UNITED STATES OF AMERICA	)	Government Targeted Brief
	)	On Receipt of Intelligence
v.	)	as a Requirement of
	)	Aiding the Enemy
Manning, Bradley E.	)	Enclosure 7
PFC, U.S. Army,	)	
HHC, U.S. Army Garrison,	)	
Joint Base Myer-Henderson Hall	)	29 March 2013
Fort Myer, Virginia 22211	)	

Encl 7 to
APPELLATE EXHIBIT 510
PAGE REFERENCED:_____
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A TREATISE

ON THE

MILITARY LAW

OF THE

UNITED STATES.

TOGETHER WITH THE

PRACTICE AND PROCEDURE OF COURTS-MARTIAL AND OTHER MILITARY TRIBUNALS.

BY

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SECOND EDITION, REVISED.

THIRD THOUSAND.

NEW YORK:

JOHN WILEY & SONS.

LONDON: CHAPMAN & HALL, LIMITED.

1911.

that is, to the officers and non-commissioned officers of the guard, to such members of the guard as are actually engaged in the performance of duty as sentinels, and to such other persons as are permitted or required, on account of their official duties, to pass and repass a line of sentinels at night.

The parole, which serves as a check upon the countersign, is given only to those who, by their office or duty, are entitled to visit and inspect guards or sentinels at night. It is used solely as a means of identification, but it cannot avail as a passport unless accompanied by the countersign. The term "watchword," as used in the Article, comprehends not only the countersign and parole, but any preconcerted word or signal issued, by competent authority, for a similar purpose in the performance of guard or outpost duty.

The offense may be committed by any military person who makes known the watchword to one not entitled to receive it, in accordance with existing orders and regulations, or who gives a parole or watchword different from that which he received. As no specific intent is set forth in the statute, the offense may be committed through negligence or inadvertence, or with the intent to convey the watchword to the enemy; the offense would be complete in either case.

ARTICLE 45. *Whosoever relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy, shall suffer death, or such other punishment as a court-martial may direct.*

ARTICLE 46. *Whosoever holds correspondence with or gives intelligence to the enemy, either directly or indirectly, shall suffer death, or such other punishment as a court-martial may direct.*

These provisions appear respectively as Articles 18 and 19, Section 14, of the British Code of 1774, as Articles 18 and 19, Section 13, of the American Articles of 1776, and as Nos. 56 and 57 of the Articles of 1806.

In view of the general term of description "whosoever" in these Articles it was held, during the late war, by the Judge-Advocate-General and by the Secretary of War, and has been held later by the Attorney-General, that civilians, equally with military persons, were amenable to trial and punishment by court-martial under either Article.[1] But the sounder construction would seem to be that, as the Articles of War are a code enacted for the government of the military establishment, they relate only to persons belonging to that establishment unless a different intent should be expressed or otherwise made manifest. No such intent is so expressed or made manifest. Persons not belonging to the military establishment may be proceeded

[1] Dig. J. A. Gen., 40, par. 1. Admitting this construction to be warranted so far as relates to acts committed on the theatre of war or within a district under martial law, it is to be noted that it is the effect of the leading adjudged cases to preclude the exercise of the military jurisdiction over this class of offenses when committed by civilians in places not under military government or martial law. See, especially, *Ex parte* Milligan, 4 Wallace, 121-123; Jones *vs.* Seward, 40 Barb., 563. *Ibid.*, 40, par. 1, note.

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.[1] The scope of these Articles under the legislation of 1776, apparently extending their application to civilians, seems to have been modified as a consequence of the adoption of the Constitution.

Relieving the Enemy.—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.[2] It is none the less relieving the enemy under this Article that the money, etc., furnished is exchanged for some commodity, as cotton, valuable to the other party.[3]

Holding Correspondence with the Enemy.—The offense of holding correspondence with the enemy is completed by writing and putting in progress a letter to an enemy, as to an inhabitant of an insurrectionary State during the late war; it not being deemed essential to this offense that the letter should reach its destination.[4] It is essential, however, to the offense of giving intelligence to the enemy that material information should actually be communicated to him; and such communication may be verbal, in writing, or by signals.[5]

"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." An insurrectionary State is no less "enemy's country," though in the military occupation of the United States, with a military governor appointed by the President.[6]

ARTICLE 47. *Any officer or soldier who, having received pay or having been duly enlisted in the service of the United States, deserts the same, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment excepting death which a court-martial may direct.*

The first statutory recognition of this offense in England dates from the middle of the fifteenth century, and will be found in an enactment[7] conferring the status of felony upon a soldier who deserted from the captain whom

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[1] Opin. J. A. Gen.
[2] Dig. J. A. Gen., 41, par. 4.
[3] *Ibid.*, par. 3.
[4] *Ibid.*, 42, par. 1.
[5] *Ibid.*, par. 2.
[6] The Service, 2 Wall., 274, 418. See, also, the opinion of the U. S. Supreme Court (frequently since reiterated in substance) as given by Grier, J. in the "Prize Cases," 2 Black, 666 (862), and by Chase, C.J., in the cases of Mrs. Alexander's Cotton, and Dig. Opin. J. A. Gen., 41, par. 2.
[7] 18 Henry VI, ch. 19.