Atty. Gen., 239.

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