IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

U N I T E D S T A T E S	)	
	)	**DEFENSE MOTION FOR**
v.	)	**SPECIFIC INSTRUCTIONS:**
	)	**THE SPECIFICATION OF**
	)	**CHARGE I**
MANNING, Bradley E., PFC	)	
U.S. Army, xxx-xx-9504	)	
Headquarters and Headquarters Company, U.S.	)	
Army Garrison, Joint Base Myer-Henderson Hall,	)	DATED: 22 June 2012
Fort Myer, VA 22211	)	

RELIEF SOUGHT

1. PFC Bradley E. Manning, by and through counsel, pursuant to applicable case law and Rule for Courts Martial (R.C.M.) 920(c), requests this Court to give the following instruction to the members on the "knowledge" element of the violation of Article 104 charged in the Specification of Charge I:

"In order to find the accused guilty of giving intelligence to the enemy through indirect means, you must be convinced beyond a reasonable doubt that the accused had actual knowledge that he was giving intelligence to the enemy through the indirect means. An accused has actual knowledge that he is giving intelligence to the enemy through indirect means only when he knowingly and intentionally provides intelligence to the enemy through the indirect means. Providing intelligence to a third party with reason to believe that the enemy might receive it, could receive it, or even would likely receive it, is insufficient. Rather, you must be convinced beyond a reasonable doubt that the accused, using the third party as a mere conduit, knowingly and intentionally gave intelligence to the enemy. That is, the accused must have used the third party for the purpose of giving the intelligence to the enemy. If you find that the accused honestly believed that he was giving intelligence only to a third party and that he was not giving it to the enemy, you must find the accused not guilty of the offense of giving intelligence to the enemy through indirect means."

BURDEN OF PERSUASION AND BURDEN OF PROOF

2. The Defense, as the moving party, bears the burden of this motion by a preponderance of the evidence pursuant to R.C.M. 905(c)(1)-(2)(A).

FACTS

3. PFC Manning is charged with five specifications of violating a lawful general regulation, one specification of aiding the enemy, one specification of conduct prejudicial to good order and discipline and service discrediting, eight specifications of communicating classified information, five specifications of stealing or knowingly converting government property, and two specifications of knowingly exceeding authorized access to a government computer, in violation of Articles 92, 104, and 134, UCMJ, 10 U.S.C. §§ 892, 904, 934 (2010).

4. Specifically, the Specification of Charge I alleges that PFC Manning "did, at or near Contingency Operating Station Hammer, Iraq, between on or about 1 November 2009 and on or about 27 May 2010, without proper authority, knowingly give intelligence to the enemy, through indirect means[,]" in violation of Article 104. *See* Charge Sheet. The Defense, in its Motion for a Bill of Particulars, asked the Government to specify the indirect means allegedly used by PFC Manning to give this intelligence to the enemy. "The Government responded 'PFC Manning knowingly gave intelligence to the enemy by transmitting certain intelligence, specified in a separate classified document, to the enemy through the WikiLeaks website.'" Appellate Exhibit LXXXI, at 1 (quoting Government Response to Defense Motion for a Bill of Particulars). The Government has further clarified that the "enemy" to whom PFC Manning allegedly indirectly gave intelligence is Al-Qaida, Al-Qaida in the Arabian Peninsula, and an entity specified in Bates Number 00410660 through 00410664.

5. On 26 April 2012, this Court denied the Defense Motion to Dismiss the Specification of Charge I for Failure to State an Offense. *See* Appellate Exhibit LXXXI, at 5. In that decision, this Court held that "Giving Intelligence to the Enemy under Article 104(2) requires *actual knowledge* by the accused that he was giving intelligence *to* the enemy." *Id.* at 2 (emphases supplied). This Court also invited the parties to propose instructions for the "knowledge" and "indirect means" elements of the violation of Article 104 charged in the Specification of Charge I. *See id.* at 4. This motion sets forth the Defense's proposed instructions for the "knowledge" element of that offense.[1]

WITNESSES/EVIDENCE

6. The Defense does not request any witnesses be produced for this motion. The Defense respectfully requests this court to consider the following evidence in support of the Defense's motion:

a. Charge Sheet;

b. Attachment A, Manual for Military Commissions (MMC) excerpt; and

c. Attachment B, Military Commissions Act of 2009 excerpt.

[1] In regards to the other elements of the violation of Article 104 charged in the Specification of Charge I, including the "indirect means" element, the Defense relies on the Defense Requested Instruction: Article 104.

LEGAL AUTHORITY AND ARGUMENT

7. As this Court has held, an accused must have *actual knowledge* that he is giving intelligence to the enemy in order to be convicted of a violation of Article 104(2). *See* Appellate Exhibit LXXXI, at 2. This actual knowledge element is an essential element of a violation of Article 104(2), regardless of whether that violation involves directly or indirectly giving intelligence to the enemy. *See id.* In light of this Court's ruling, the Defense proposes that the Court instruct the members that where, as here, the accused is charged with indirectly giving intelligence to the enemy, this actual knowledge element requires the Government to prove beyond a reasonable doubt that the accused, using the third party as a mere conduit, knowingly and intentionally gave intelligence information to the enemy. In other words, the Government must prove that the accused used the third party for the purpose of giving intelligence information to the enemy.

8. This instruction on the actual knowledge element is most consistent with the case law interpreting Article 104(2), including this Court's 26 April 2012 decision. Additionally, it is supported by both Offense 26 of the Military Commissions Act, *see* 10 U.S.C. § 950t(26), and the common law of war.

9. Therefore, the Defense requests this Court to adopt its proposed instruction on the actual knowledge element.

A. A "Knowingly and Intentionally" Requirement is Consistent With the Case Law Interpreting Article 104(2)

10. Defining the actual knowledge element to require the Government to prove beyond a reasonable doubt that the accused, using the third party as a mere conduit, knowingly and intentionally gave intelligence information to the enemy is the definition that is most consistent with the case law interpreting Article 104(2), including this Court's 26 April 2012 ruling. Moreover, any watered-down instruction on actual knowledge that would, for instance, be satisfied where the accused merely had knowledge that intelligence given to a third party might be received by the enemy, could be received by the enemy, or even would likely be received by the enemy, would impermissibly turn Article 104(2) into a strict liability offense.

11. Article 104(2) punishes "[a]ny person who . . . (2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly." 10 U.S.C. § 904. The Manual for Courts-Martial (MCM) explains that the textual requirement that an accused "knowingly . . . gives intelligence" requires the accused to have actual knowledge that he is giving intelligence to the enemy. *See* MCM, Part IV, para. 28.c(5)(c) ("Actual knowledge is required but may be proved by circumstantial evidence.").

12. Case law interpreting Article 104(2) makes clear that mere knowledge that the enemy might receive the intelligence, or could receive the intelligence, or even would likely receive the intelligence is insufficient to satisfy the actual knowledge requirement. Courts have uniformly

held that the Government must prove that the accused knowingly and intentionally gave intelligence to the enemy under Article 104(2). *See United States v. Anderson*, 68 M.J. 378, 387 (C.A.A.F. 2010); *United States v. Batchelor*, 22 C.M.R. 144, 157 (C.M.A. 1956); *United States v. Olson*, 20 C.M.R. 461, 464 (A.B.R. 1955).

13. In *Olson*, for example, the United States Army Board of Review held that Article 104 "does require a general evil intent in order to protect the innocent who may commit some act in aiding the enemy inadvertently, accidentally, or negligently." 20 C.M.R. at 464. Similarly, in *Batchelor*, the Court of Military Appeals explained that there was "no doubt that [defense] counsel are on sound ground when they assert that [Article 104] requires a showing of criminal intent, and the Government concedes that premise to be true . . . . [S]urely an offense which is so closely akin to treason and may be punished by a death sentence cannot be viewed as a 'public welfare' kind of dereliction." 22 C.M.R. at 157. Rather, the Court observed that proper instructions for an Article 104 offense must require "the finding of general criminal intent." *Id.* at 158. Finally, the Court of Appeals for the Armed Forces in *Anderson*, by comparing Article 104 with an offense charged under Article 134, emphasized that an accused's intent behind the conduct at issue matters in an Article 104 prosecution: "*Unlike Article 104*, UCMJ, the general offense as charged [as a violation of Article 134] prohibits the dissemination of the information *regardless of the intent behind that dissemination*." 68 M.J. at 387 (emphases supplied).

14. Additionally, this Court's 26 April 2012 ruling provides further support that the actual knowledge element of an Article 104(2) prosecution requires proof that the accused knowingly and intentionally gave intelligence to the enemy. In that ruling, after holding that Article 104(2) requires that the accused had actual knowledge that he was giving intelligence to the enemy, this Court proposed the following instruction for knowledge:

> Knowingly means Giving Intelligence to the Enemy under Article 104(2) requires *actual knowledge* by the accused that he was giving intelligence *to* the enemy. This is true whether the giving of intelligence is by direct or indirect means. A person cannot violate Article 104 by acting inadvertently, accidently, or negligently. *See* MCM, Paragraph 28c(5)(c). *U.S. v. Olson*, 20 C.M.R. 461 (A.B.R. 1955).

Appellate Exhibit LXXXI, at 4 (emphases supplied). This instruction demonstrates that the act of giving the intelligence to the enemy must be knowing and intentional; it cannot be an inadvertent mistake, accident or negligent act. *See id.* This Court's proposed definition of "indirect means" further bolsters the conclusion that an accused must knowingly *and intentionally* give intelligence to the enemy. This Court proposed the following definition of "indirect means:"

> "Indirect means" means that the accused knowingly gave intelligence to the enemy through a 3rd party or in some other indirect way. The accused must actually know that by giving intelligence to the 3rd party he was giving intelligence *to* the enemy through this indirect means.

Id. (emphasis supplied). Since "[t]he accused must actually know that by giving intelligence to the 3rd party he was giving intelligence to the enemy through this indirect means[,]" *id.*, an accused cannot be found guilty of giving intelligence to the enemy where he gives intelligence to a third party with the mere knowledge that the enemy might, could, or even would likely receive the intelligence. Rather, the instruction properly requires that an accused, using the third party as a conduit, knowingly and intentionally gives intelligence to the enemy.

15. Indeed, permitting an Article 104(2) conviction where the accused gave intelligence to a third party with the mere knowledge that the enemy might, could, or even would likely receive the intelligence would convert Article 104(2) into a strict liability offense. Today, everyone understands that information posted on a publicly accessible website can potentially be viewed by anyone with Internet access. *See Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 851 (1997) ("Anyone with access to the Internet may take advantage of a wide variety of communication and information retrieval methods. These methods are constantly evolving and difficult to categorize precisely. But, as presently constituted, those most relevant to this case are electronic mail (e-mail), automatic mailing list services ('mail exploders,' sometimes referred to as 'listservs'), 'newsgroups,' 'chat rooms,' and the 'World Wide Web.' All of these methods can be used to transmit text; most can transmit sound, pictures, and moving video images. Taken together, these tools constitute a unique medium – known to its users as 'cyberspace' – located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet.").

16. Therefore, if the actual knowledge element of Article 104(2) only encompasses something less than knowingly and intentionally giving intelligence to the enemy, then the actual knowledge element would be satisfied in any case where anyone subject to the UCMJ causes intelligence to be published on the Internet since everyone knows that anyone with Internet access, including the enemy, could obtain information placed on the Internet. *See Reno*, 521 U.S. at 851. Not only does this result render the actual knowledge element of Article 104(2) identified by this Court in its 26 April 2012 ruling utterly toothless in all Internet-intelligence cases, it transforms Article 104 into a strict liability offense, punishing anyone who causes intelligence to be published on the internet, regardless of whether that act intentionally, inadvertently, accidentally, or negligently gave intelligence to the enemy. Binding precedent from the highest military court clearly forecloses such an expansive use of Article 104. *See Batchelor*, 22 C.M.R. at 157 ("[S]urely an offense which is so closely akin to treason and may be punished by a death sentence cannot be viewed as a 'public welfare' kind of dereliction."); *see also Olson* 20 C.M.R. at 464 (holding that Article 104 "does require a general evil intent in order to protect the innocent who may commit some act in aiding the enemy inadvertently, accidentally, or negligently"); Court's Ruling - Appellate Exhibit LXXXI, at 2, 4 ("A person cannot violate Article 104 by acting inadvertently, accidently, or negligently.").

17. Simply put, one cannot knowingly give intelligence to the enemy without intentionally giving the intelligence to the enemy. If one knowingly performs an act (e.g. giving intelligence to the enemy through indirect means), he intentionally performs that act. For instance, if a Soldier is charged with arson and the mens rea for that offense is that the defendant "knowingly set fire," "knowingly" is equivalent to "intentionally" (i.e. intentionally set something on fire). Even though the Government need not prove that the Soldier intended the further consequences

of his act – that is, to burn down a building – the Government still must prove that the Soldier intended the initial actus reus. *Cf. Morissette v. United States*, 342 U.S. 246, 270-71 (1952) (explaining, when discussing the offense of knowing conversion of government property, that "knowing conversion requires more than knowledge that defendant was taking the property into his possession. He must have had knowledge of the facts, though not necessarily the law, that made the taking a conversion. In the case before us, whether the mental element that Congress required be spoken of as knowledge or as intent, would not seem to alter its bearing on guilt[,] for it is not apparent how Morissette could have knowingly or intentionally converted property that he did not know could be converted, as would be the case if it was in fact abandoned or if he truly believed it to be abandoned and unwanted property."). The same can be said for knowingly giving intelligence to the enemy: whenever an accused, using a third party as a mere conduit, knowingly gives intelligence to the enemy, he must, of necessity, also intentionally give the intelligence to the enemy through the same indirect means.[2] Including the "knowingly and intentionally" requirement in the actual knowledge element is simply a way to ensure that an accused is not convicted because he has knowledge that an enemy *might*, *could*, or even *would likely* receive the intelligence. If any of these loose conceptions of knowledge is the standard adopted by the Court, Article 104(2) would punish giving intelligence to the enemy "inadvertently, accidentally, or negligently." *Olson*, 20 C.M.R. at 464. Well-established Article 104 precedent, including this Court's 26 April 2012 decision, plainly forbids this result. *See Anderson*, 68 M.J. at 387; *Batchelor*, 22 C.M.R. at 157; *Olson*, 20 C.M.R. at 464; *see also* Appellate Exhibit LXXXI, at 2, 4 ("A person cannot violate Article 104 by acting inadvertently, accidently, or negligently.").

18. Therefore, this Court should adopt in full the Defense's proposed instruction and instruct the members that where, as here, the accused is charged with indirectly giving intelligence to the enemy, the actual knowledge element requires the Government to prove beyond a reasonable doubt that the accused, using the third party as a mere conduit, knowingly and intentionally gave intelligence information to the enemy.

B. A "Knowingly and Intentionally" Requirement is Supported by Offense 26 of the Military Commissions Act and by the Common Law of War

19. Offense 26 of the Military Commissions Act and the common law of war further support the conclusion that the actual knowledge element of an Article 104(2) prosecution requires the Government to prove that the accused knowingly and intentionally gave intelligence to the enemy.

20. Offense 26 of the Military Commissions Act, entitled "Wrongfully aiding the enemy" (Offense 26), provides in full as follows:

[2] Saying that an accused acted "intentionally" in this context is not the same as saying an accused acted with any type of specific intent or motive (e.g. intent to aid the enemy). *See* Appellate Exhibit LXXXI, at 3. Rather, the term "intentionally" here simply means that the accused intended to perform the act (i.e. intended to give intelligence to the enemy). In other words, it means that he did not act "inadvertently, accidentally, or negligently." *Olson*, 20 C.M.R. at 464; *see* Appellate Exhibit LXXXI, at 2, 4 ("A person cannot violate Article 104 by acting inadvertently, accidently, or negligently.")

> Any person subject to this chapter who, in breach of an allegiance or duty to the United States, *knowingly and intentionally* aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

10 U.S.C. § 950t(26) (emphasis supplied); *see also* Attachment A, Manual for Military Commissions (MMC), Part IV, at 20-21 (2010 ed.) (containing this language). A comparison of the statutory text of Offense 26 and Article 104, as well as an examination of the legislative history of the Military Commissions Act, demonstrates that Offense 26 was directly patterned after Article 104.

21. Offense 26 prohibits several acts punished by Article 104, including giving intelligence to the enemy. *Compare* 10 U.S.C. § 104 (punishing "[a]ny person who – (1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or (2) without proper authority, knowingly harbors or protects or *gives intelligence to*, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly" (emphasis supplied)), *with* MMC, Part IV, at 21 ("The means the accused can use to aid the enemy include but are not limited to: providing arms, ammunition, supplies, money, or other items or services to the enemy; harboring or protecting the enemy; or *giving intelligence or other information to the enemy*." (emphasis supplied)). Indeed, all forms of aiding the enemy prohibited by Offense 26 are also prohibited by Article 104.

22. The statutory text now contained in Section 950t(26) was supplied by the Military Commissions Act of 2009. *See* Attachment B, Military Commissions Act of 2009, Pub. L. No. 111-84, tit. 18, § 1802, 123 Stat. 2190, 2611 (codified at 10 U.S.C. §§ 948a–950t). The language of Offense 26 in Section 950(t)(26) replaced identical language in the Military Commissions Act of 2006, which was contained in 10 U.S.C. Section 950v(b)(26). *See* 10 U.S.C. § 950v(b)(26) (2006) (containing language identical to that contained in Section 950t(26)). The Report of the House Committee on Armed Services accompanying the Military Commissions Act of 2006 indicated that the offenses listed in then-Section 950v(b) (now Section 950t) were not new offenses, but were rather modern war crimes or offenses triable by military commissions or international courts:

> [T]he committee believes the list [of offenses in 10 U.S.C. Section 950v(b)] codifies offenses hitherto recognized as offenses triable by military commissions or international courts. Most of the listed offenses constitute clear violations of the Geneva Conventions, the Hague Convention, or both. Several constitute ''modern-day war crimes,'' such as hijacking and terrorism, which constitute practices contrary to the law of nations that can, and hereby do, have the same status as traditional war crimes.

H.R. Rep. No. 109-664, pt. 1, at 28 (2006).

23. Moreover, Section 950p(d) makes clear that the offenses currently listed in Section 950t, including Offense 26, are not new offenses, but are instead codifications of offenses traditionally triable by military commission. *See* 10 U.S.C. § 950p(d) ("The provisions of this subchapter

codify offenses that have traditionally been triable by military commission. This chapter does not establish new crimes that did not exist before the date of the enactment of this subchapter[.]").

24. Therefore, the close similarity between Offense 26 and Article 104, when coupled with the fact that Offense 26, like all offenses listed in Section 950t, is not a new offense but simply a codification of an existing offense, leads to the inescapable conclusion that Offense 26 was directly patterned after Article 104.

25. Offense 26 requires an accused to knowingly and intentionally aid the enemy. *See* 10 U.S.C. § 950t(26); *see also* MMC, Part IV, at 21 (listing the following as the second element of Offense 26: "The accused intended to aid the enemy."). Since Offense 26 is not a new offense, *see* 10 U.S.C. § 950p(d), and is obviously patterned after Article 104, this requirement that an accused knowingly and intentionally aid the enemy must come from Article 104. Accordingly, where, as here, the accused is alleged to have aided the enemy by giving intelligence to the enemy, *see* MCM, Part IV, para. 28.c(5)(a) ("Giving intelligence to the enemy is a particular case of corresponding with the enemy made more serious by the fact that the communication contains intelligence that may be useful to the enemy for any of the many reasons that make information valuable to belligerents"), Article 104 requires that the accused knowingly and intentionally give the intelligence to the enemy.

26. If Article 104 does not require an accused to knowingly and intentionally give intelligence to the enemy, a very troublesome absurdity would exist. In a prosecution of a terrorist under Offense 26, the Government would be required to prove that the terrorist knowingly *and intentionally* aided the enemy. Yet in a prosecution of a Soldier under Article 104 for giving intelligence to the enemy, the Government would only be required to prove that the Soldier knowingly gave intelligence to the enemy. Thus, for the exact same conduct, a terrorist would benefit from a friendlier mens rea than a Soldier would. Congress could not have intended to give terrorists a more protective mens rea than it gave to Soldiers. It defies all logic to think that a terrorist would fare better in an American court for aiding the enemy than a U.S. soldier would. To make sense of this all, Article 104, like Offense 26, must require the Government to prove that the accused knowingly *and intentionally* gave intelligence to the enemy.

27. Additionally, aiding the enemy by giving intelligence to the enemy is one of the "common law" war crimes. The Government has recently explained this point in its briefing in another case. *See* Brief for Respondent United States at 41-45, Hamdan v. United States, No. 11-1257 (D.C. Cir. Jan. 17, 2012). In its brief before the District of Columbia Circuit in *Hamdan*, the Government explained that "[s]ince the adoption of the Constitution, Congress and the Executive have repeatedly employed their war-making powers to identify . . . 'common law' war crimes and to make those offenses triable by military tribunal, rather than by an Article III Court." *Id.* at 41. The Government then identified aiding the enemy as one of these "common law" war crimes. *Id.* at 44 (explaining that "aiding the enemy (by someone with a duty of loyalty to the United States), although not a war crime under international law, has long constituted an offense under the U.S. law of war, making the offender subject to trial by military tribunal."). The Government identified the Articles of War of 1775 as the first American military law to punish aiding the enemy and from there concluded that "[t]his prohibition on aiding the enemy has

remained substantially the same during the past 235 years." *Id.*; *see also id.* at 44-45 n.15 (citing various provisions punishing aiding the enemy over the years, including Article 104).

28. The Government then observed that:

> [b]oth aiding the enemy in violation of a duty of loyalty and spying [which the Government also identified as constituting a "common law" war crime] are offenses subject to trial by military commission under the 2006 and 2009 [Military Commissions Acts], and both are offenses that constitute . . . this nation's "common law of war."

Id. at 45 (footnote omitted); *see also id.* at 45 n.16 (citing 10 U.S.C. § 950t(26) and 10 U.S.C. § 950v(b)(26)). Offense 26, codified at Section 950t(26), thus represents the most recent installment of the common law of war offense of aiding the enemy which "has remained substantially the same during the past 235 years." *Id.* at 44. As mentioned above, Offense 26 does not create a new offense in any way. *See* 10 U.S.C. § 950p(d). Therefore, it is simply a present restatement of the common law of war offense of aiding the enemy. As Offense 26 contains a requirement that the accused knowingly and intentionally aid the enemy, that knowingly and intentionally requirement must come from the common law of war offense, unchanged for 235 years. Because Article 104 represents the modern version of this common law of war offense, it too must include the knowingly and intentionally requirement for the offense of giving intelligence to the enemy.

29. Therefore, Offense 26 and the common law of war provide further evidence that the Defense instruction, requiring as it does that the Government prove that the accused knowingly and intentionally gave intelligence to the enemy through indirect means, is correct and should be adopted in full by this Court.

CONCLUSION

30. For the reasons articulated above, the Defense requests that this Court give the following instruction to the members on the "knowingly" element of the Specification of Charge I:

"In order to find the accused guilty of giving intelligence to the enemy through indirect means, you must be convinced beyond a reasonable doubt that the accused had actual knowledge that he was giving intelligence to the enemy through the indirect means. An accused has actual knowledge that he is giving intelligence to the enemy only when he knowingly and intentionally provides intelligence to the enemy through the indirect means. Providing intelligence to a third party with reason to believe that the enemy might receive it, could receive it, or even would likely receive it, is insufficient. Rather, you must be convinced beyond a reasonable doubt that the accused, using the third party as a mere conduit, knowingly and intentionally gave intelligence to the enemy. That is, the accused must have used the third party for the purpose of giving the intelligence to the enemy. If you find that the accused honestly believed that he was giving intelligence only to a third party and that he was not giving it to the enemy, you must find

the accused not guilty of the offense of giving intelligence to the enemy through indirect means."[3]

Respectfully submitted,

DAVID EDWARD COOMBS
Civilian Defense Counsel

[3] This last sentence of the Defense's proposed instruction is simply a necessary consequence of this Court's finding that the accused must have actual knowledge that he is giving intelligence to the enemy. Where an offense requires actual knowledge as to some fact (e.g. actual knowledge that an accused was giving intelligence to the enemy), an honest mistake as to that fact – without regard to the reasonableness of the mistake – is a complete defense to the offense. *See United States v. Nix*, 29 C.M.R. 507, 511 (C.M.A. 1960); *United States v. Walters*, 28 C.M.R. 164, 167 (C.M.A. 1959) ("[W]here subjective knowledge is required, reasonableness is not one of the criteria which should be used in instructing on mistake of law or fact.").