

Defence: Closing address:

In so far as the first charge is concerned I submit that the court ought to make a finding of not guilty. The evidence shows that the accused stole this motor truck, I refer you to the provision sec 40 Army Act "Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other sec of this act." Now special provision is made under sec 18 subsec 4 which makes it an offence to steal public property. Therefore I submit that the accused should have been charged under 18-4 and therefore not guilty on the first charge.

Reference 2nd charge I submit court should find not guilty on this count in first place I submit that off gangster was not in the execution of his office when struck by the accused. I can not see that it is any part of the execution of the office of an MP in demanding the production of a soldier's identity disks. I also refer court to page 233 MML (5th line into 3) (Superior Officer etc, sec 3).

Evidence shows that the incidents took place 1900 hrs 4 Nov 44. The court notes fact that at 1900 hrs it is pretty dark. Hoff Bell stated room was gloomy. Submit that prosecution have not sufficiently discharged the onus of proving that the accused was aware of the rank of the soldier when he struck. Therefore submit court ought to make finding of not guilty on 2nd charge.