Declassified E.O. 12356 Section 3.3/NND No. 785016

ACC

10000/142/1006

LEGAL S/C OF
DEC. 1943 – JA

10000/142/1006

LEGAL S/C OF ACC, U.S. & BRITISH COURTS MARTIAL
DEC. 1943 - JAN. 1944

Legal Dept N° 31

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommission

Col Upjohn

9 January 1944.

In reply
refer to: ACC/1/201.

SUBJECT: Rights of the Occupant.

TO : Brig. Gen. Taylor.

The rights of the occupant in the occupied territories are found in:

FM 27-10 p. 75-86

Manual of Military Law
Amendment No. 12 p. 67-81.

Both manuals are enclosed herewith.

Returned Tuy Ltr

G. R. UPJOHN, Colonel
Chief Legal Officer, ACC.

515

21

201

17 DEC 1943 127

Branch Office of The Judge Advocate General
with the
North African Theater of Operations
APO 534, U. S. Army

7 December 1943

201

SUBJECT: Digest of Opinions.

TO : All Staff Judge Advocates, North African Theater of Operations.

Inclosed for your information is a copy of a compilation of digests of selected holdings, opinions and reviews by the Board of Review in the Branch Office of The Judge Advocate General with the North African Theater of Operations. The digests cover the period from the establishment of the Branch Office to 30 November 1943. It is expected that digests of some but not all of these holdings, opinions and reviews will be included in the monthly Bulletins of The Judge Advocate General.

HUBERT D. HOOVER,
Colonel, J.A.G.D.,
Assistant Judge Advocate General

1 Incl. - Digests.

ARTICLE OF WAR 43 - Sentence - Vote in Adjudging.

Accused was sentenced to confinement for 15 years but only two-thirds of the members present concurred. Three-fourths of the members present is required in order to render legal a sentence to confinement in excess of ten years. The defect was, however, cured by reduction of the sentence by the reviewing authority to ten years.

NATO 630, Cooke.

ARTICLE OF WAR 64 - Lifting Up Weapon Against Officer - Proof.

Accused was found guilty of lifting up a weapon, a rifle, against his superior officer who was in the execution of his office. The evidence showed that the officer approached accused's tent following unruly conduct by accused, and announced that he was about to enter. Accused expressed his consent to the entrance provided the officer came alone and without anything in his hands. Upon entrance the officer observed that accused had his rifle in the "ready position" pointed in the direction of the officer. Thereafter accused had the weapon in his possession but did not point it at the officer. No physical attempt or menace of violence was directed towards the officer. It appearing that the position of accused when the officer entered the tent was no different from what it had been prior to that time, and there having been no menacing move or gesture thereafter, the evidence did not support the finding of guilty. There is no lifting up of a weapon against an officer, within the meaning of Article of War 64, unless the act involved amounts to an assault.

NATO 759, Thompson.

ARTICLE OF WAR 64 - Offering Violence Toward Officer in Execution of His Office.

Accused was found guilty of assaulting a medical officer in violation of Article of War 64. The evidence shows that while the officer was riding along a roadway in a command car he had to stop when accused thrust his foot before the car. The officer commenced to investigate the conduct of the accused and also took steps to quell a disorder among military personnel present. While so engaged accused struck him. The officer was in the execution of his office when the assault was committed upon his person, for the circumstances warranted his interposition because of the disorder within the meaning of Article of War 68 and his attempt to quell the disorder was an act authorizedly done by military usage. Record sufficient to support findings.

N.TO 899, Ber[illegible].

.RTICLE OF W.R 84 - Proof of Government Ownership.

.ccused were found guilty of the unlawful sale of gasoline, military property of the United States, in violation of .rticle of War 84, and of wrongful disposition of the same gasoline, in violation of .rticle of War 89. The evidence showed that the gasoline was loaded on an .rmy truck at a quartermaster truck-aviation unit and transported to an airfield near Tebessa, Tunisia. .ccused were members of that quartermaster organization. The containers were of the type commonly used in the field. Held: The circumstances justified an inference that the gasoline was military property of the United States issued for use in the military service. CM 207591, Nash et al, Dig. Op. J.G. 1912-1940, sec. 452 (10), distinguished.

N.TO 252, Dickerson et al.

ARTICLE OF W.R 95 - Unnatural Practices as Violation Of.

.ccused was found guilty of committing indecent and improper acts on various enlisted personnel of his command, in violation of .rticle of War 95. Under pretext of official license, on separate and distinct occasions, accused took perverse liberties by manually touching and stroking the bodies of soldiers; his movements were in the nature of fondling and were suggestive of what might more appropriately be done to a person of the opposite sex; in each instance the enlisted man was summoned before the accused for some asserted breach of military discipline and detained for a long period of time; much of the time he kept the soldiers standing at attention or parade rest for the ostensible purpose of correcting the soldiers' posture. .ll circumstances in evidence evince either a depravity of instinct or, as betrayed also by his acts, an innate moral perverseness. The conduct of the accused demonstrates his moral unfitness to continue as an officer. Record sufficient to support the findings and sentence.

N.TO 466, Brewer.

.SS.ULT - With Intent To Do Bodily Harm - Principals.

Two accused were found guilty of rape and of assault with intent to do bodily harm with a dangerous weapon. The evidence shows that in events leading up to the act of rape "they" shot men present in the hand and thigh. The two accused put the woman on the ground and had sexual intercourse with her without her consent and against her will.

2. While engaged in the unlawful enterprise one of them fired the shots. The question as to who fired is of no consequence. Each was responsible, in law, for the act of the other. Record of trial sufficient to support findings of guilty of the assault.

NATO 779, Clark et al.

ASSAULT - With Intent to Rape - Proof - Abandonment of Purpose.

Accused was found guilty of assaults with intent to rape. He wrongfully entered two Arab huts and in each of them seized a woman occupant. In one instance the act of violence was accompanied by the words "zig zig" (meaning sexual intercourse), and in the other accused forced the woman to the floor and unbuttoned his trousers. In each case, after the woman had successfully resisted, accused offered her candy. Although accused desisted in his use of force, the facts justify an inference that in both cases, at the beginning, he intended to overcome the woman's resistance by force. What accused did immediately after the assault, whether by enticement or subterfuge, does not relieve him from responsibility. Once the assault with intent to commit rape has been made, it was no defense that accused resorted to other means to accomplish his purpose or voluntarily desisted. Record sufficient to support findings.

NATO 583, Terrell.

BURGLARY - Breaking and Entering with Intent to Rape.

One of two accused was found guilty of burglary, rape and attempt to commit rape and the other was found guilty of burglary and rape, accomplished at the same time and place. Burglary is the breaking and entering in the night of another's dwelling house with intent to commit a felony therein. The evidence showed that accused scaled a courtyard wall at night, broke the door of the room where the prosecutrix was, and had sexual intercourse with her by force and without her consent. It was necessary to prove specific intent, at the time of the entry, to commit a felony. Intent is to be inferred from the facts. When accused actually and immediately committed a felony after entering the house, it may be inferred that the entrance was with the intent to commit a felony. Record sufficient to support findings.

NATO 439, Hunt et al.

CHALLENGE, PEREMPTORY - Time of Submission.

Some time after arraignment accused submitted a peremptory challenge. The law member ruled that a peremptory challenge was not then in order. The ruling was correct. Accused had been accorded his right to exercise such a challenge before the court was sworn. Failure to exercise the right when it was tendered constituted a waiver. A vote by the members of the court upon challenge was not required.

N.T.O 646, Simpson and Baker.

CHALLENGES - Waiver.

Accused was tried for rape by a court-martial which had completed the trial of another soldier for rape of the same woman, at the same place and at about the same time. There was evidence of general concert of action between the accused and the other soldier. The defense did not interpose any challenge and the defense counsel stated that accused did not object to any member of the court as constituted. Under Par. 58c, MCM, members of the court were subject to challenge. They were not, however, ineligible to sit as members of the court. Their disqualification was subject to waiver through withholding challenge. The right of challenge was effectively waived.

N.T.O 423, Stroud.

CHARGES - Multiplicity of Specifications.

Accused was properly charged with three separate robberies although they were very closely related in point of time and place. Each robbery was basically a separate trespass and as such constituted a distinct and complete offense. The case does not present the situation of larcenous taking of several articles from different persons where the taking is substantially the same transaction, and the rule against multiplicity is therefore inapplicable.

N.T.O 950, Harlan.

CONFESSIONS - Admissions Distinguished - Proof of Voluntariness.

The company commander of accused's organization was permitted to testify that, in his opinion, the statements accused made to him "contained a confession". The statements, which were received in evidence without any showing that they were voluntarily made, were not in fact

confessions also they fell short of admission of guilt. But they did constitute admissions against interest which the court properly admitted without requiring any inquiry into the circumstances under which they were made (MCM, 1928, 114b). The opinion expressed by the company commander as to the legal effect of these statements was patently incorrect, but was harmless.

N.TO 937, Barbieri et al.

DESERTION - With Intent to Avoid Hazardous Duty.

Accused was found guilty of desertion by absenting himself without leave with intent to avoid hazardous duty, to wit, combat with the enemy. The evidence showed that on 1 April 1943, accused's company attacked the enemy near Maknassy, Tunisia. That night the company withdrew to a position about four miles west of Maknassy where it remained in mobile reserve. On 3 April accused absented himself without leave from the company and remained absent until 8 May 1943. From the unauthorized absence under the circumstances noted the court was justified in inferring an intent to avoid hazardous duty of combat.

N.TO 412, Weaver.

DESERTION - With Intent to Avoid Hazardous Duty - Proof.

Accused was found guilty of desertion with intent to avoid hazardous duty. The evidence shows that without authority he left his company when it was facing enemy elements less than a mile away. He remained absent for 126 days. There is substantial evidence that his company was engaged in actual combat when he absented himself. Under these circumstances the court was warranted in concluding that accused left his company with the specific intent of avoiding hazardous duty.

N.TO 867, McCullough.

EVIDENCE - Hearsay Identification.

Upon a trial for rape witnesses were permitted to testify that the victim and her husband, prior to trial, identified the accused as the woman's assailant. This testimony was incompetent but, in view of the uncontroverted evidence of identity, was harmless.

N.TO 423, Stroud.

N.TO 460, Trevino.

MANSLAUGHTER, VOLUNTARY - Established When Evidence Shows Murder.

Upon trial for murder accused was found guilty of voluntary manslaughter. He provoked a quarrel with an Arab over 50 francs which accused claimed was owed him, and a disorder followed. A French woman, in search of assistance, hailed two military policemen who were off duty and unarmed. The military policemen were brought to accused. He thrust them into a corner and struck both with a knife. One died two days later. The reduction of the charge of murder to manslaughter, possibly induced by the belief that the homicide was "committed in the heat of sudden passion caused by provocation", was favorable to accused and his rights were not thereby injured. Findings legally authorized.

N.TO 581, Grant.

MANSLAUGHTER, VOLUNTARY - May Be Homicide Committed in Heat of Passion Induced by Fear.

Upon trial for murder accused was found guilty of voluntary manslaughter. He unlawfully entered a dwelling and while within the dwelling became fearful of his own safety and in his fear and excitement fired upon and killed an occupant. Held: While the characteristic element of voluntary manslaughter is sudden heat of passion, aroused by provocation, the passion may consist of fear such as a normal person would entertain under the circumstances. The court having resolved the questions of fact in fevor of accused insofar as murder was concerned, its findings of guilty of voluntary manslaughter were not legally improper.

N.TO 440, Gilbert.

MANSLAUGHTER, VOLUNTARY - Self-Defense - Proof.

Accused was found guilty of voluntary manslaughter by shooting H_____ with a rifle. The homicide was proved. Just prior to the shooting H_____ became enraged because accused asked him what he had done with accused's canteen and an argument ensued in which cursing was exchanged. Accused retired from the scene and commenced sweeping about his tent. H_____ went to his tent, secured a rifle and made a threat. Accused then secured his rifle but retreated. H_____ fired at accused, the bullet striking in a tree above accused's head. Accused then fired the fatal shots. As a matter of law, upon these facts, it is manifest that accused killed in self-defense. The danger accused faced was apparently real and he believed it was imminent. He retreated as far as was reasonably necessary. The elements of self-

13

defense being present, the homicide was not unlawful. Record not legally sufficient to support findings of guilty.

NATO 550, Mitchell.

MISBEHAVIOR BEFORE THE ENEMY - Penitentiary Confinement.

Accused was found guilty of running away from his company, then engaged with the enemy, in violation of Article of War 75. A Federal reformatory was designated as the place of confinement. JD letter, February 20, 1941 (AG 2-6-41) authorizes confinement in a Federal reformatory or correctional institution only when confinement in a penitentiary is authorized by law. Penitentiary confinement is not authorized inasmuch as the offense of which the accused was convicted is not one of a civil nature and so punishable by penitentiary confinement for more than one year by any statute of the United States of general application in the United States or by the law of the District of Columbia (AW 42). A place of confinement other than a penitentiary, Federal correctional institution or reformatory, must be designated.

NATO 811, Schwartz.

MISBEHAVIOR BEFORE THE ENEMY - Proof.

Accused was found guilty of shamefully abandoning his company while before the enemy, in violation of Article of War 75, and of desertion with intent to avoid hazardous duty, in violation of Article of War 58. The evidence shows that accused was present with his company while it was engaged in combat with the enemy and, during a lull in the battle, went to the rear for water and failed to return to the organization. He went to a first aid station and there was told to return to his command. Instead he proceeded to a city over 300 miles from the combat zone, where he remained unauthorizedly absent until after the fighting was over. The requirements of proof for conviction of violation of both Articles of War 75 and 58 were fully satisfied.

NATO 397, Barbieri et al.

MISBEHAVIOR BEFORE THE ENEMY - Proof - Abandoning Organization.

Accused was found guilty of shamefully abandoning his company and seeking safety in the rear at a time at which the company was

engaged with [illegible] enemy. Accused was assigned to [illegible] wire section as trouble shooter and switchboard operator. His section was required to go out frequently to repair telephone lines damaged by enemy shell fire and air attacks. While the company was engaged in combat in Tunisia, accused left the scene without authority and remained absent until he surrendered in Algiers stating that he was a "straggler". Absence under such circumstances amounted to a shameful abandonment of his organization and it must be inferred that in fact he sought safety in the rear. Record sufficient to support findings.

NATO 470, Seeger.

MORNING REPORTS - Hearsay Entries.

The entries contained in the morning reports introduced in evidence were not made upon personal knowledge as to the facts recited, and were therefore objectionable on the ground of hearsay. Inasmuch as the facts as recited in the morning reports were otherwise established by competent and undisputed evidence, the substantial rights of accused were not injuriously affected.

NATO 603, Suci.

MURDER - Proof.

Accused was found guilty of murder by shooting his victim with a rifle. The shooting followed a petty dispute between the two men and the utterance of threats by accused to shoot deceased. The circumstances exhibited nothing approaching legal excuse or justification. No adequate motive appeared but the homicide was deliberate, willful and premeditated. Malice aforethought was plainly inferable from the circumstances and remarks of the accused. The elements of murder were fully established. Accused had been drinking, but from the evidence adduced there was nothing to indicate that he was not mentally responsible for his acts in all respects. Record legally sufficient to support the findings.

NATO 697, Gardner.

MURDER - Provocation - Justification.

Accused was found guilty of murder by shooting his victim with a rifle. Accused declared as a witness that about 15 or 20

minutes before the shooting, he had decided to kill his victim, the latter having on the preceding night forced accused to submit to an unnatural sexual act. While the circumstances may have explained the accused's acts, they could not be regarded as legal justification or as provocation sufficient to reduce the offense to voluntary manslaughter. Where "cooling time elapses between the provocation and the blow the killing is murder, even if passion persists" (MCM, 1928, p. 166). The killing here was shown to have been coolly and deliberately planned, with a specific and malicious intent to kill.

NATO 419, Addison.

MURDER - Revision Proceedings to Increase Sentence to Comply with Mandatory Requirements, Authorized.

After finding accused guilty of murder in violation of Article of War 92 the court sentenced him to dishonorable discharge, total forfeitures and confinement for 50 years. The reviewing authority returned the record of trial for proceedings in revision and the court thereupon sentenced the accused to dishonorable discharge, total forfeitures and confinement at hard labor for the term of his natural life. Since a sentence to death or life imprisonment is mandatory for murder the action of the court was proper under Article of War 40 (d).

NATO 544, Helton.

MUTINY - Attempt to Create.

Accused were found guilty of an attempt to create a mutiny, in violation of Article of War 66. There was evidence that a company guard had refused to arrest two men who had become involved in trouble and that the Military Police had been called in to make the arrest. Several of the men of the company assembled with their rifles and began shooting in the air in protest. The accused were among the inciters and ring leaders. The company commander called a formation to discuss the matter and the men thereafter dispersed but reassembled with their rifles and commenced shooting in the air again. Had the group of soldiers collectively defied lawful authority in an effort to free the men in custody of the Military Police, a mutiny would have been committed, and but for the timely and vigorous intervention of the company commander the mutiny might have taken place. There is evidence that the accused made statements to the group designed to induce the collective action indicated. An attempt to commit a crime is an act done with intent to commit that partic-

ular crime, e[illegible] forming part of a series of acts which will apparently, if not interrupted by circumstances independent of the doer's will, result in its actual commission (MCM, 1928, par. 152c). Voluntary abandonment of purpose after an act constituting an attempt is not a defense (MCM, 1928, par. 156a). Record is legally sufficient to support the findings.

NATO 371, Jackson et al.

RAPE - May Be Found as Joint Offense.

Two accused were found guilty of rape alleged to have been committed jointly and in pursuance of a common intent. The evidence shows that both accused violated the person of the victim, forcibly and without her consent, and that the rapes were accomplished in the course of a common venture in which each accused aided the other. The finding of joint action in pursuance of a common intent was therefore justified. The Defense objected that "rape is not an offense that can be committed jointly". It is true that two or more cannot jointly commit a single rape, because by the very nature of the act individual action is necessary. However, this rule does not prevent the joinder of persons aiding and abetting one another in the commission of the crime. They are then chargeable as principals. Record sufficient to support the findings.

NATO 646, Simpson et al.
NATO 779, Clark et al.

RAPE - One Who Aids and Abets Is Principal.

Accused was charged with rape as a principal. The evidence shows that while his companions were raping two Arab women, he stood guard with a gun over the husband of one of them and two others. The effect of the accused's action was to render aid in the perpetration of the crimes and make him an aider and abettor. At common law he would have been a principal in the second degree. The distinction between principals in the first and second degree is a distinction without a difference and is no longer required. Aiders and abettors under rules of general application may be charged as principals. Although two persons cannot be guilty of a single joint rape, because by the very nature of the act individual action is necessary, all persons present aiding and abetting another in the commission of rape are guilty as principals and punishable equally with the actual perpetrator of the crime. The accused was properly charged as a principal with the offense of rape as alleged. Record sufficient to support the findings.

NATO 385, Speed.

RAPE - Proof of Complaint by Prosecutrix.

Upon a trial for the rape of a seven-year old child the mother was permitted, over objection by the defense, to testify that the child told the mother, immediately after the child was returned to her home, that an "American brought me and hurt me". The testimony was properly admitted, as proof of prompt complaint, for the purpose of corroborating the testimony of the prosecutrix relative to the corpus delicti.

NATO 910, Hudgins.
NATO 384, Middleton et al.

ROBBERY - Proof.

Accused was found guilty of robbery and was sentenced to dishonorable discharge, total forfeitures and confinement at hard labor for 30 years. The evidence shows that he stole property from three persons, that an assault in each instance either preceded or accompanied the larcenous taking and that the taking was effected against the will of each victim by means of violence and intimidation. The situation presented a reasonably well founded apprehension of present serious danger if resistance were offered. The robberies were committed with the aid of two accomplices for whose acts the accused became responsible as a principal. Accused was properly charged with three separate robberies, although they were closely related in point of time and space. Each robbery was basically a separate trespass and as such constituted a distinct and complete offense. Record sufficient to support findings and sentence.

NATO 950, Harlan.

VALUE - Proof Of.

Upon trial of accused for wrongful sales of issue clothing and equipment in violation of Article of War 94, the "black-market" prices at which the articles were sold were shown to be considerably in excess of the published list prices. Held: The determinative values of the articles sold were the published list prices rather than the so-called local market values.

NATO 452, Reed.

WITNESS - Impeachment by Proof of Inconsistent Statement.

The prosecution, taken by surprise, was allowed to impeach one of its own witnesses by proving a prior statement inconsistent with the witness' testimony. The inconsistent statement was to the effect that witness saw accused commit the offense involved in the charges. Having been introduced only for purposes of impeachment the statement was not for consideration as bearing upon the issue of guilt.

NATO 372, Brown.

WITNESSES - Cross-Examination of Accused.

After accused had testified as to his version of a disturbance, he was asked if he had had a weapon. Objection overruled. This specific subject had not been covered in direct examination. The scope of cross-examination of an accused rests within the sound discretion of the court and greater latitude than in other cases may be properly allowed. No error.

NATO 778, Tallent.

WITNESSES - Expert.

The law member refused to permit a medical officer to express his opinion as to the drunkenness of accused, based upon a blood alcohol test. This witness had not had laboratory experience with alcohol blood tests and testified that he placed more credence on physical symptoms than on the blood tests in such cases. It was within the province of the court to determine the qualifications of the witness. The court had broad legal discretion in determining whether a supposed expert possessed the required qualifications. The court's determination could not be held erroneous unless palpably unreasonable.

NATO 213, Smith.

WITNESSES - Infant - Competency.

The court permitted an assaulted child, seven years of age, to testify. Prior to testifying she was questioned and the court determined, over objection by the defense, that she was a competent witness.

This was prop[illegible]. The competency of children a[illegible]itnesses is not dependent upon their age but upon their apparent sense and their understanding of the moral importence of telling the truth. There appears to have been no abuse of discretion.

NLTO 910, Hudgins.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommission

9 January 1944.

In reply
refer to: ACC/L/201.

SUBJECT: Rights of the Occupant.

TO : Brig. Gen. Taylor.

The rights of the occupant in the occupied territories are found in:

FM 27-10 p. 75-86

Manual of Military Law
Amendment No. 12 p. 67-81.

Both manuals are enclosed herewith.

G. R. [illegible], Colonel
Chief Legal Officer, ACC.

5

1138

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommission

NS/gmf

7 January 1944.

In reply
refer to: 2.1

SUBJECT: Depositions made in Italy.

TO : G-2, Advance Intelligence, AFHQ
(for Mr. Frank L. Agrim).

In response to your inquiry regarding the authentication of depositions made in Italy for use as valid and competent evidence in the Courts of the United States, I submit the following:

Article 114 of the Articles of War provides that judge advocate, acting judge advocate, president of a general or special court martial, trial judge advocate, assistant trial judge advocate of a general or special court martial, president or recorder of court of inquiry or military board, any officer designated to take a deposition, any officer detailed to conduct an investigation and the adjutant of any command, shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgement of legal documents and the attestation of documents.

A. R. TEICHER, Major
Legal Subcommission, ACC.

4

400

1 of

SUBJECT: Applicability of Military Law to Press Correspondents.

TO: General Maxwell Taylor, Allied Control Commission.

1. The question has been raised whether an American Press Correspondent, attached to the armed forces of the United States, is subject to the Articles of War and may be punished by Court Martial for his violation of one or more of those Articles.

2. It is entirely clear that the correspondent mentioned in the preceding paragraph is responsible, like regular military personnel, to Military Law and to Court Martial proceedings. In the second Article of War, paragraph (d), it is specifically provided that in time of war "all persons accompanying or serving with the Armies of the United States....in the field", are subject to the Articles and are to be included in the term "any person subject to Military Law". This responsibility of correspondents is balanced by the advantages specifically given to them in Article 81, Title VII of the Geneva Convention, by which "individuals who follow the armed forces without directly belonging thereto, such as correspondents, newspaper reporters" etc., are entitled if captured by the enemy to be treated as prisoners of war.

3. Correspondents, whatever their citizenship, who are attached to the British Army are by virtue of the Sections 175 & 176 of the Army Act (44 & 45 Vict. C. 58) similarly subject to British Military Law, as officers if they have a pass issued by the Commanding Officer, as soldiers if they have no such pass.

W. H. W. K.

WARREN DeW. KNOX, Major, AUS
Chief Legal Officer, Region 2,

1. The question has been raised whether an American Press Correspondent, attached to the armed forces of the United States, is subject to the Articles of War and may be punished by Court Martial for his violation of one or more of those Articles.

2. It is entirely clear that the correspondent mentioned in the preceding paragraph is responsible, like regular military personnel, to Military Law and to Court Martial proceedings. In the second Article of War, paragraph (d), it is specifically provided that in time of war"all persons accompanying or serving with the Armies of the United States....in the field", are subject to the Articles and are to be included in the term "any person subject to Military Law". This responsibility of correspondents is balanced by the advantages specifically given to them in Article 81, Title VII of the Geneva Convention, by which "individuals who follow the armed forces without directly belonging thereto, such as correspondents, newspaper reporters" etc., are entitled if captured by the enemy to be treated as prisoners of war.

3. Correspondents, whatever their citizenship, who are attached to the British Army are by virtue of the Sections 175 & 176 of the Army Act (44 & 45 Vict. C. 58) similarly subject to British Military Law, as officers if they have a pass issued by the Commanding Officer, as soldiers if they have no such pass.

W. W. H.

MARK DeW. HOWE, Major, AUS
Chief Legal Officer, Region 2.

The Army Act (Man. of Mil. Law) (44 & 45 Vict. c. 58)

P. 580ff Persons subject to Military Law.

175. The persons in this section mentioned are persons subject to military law as officers, and this Act shall apply accordingly to all the persons so specified; that is to say,

(8.) Any person, not otherwise subject to military law, accompanying a force on active service, who shall hold from the commanding officer of such force a pass, revocable at the pleasure of such commanding officer, entitling such person to be treated on the footing of an officer.

Note 4: Paras (7) & (8.) these paragraphs make certain persons subject to military law as officers who would otherwise be subject under s. 176(10) to trial & punishment as soldiers. The first extends to persons attached to a military expedition by order of the Army Council or the Governor General of India or Bombay in a diplomatic, scientific or other official capacity. The second would apply to persons like contractors or newspaper correspondents, who obtain pass from the commanding officer of the force directing them to be treated as officers.

176. The persons in this section mentioned are persons subject to military law as soldiers, & this act shall apply accordingly to all the persons so specified, that is to say —

(10) All persons not otherwise subject to military law (see note 4 [struck through] to s. 175 under which some of the persons indicated there might be subject to military law "as officers.") who are followers of or accompany His Majesty's troops, or any portion thereof, when employed on active service;

184 [struck through] — (1) Where an offense has been committed by any person subject to military law who does not belong to His Majesty's forces, such persons may be tried by any description of court martial convened by an officer authorized to convene such description of court-martial, within the limits of whose command the offender may for the time being be, & may be tried, & on conviction shall be punished accordingly.

Any person subject to mil. law who does not belong to H M's forces — shall be deemed to be under the command of the commanding officer of the corps or portion of corps (if any) to which he is attached — — —