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Report of the Army and Air Force Courts-Martial Committee

1946

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PREFATORY NOTE BY THE SECRETARIES OF STATE FOR WAR AND AIR

This Report reviews the existing Court-Martial system of the Army and the Royal Air Force and the recommendations of the previous Army and Air Force Courts-Martial Committee, 1938 (Cmd. 6200),* which were left in abeyance owing to the outbreak of war. The present Committee has made a large number of recommendations, which are summarised in Chapter VII on pages 53 to 60 of the Report. Certain of these, *viz.*, those relating to the appointment and functions of the Judge Advocate General in paragraphs 107 and 109 and those affecting Court-Martial procedure in paragraphs 115 to 120, have already been accepted and put into effect, and certain others designed to reduce delays before trial and dealing with pre-trial procedure, which do not require legislation, are in process of adoption. Other recommendations, in particular those dealing with the creation of a Courts-Martial Appeal Court to hear appeals on points of law and the reconstitution of Courts-Martial with civilian Judge-Presidents, are of a very far-reaching character and His Majesty's Government have not yet reached a decision upon them.

* H.M.S.O. Price 4d.

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The cost of the Committee's enquiry is estimated to be £292 17s. *od.*, of which £111 10s. *od.* represents the estimated gross cost of the printing and publication of this Report.

REPORT

INTRODUCTION

1. We were constituted as a Committee by War Office letter dated 4th November, 1946, with the following terms of reference:—

“ To bring under review in the light of the experience gained in the late war and of the composition of the Army and the Royal Air Force, the recommendations of the Army and Air Force Courts-Martial Committee, 1938 (Cmd. 6200) with special reference to the question whether it is desirable to provide any, and if so what, form of appeal from the findings or sentences of courts-martial; to investigate the powers of courts-martial and of commanding officers to award punishment and the nature and scale of such punishment; and to make recommendations upon these and kindred matters ”.

The members of the Committee were:—

The Hon. Mr. Justice Lewis, O.B.E. (Chairman).
Air Marshal Sir Philip Babington, K.C.B., M.C., A.F.C.
Mr. A. R. Blackburn, M.P.
Major-General the Viscount Bridgeman, C.B., D.S.O., M.C.
Mr. Terence Donovan, K.C., M.P.
Sir Theobald Mathew, K.B.E., M.C.
Mr. J. C. Maude, K.C., M.P.
Brigadier R. A. F. Thorp, O.B.E., M.P.

Joint Secretaries:

Colonel W. R. F. Osmond, O.B.E. (War Office).
Group Captain E. H. Hooper, C.B.E. (Air Ministry).
Lieutenant-Colonel R. J. H. de Brett (War Office).

2. We sat on 37 occasions, examined 57 witnesses, and studied upwards of 200 memoranda submitted to us. The names of witnesses, and persons and organisations who submitted memoranda, will (with the exceptions indicated below) be found in Appendices A and B respectively to this Report. We arranged that all ranks in the Army and Royal Air Force should be made aware that the Committee was sitting, and should be invited to send direct to us any suggestions they had to make. It was made clear that the names of those responding to such invitation, and subsequently giving evidence before us in support of their suggestions, would be treated in confidence; and for this reason only their names are not given in Appendices A and B. 46 officers and 17 other ranks of the Army and the Royal Air Force sent in memoranda in response to such invitation, and of these, 2 officers and 4 other ranks attended the Committee and gave oral evidence.

3. For the great help afforded by all those who submitted memoranda, and all those who gave evidence before us, whether they had previously submitted a memorandum or not, the Committee desires to express its grateful thanks.

4. In addition to the meetings of the full Committee, 12 meetings were held of a Drafting Sub-Committee consisting of the Chairman, the Viscount Bridgeman, Mr. Terence Donovan and Sir Theobald Mathew.

5. The terms of reference of the Army and Air Force Courts-Martial Committee, 1938, presided over by Mr. Roland Oliver, M.C., K.C., now Mr. Justice Oliver (which Committee is hereinafter referred to as the Oliver Committee) were as follows:—

“ To examine the existing system of trial by court-martial under the Army and Air Force Acts, and matters incidental thereto, and in particular to consider whether it is desirable and practicable that a person convicted by court-martial should have the right of appeal to a civil judicial tribunal against his conviction, and to make recommendations ”.

6. It will be seen that the terms of reference of the present Committee were wider than those of the Oliver Committee. We have had to consider whether *any* form of appeal (*i.e.*, not merely to a civil judicial tribunal) should be granted; and whether it should be granted not only against conviction by a court-martial, but also against its sentence. We have also had to review the nature and scale of punishment which courts-martial and commanding officers have power respectively to award. Furthermore, while the Committee was sitting, Parliament approved the principle of compulsory military service in peace-time, and Royal Assent to the National Service Act was given on 18th July, 1947.

7. In future, therefore, large numbers of citizens will join the Forces in peace-time whether they wish to or not, and we have had to bear this always in mind in considering the judicial machinery best suited to the Army and the Royal Air Force. It is no longer true to say that every member of the Forces has, after all, voluntarily submitted himself to the existing system with any imperfections it may have—a consideration which (quite properly at the time) influenced the Oliver Committee.

8. We would observe that whereas the Oliver Committee was concerned largely with experience gained over a period of some 20 years entirely under peace conditions, the evidence given before us related almost exclusively to war-time conditions.

9. At this new point in the history of the Forces, it seemed to us that it would be more helpful to those who have to consider our recommendations and to take decisions upon them, if we made our Report as comprehensive as possible; and we have accordingly included a short history of the court-martial system, and of the office of the Judge Advocate General, which provides a useful background against which to view the present position.

10. We now have the honour to present our Report which is arranged as follows:—

Chapter I—Short History of the Court-Martial System and of the Office of Judge Advocate General.

Chapter II—The Present Types of Courts-Martial and their Procedure.

Chapter III—Alleged Defects in the Present System.
The Committee's Observations and Recommendations.

Chapter IV—Appeals.

Chapter V—Punishments.

Chapter VI—Courts-Martial for the Future.
The Committee's Observations and Recommendations.

Chapter VII—Summary of Recommendations and Conclusion.

CHAPTER I

SHORT HISTORY OF THE COURT-MARTIAL SYSTEM AND OF THE OFFICE OF JUDGE ADVOCATE GENERAL

11. The soldier (a term which we use in this context to include commissioned officers as well as other ranks in the Army and airmen in the Royal Air Force) notwithstanding his membership of the Forces, is still a citizen; and as such he continues to be entitled both to the protection of the ordinary civil law and to be subject to its authority. The tasks which he may be called upon to perform as a soldier, however, and the circumstances under which such tasks may have to be performed, call for a high degree of discipline; and the maintenance of such discipline in turn requires a special code of law to define the soldier's duty and to prescribe punishment for breaches of it. The civil law grants the remedy of damages in a case where a servant leaves his master's employment without proper notice; but such a remedy would hardly avail to prevent desertion from the Forces. Disobedience to the orders of a superior is not, in civil life, normally a criminal offence, but such disobedience in the Forces may be an offence of great gravity, imperilling the lives of many men and calling for exemplary punishment. In order to maintain the efficiency of a fighting force and the discipline upon which such efficiency depends, it has, therefore, always been recognised that a special code of military law is necessary. Yet it was not until the eighteenth century that such necessity was expressly recognised by Parliament and statutory authority given for the infliction by military tribunals of punishment for certain military offences.

12. The reason was that the making of war formed part of the King's Prerogative, and in exercise of that Prerogative the King raised and employed troops for particular wars or rebellions. The rules of conduct which such troops were required to observe, together with the punishments for their non-observance, were, in further exercise of the Prerogative, prescribed in Ordinances known as Articles of War, which ceased to have effect as soon as the particular Army in respect of which they were issued was disbanded.

13. Thus, in 1629, Charles I issued Articles of War "for the government and good ordering of the troops in England either in an army, or in regiments, or in single companies" and followed this up with further codes upon the same subject in 1639 and 1642. After the Restoration, Parliament allowed Charles II to maintain at his own cost troops called "His Majesty's Guards and Garrisons" which ultimately developed into the standing army. For the government of these troops Charles II issued orders and Articles of War in 1662, 1666 and 1672. In 1686, on the rebellion of Monmouth, James II also issued Articles of War for his Army.

14. These various codes defined the duties of the soldier and prescribed punishments for offences. Such punishments were severe. In the Articles of War of 1642, for example, death was the punishment prescribed by forty-three of the Articles for various offences, and the lesser punishments included imprisonment, burning the tongue with a hot iron, and flogging.

15. The tribunal which in the earliest times administered the military code and had jurisdiction over the soldier as such, was the Court of Chivalry—a Court which on its civil side was a Court of Honour dealing with matters relating to coats of arms, precedence, etc., and which in time of war had jurisdiction over all military offences. The Judges were the

Lord High Constable, who was the King's General, and the Earl Marshal, whose duty it was to muster the Army. Thus the Court came to be known as the Court of the Constable and Marshal, and it is from the Marshal that Courts-Martial derive their name. During the reign of Henry VIII, the Duke of Buckingham, who was then Lord High Constable, was attainted, and executed, and no other person has since been permanently appointed to the office. The practice was then instituted of the King granting commissions to the Commander-in-Chief, authorising him to hold courts for the trial of military offences. These Courts came to be known as Councils of War and also as Marshals Courts or Courts-Martial. Thus the Articles of War of 1666 established "for the better administration of justice" a General Court-Martial for offences punishable with life or limb; Regimental Courts for lesser offences and "Detachment" with the powers of Regimental Courts.

16. Upon the abdication of James II, followed by the mutiny of certain Scottish regiments bound by their oath to his service, it became necessary for Parliament to intervene in order to constrain the Army to allegiance to William III. The first Mutiny Act was accordingly passed in 1689. It declared the necessity while the Army was on duty of "retaining an exact discipline" and it went on to enact:—

"that every person mustered and in pay as an officer or soldier in the King's Army found guilty by Court-Martial of exciting, causing or joining in any mutiny or sedition or of desertion from the Army should suffer death or such other punishment as that Court should award".

The effect of this Act, says Clode, in his work on Military and Martial Law (2nd Edition, 1874, page 21), was "to leave all ordinary 'military' offences to be dealt with as heretofore by the Crown alone, but to give Parliamentary sanction to the infliction of Capital Punishment for certain specified offences which, whether regarded as Military or Political, it was expedient should be summarily punished by Courts-Martial".

17. The Act proceeded to give authority to the King, or to the General of the Army, to grant his Warrant to officers not under the rank of Colonel to convene Courts-Martial from time to time for the punishment of offenders. The Act was limited to an experimental period of seven months, but was re-enacted from year to year (with the exception of a few short intervals only) from 1689 to 1789, being constantly amended and expanded. Until 1803, when the prerogative power was superseded by a corresponding statutory power, the Crown continued to make Articles of War by virtue of its Prerogative; but they were valid only so far as consistent with the current Mutiny Act.

18. In 1879, the Articles of War and the Mutiny Act were consolidated in one Statute—the Army Discipline and Regulation Act. Two years later this was replaced by the Army Act of 1881, from which Act Courts-Martial now derive their jurisdiction. The Army Act requires, however, to be brought into operation annually by a separate Act of Parliament, and this was done down to 1920 by the Army (Annual) Act. In 1920, consequent upon the formation in 1918 of the Royal Air Force, the title of the Act was altered to "The Army and Air Force (Annual) Act". This Act brings into force both the Army Act and the Air Force Act, the latter corresponding in the Royal Air Force to the Army Act with modifications not material for present purposes.

19. The power to convene General Courts-Martial is still by statute (*see* Sections 48 and 122-3 of the Army Act) exclusive to His Majesty or to some person deriving authority from him.

The Judge Advocate General

20. The Articles of 1639 issued by Charles I gave authority "to the Council of War and the Advocate of the Army to enquire of the actors and circumstances of offences committed by the oaths of such and so many" as they thought convenient using "all means for examination and trial of persons delated, suspected, or defamed".

21. The Orders issued in 1662 by Charles II for the regulation of His Majesty's Guards and Garrisons gave authority to the General to constitute Courts-Martial and to the "Judge Advocate of the Forces" to take information and depositions as occasion should require in all matters triable before Court-Martial.

22. By the code of 1666, referred to in paragraph 13, the "Judge Advocate" was required to attend General Courts-Martial, summon witnesses and administer oaths: and in the Articles of War of 1672 it was provided that in criminal cases affecting the Crown the "Judge Advocate General" had to inform and prosecute on behalf of the Crown.

23. In Turner's *Pallas Armata*, written in 1671, it is said that it was the duty of the "Judge Advocate"

"to inform the Court-Martial what the Civil or Municipal Law provides, that the Military might not infringe upon the jurisdiction of the Civil Courts".

24. From 1689, the Judge Advocate General acted as legal adviser in all matters to the Commander-in-Chief. He and his deputies advised on the charges and the evidence in criminal cases of difficulty before a Court-Martial was convened. The Judge Advocate also attended General Courts-Martial both as a prosecutor and as a legal adviser to the Court.

25. This combination of duties came to be regarded as undesirable, and the Judge Advocate gradually ceased to act as prosecutor. It was not, however, until 1860 that Articles of War provided that the Judge Advocate should no longer be the prosecutor. Yet no alternative arrangements for the prosecution of serious cases were provided, and the Judge Advocate General as legal adviser to the Commander-in-Chief continued to arrange for the proper conduct of such prosecutions. He also reviewed all courts-martial proceedings for the purpose of advising the Commander-in-Chief whether they were free of legal error.

26. For nearly a century before 1893, the Judge Advocate General was a Privy Councillor, a member of the Government and usually a Member of Parliament. He had direct access to the Sovereign on matters pertaining to his Office. In 1893, the office ceased to be a political appointment and was held continuously from that year until 1905 by the President of the Probate, Divorce and Admiralty Division of the High Court. In 1905, on a new appointment having to be made, it was decided that the office should in future be filled by a person of suitable legal attainments, who should, however, be subject to the orders of the Secretary of State for War. The appointment is made by the King under Letters Patent.

27. At the present day the Judge Advocate General of the Forces is responsible for the following functions:—

- (a) The supervision of the Military and Air Force Departments of his Office, the main duties of which include that of advising and assisting convening officers of both services upon questions arising in the preparation of cases for trial by courts-martial, prosecuting

thereat when required, safeguarding the interests of accused persons, advising General and Air Officers upon questions arising as to summary jurisdiction under section 47 of the Army and Air Force Acts, and upon questions in connection with courts of inquiry, providing members of such courts in special cases, and instruction in Military and Air Force Law.

- (b) The provision of a " Judge Advocate " at all trials by General Court-Martial held in the United Kingdom and at the more serious cases tried by District Courts-Martial. Pursuant to his Letters Patent he also appoints judge advocates for important trials abroad by General or Field General Courts-Martial. The judge advocate attends the court in an advisory capacity and as the representative of the Judge Advocate General.
- (c) The superintendence of the administration of Military and Air Force Law in the Army and Royal Air Force respectively. The review of the proceedings of all courts-martial with a view to seeing whether they have been regular and legal, including the tendering of legal advice on confirmation or review or on petition. In the event of it being necessary to quash proceedings, the Judge Advocate General makes recommendations to the appropriate Secretary of State or Commander-in-Chief with this object. He is the custodian of the proceedings of all courts-martial. He assists each Secretary of State in the formulation of any advice it may be necessary to give the Sovereign regarding the proceedings of courts-martial.
- (d) Advice to the Secretaries of State for War and Air and to Commanders at home and abroad on general legal questions affecting the Army and the Royal Air Force.

28. The Judge Advocate General has Deputies and Staffs with the major Army and Air Force Commands abroad.

29. In practice, the duties under (a) above are kept entirely separate in the Judge Advocate General's Office in London, and, so far as possible, are kept separate in Commands overseas.

30. The title " judge advocate " with its suggestion of completely opposite functions being performed by the same individual is curious and misleading. It may lead an accused to think that the judge advocate is not only a legal adviser to the court, but an advocate for the prosecution as well. The explanation of the title may lie in the description given, in 1864, by Lord Cranworth of the duties of the judge advocate (173 H.D. (3), page 1174). He calls him the " ' Judex Advocatus ', a Judge called to assist the Court though forming no constituent part of it ". The term " advocate " may thus be a corruption of " Advocatus " used in Lord Cranworth's sense.

31. Upon the creation of the Royal Air Force in 1918, the Judge Advocate General's functions were extended to that Service and the present Judge Advocate General's Letters Patent from the Crown granted in 1934 specifically include both the Army and the Royal Air force.

32. In addition to the normal functions indicated above, the Judge Advocate General has been made responsible for the collection of evidence against and the prosecution of war criminals in Europe and the Far East for trial before Military Courts constituted by Royal Warrant (Army Order 81/1945). He is also responsible for the provision of judge advocates at these trials when required, and for the review of proceedings and advice on

petitions. The Judge Advocate General is head of the United Kingdom National Office of the United Nations War Crimes Commission. Similar responsibilities devolve upon the Judge Advocate General in connection with the trials of Prisoners of War by Military Court under the Royal Warrant of 1939, and Regulations for the Maintenance of Discipline Among Prisoners of War. These important commitments are abnormal and will lapse in due course.

CHAPTER II

THE PRESENT TYPES OF COURTS-MARTIAL AND THEIR PROCEDURE

33. *References to the Army and Royal Air Force.*—The disciplinary codes of the Army and the Royal Air Force are materially the same, being based upon the Army Act and the Air Force Act respectively, but in order to avoid constant reference to the two codes and to the different ranks and terms in use in the two Services we have, as a general rule, confined ourselves, hereinafter in this Report, to Army terminology. It should, therefore, be understood that our references to the military legal and regulational provisions and military ranks and authorities apply generally, *mutatis mutandis*, to their Royal Air Force equivalents unless otherwise stated. For example, the term "soldier" should be read as including "airman", and army ranks as including the relative ranks in the Royal Air Force.

34. There are at present three types of court-martial in the Army and the Royal Air Force, namely a General Court-Martial, a District Court-Martial and a Field General Court-Martial.

35. A General Court-Martial must consist of at least five officers, each of whom must have held a commission during not less than three years, and one of whom acts as president of the court. The president, who must be named in the Order convening the court-martial, is never below the rank of field officer save exceptionally where no such officer is available. Not less than four members of the court must be of the rank of captain or above. A General Court-Martial may try both officers and other ranks.

36. A District Court-Martial consists of at least three officers, each of whom must have held a commission during not less than two years, and one of whom acts as president of the court. Again the president must not be under the rank of field officer unless no such officer is available. Normally, not more than one member of the court is a subaltern. A District Court-Martial may try warrant officers, non-commissioned officers and other ranks but may not try an officer.

37. A Field General Court-Martial may be convened when it is not practicable to convene a General Court-Martial. This is normally coincident with active service. It consists, as a rule, of at least three officers, one of whom acts as president of the court. The president is normally a field officer unless such an officer is not available. The members of the court should have held commissions for not less than one year, but if officers are available who have held commissions for not less than three years they are to be selected in preference to officers of less service. Exceptionally, *i.e.*, if three officers are not available, the Field General Court-Martial may consist of two officers only, in which case, however, its powers of punishment are limited.

38. Each one of the three types of courts-martial has jurisdiction in respect of the offences specified in Sections 4 to 40 of the Army Act, that is to say, offences committed by persons subject to military law, the disciplinary code essential in the Armed Forces. These may for convenience be called "military offences".

39. In addition, each of these courts has jurisdiction in respect of all other offences which are punishable by the ordinary law of England and which, when committed by persons subject to military law, are offences under the Army Act. (See in this connection Section 41 of the Army Act.) These may for convenience, and to distinguish them from the military offences above referred to, be called "civil offences".

40. No court-martial can, however, try the offences of treason, murder, manslaughter, treason-felony or rape committed in the United Kingdom. Nor can it try those five excepted offences if they are committed in any place within His Majesty's dominions other than the United Kingdom and Gibraltar, unless the offence was committed when the offender was on active service, or the place where the offence was committed is more than one hundred miles distant from a city or town which has a civil court of competent jurisdiction.

41. An officer under the rank of captain may not be a member of a General Court-Martial for the trial of a field officer.

42. A General Court-Martial can award the punishments of death, penal servitude and imprisonment. A District Court-Martial cannot award a sentence higher than two years' imprisonment with or without hard labour. A Field General Court-Martial composed of three officers can award the same punishment as a General Court-Martial.

43. In the succeeding paragraphs we give a short account of how persons are brought before courts-martial and the procedure at the trial. (A more detailed account will be found by those interested in the Manuals of Military Law and of Air Force Law, published by the Stationery Office.)

44. Persons subject to military law charged with an offence under the Army Act may be taken into military custody, *i.e.*, placed in open or close arrest. Open arrest means that the person arrested (hereinafter called the accused) may not leave the precincts of the barracks or camp but may be required to perform all duties. Speaking generally, close arrest, if the accused is an officer, warrant officer or non-commissioned officer, normally means that he is placed under the escort of another officer or warrant officer or non-commissioned officer of the same rank, if possible, and may not leave his quarters except to take exercise under supervision. Close arrest, if the accused is a private soldier, means confinement under the charge of a guard.

45. The first step after the accused is taken into military custody is for his alleged offence to be investigated by his commanding officer. For this purpose the person who ordered the arrest, or the commander of the guard who received the accused into confinement, as the case may be, must make a report to the commanding officer within twenty-four hours of the event.

46. The commanding officer must then investigate the matter himself, in the presence of the accused. At this investigation oral evidence will be given by witnesses of the facts alleged to constitute the offence. The accused may ask questions of such witnesses, and may call witnesses on his own behalf. At this stage no witness, whether for or against the accused, is sworn.

47. At the end of this investigation the commanding officer, according to the view he has formed, will either

- (a) dismiss the case; or
- (b) in the case of a non-commissioned officer or private soldier award summary punishment within the limit of his powers; or
- (c) in the case of an officer below the rank of lieutenant-colonel or squadron leader, or in the case of a warrant officer, refer the charge to a superior officer to be dealt with summarily by him; or
- (d) remand the case for trial by court-martial.

48. In the case of a non-commissioned officer, the commanding officer cannot award summarily punishments other than "stoppages", severe reprimand, reprimand, or admonition. In the case of a private soldier further punishments can be awarded summarily (which are detailed elsewhere in this Report) some of which involve forfeiture of pay. If such a forfeiture is involved, the private soldier may elect to be tried by District Court-Martial. He may also so elect if the commanding officer proposes to deal with the offence otherwise than by awarding minor punishment. "Minor punishment" is defined by King's Regulations (paragraph 587) as—briefly—confinement to barracks up to 14 days, extra guards and picquets, and admonition.

49. Assuming that the commanding officer remands the case for trial by court-martial, or the accused, when he may do so, elects to be so tried, the case is adjourned for a "Summary of Evidence" to be taken.

50. A Summary of Evidence is a written statement of the evidence resembling in many ways the depositions taken at a Magistrate's Court. Its chief purpose is to give to the accused, the commanding officer, the convening officer (*i.e.*, the officer who may in due course have to convene the court-martial) and to the president of any court-martial so convened, particulars of the evidence in respect of the charge or charges. The commanding officer may himself prepare the Summary of Evidence or appoint some other officer to do so. Witnesses are examined in the presence of the accused, and if the accused so requires or the commanding officer so directs, the examination is on oath. The evidence is taken down in writing by the officer in charge of the proceedings, and read over to each witness at the end of his evidence. The witness then signs the statement. The accused has the right personally to cross-examine any witness and may call witnesses on his own behalf. He is not, however, entitled to be legally represented at the taking of the Summary of Evidence. After all the evidence in support of the charge has been given and taken down, the accused is cautioned and told that he may make a statement or give evidence on oath. If he does so, he cannot be cross-examined on any such statement or evidence.

51. When the Summary of Evidence is completed it is considered again by the commanding officer who, notwithstanding that he had previously remanded the case with the intention of applying for trial by court-martial, may now, if he thinks that course unnecessary, himself re-hear the case, and either dismiss it or dispose of it summarily by awarding a punishment within his powers, unless the accused has elected to be tried by court-martial. If, after considering the Summary of Evidence, the commanding officer remains of the opinion that a court-martial is required, or if it is a case where the accused has himself required such a trial, the commanding officer forwards a statement of the charge or charges and the Summary of Evidence to an officer authorised, either mediately or immediately by the King's Warrant, to convene a General or District Court-Martial, or empowered under the Army Act to convene a Field General Court-Martial (*i.e.*, the convening officer) at the same time applying for a court-martial to be convened. Copies of the

charge or charges, and of the Summary of Evidence are furnished to the accused, who must be given proper facilities for preparing his defence, communicating with his witnesses and legal adviser or defending officer, and procuring the attendance at the trial of any witness that he may require. The defending officer is an officer, who may or may not be legally qualified, selected by the accused or assigned to him by the convening officer in default of a civilian solicitor or counsel.

52. In the case of an officer no Summary of Evidence is necessary unless the accused so desires; otherwise, an abstract of the evidence, not prepared in the presence of the accused, takes the place of the Summary of Evidence.

53. The convening officer, upon receipt of the documents above referred to, must satisfy himself that the charge or charges against the accused submitted by the commanding officer constitute an offence or offences under the Army Act and are framed in conformity with the Rules of Procedure made under that Act. He must also satisfy himself that the Summary or Abstract of Evidence, as the case may be, discloses sufficient admissible evidence to justify trial by court-martial upon the charge or charges. If he is in doubt upon these matters, he may seek advice from the Military Department of the Judge Advocate General at home, or from his Deputy abroad. Subject to being satisfied, however, upon the foregoing matters, the convening officer orders a court-martial to assemble at a stated time and place which may, according to the circumstances, be a General Court-Martial, a District Court-Martial, or a Field General Court-Martial.

54. At the time and place specified in such order the court-martial will assemble. Each member of the court is sworn to administer justice without partiality, favour or affection. The court-martial sits in public, but has an inherent power to sit in camera if it considers this course is necessary for the proper administration of justice.

55. At the commencement of the trial the accused is brought before the court, and after the order convening the court is read, he is asked whether he objects to the president or any member of the court and, if so, the grounds of his objection. If any such objection is made, the court considers it and either allows or disallows it. If the objection is to the president of the court and is allowed, the court adjourns for the purpose of another president being appointed. If the objection is to another member of the court and is allowed, the member in question retires and his place is taken by another officer in attendance as a "waiting member". Should no such waiting officer be present, the court will adjourn for an officer to be appointed in the place of the officer to whom objection has been successfully taken. If no objection is raised the trial proceeds, the charges being read to the accused. In relation to each charge he is asked whether he is guilty or not guilty.

56. If the accused pleads guilty to all the charges against him, that plea is recorded as the finding of the court, except in cases where death may be the sentence for the offence. In such a case a plea of "Guilty" is rejected and a plea of "Not guilty" recorded. Before recording a finding in accordance with the plea of "Guilty", the president must ascertain that the accused understands the nature of the charge against him and the effect of his plea and must advise him to withdraw his plea if it appears from the Summary of Evidence that the accused ought to plead "Not guilty".

57. If the accused pleads "Not guilty" to all or some of the charges, he is asked whether he desires to apply for an adjournment on the grounds either that any of the Rules of Procedure relating to procedure before trial

have not been complied with and that he has been prejudiced thereby, or that he has not had sufficient opportunity to prepare his defence. The court considers any such application, and may grant an adjournment in its discretion if it thinks proper. Assuming no such application is made, or is made and rejected, the trial of those charges to which a plea of "Not guilty" has been entered begins by the prosecuting officer making an opening address, calling his witnesses, who are examined, and may be cross-examined by the accused.

58. At the conclusion of the evidence of the prosecution the accused is told by the president that he may give evidence himself, subject to his liability to be cross-examined, and is asked whether he wishes to give evidence himself or call witnesses on his behalf; and the subsequent procedure depends upon the accused's answers to these questions.

59. If he desires to give evidence himself, but to call no witnesses as to the facts, he then gives such evidence, and, if he wishes to do so, may call evidence as to his character. When all such evidence has been taken, the prosecutor may make a final address, after which the accused may make a closing address in his defence.

60. If the accused desires to give evidence himself, and to call other witnesses as to the facts, he may first make an opening address in his defence. He then gives evidence and calls his other witnesses as to the facts, and also witnesses as to character if he so desires. When all such evidence has been taken, he may make a closing address in his defence, to which the prosecution may reply.

61. If the accused is represented by counsel or by an officer subject to military law, the opening and closing addresses for the defence above referred to are made by such representative.

62. There are some variations in this procedure if the accused does not give evidence himself, and if, while not giving evidence himself, he calls other witnesses as to the facts. In these cases the procedure also varies a little according to whether the accused is legally represented or not. It is unnecessary to detail these variations here: they will be found in Rules of Procedure 40 and 41 made under the authority of Section 70 of the Army Act.

63. The judge advocate, if one is present, then sums up the evidence, and advises the court upon the law relating to the case. The summing-up must be impartial, but the judge advocate is entitled, if he thinks fit, to comment on the failure of the accused to give evidence. There is nothing to prevent the judge advocate from indicating his own view as to the true conclusions to be drawn from the evidence, but he is expected to make it clear to the court that the finding is entirely the court's responsibility.

64. The court is then closed for consideration of the finding, the judge advocate being present with members of the court. Each member must state his opinion as to the finding he thinks proper upon each charge, the junior officer stating his opinion first, then the next senior and so on. A majority of votes suffices for any finding, but if the court should be an even number and the votes are equally divided, the accused is acquitted. The president has no casting vote in such a case. A finding of "Not guilty" is announced at once in open court, and if this finding applies to all the charges the accused is released.

65. A finding of "Guilty" upon any charge is not so announced. The court is reopened and evidence heard as to the character, age, service and military record of the accused. The witnesses giving this evidence can be cross-examined by the accused, and he himself can call witnesses as to his

good character at this stage, such witnesses, however, being subject to cross-examination by the prosecution. After any such evidence has been taken the accused, or his counsel or defending officer, may address the court in mitigation of punishment. The court is then closed for consideration of sentence. When announcing that the court is being closed for this purpose, the president states that the finding and sentence, being subject to confirmation, will not be announced but will be promulgated later and that the proceedings in open court are accordingly terminated. (Note.—Certain changes have recently been introduced into the procedure described in this and the preceding paragraph as a result of interim recommendations made by the Committee. We deal with the matter in Chapter III.)

66. Each member of the court must give his opinion separately on the sentence to be awarded, (even though he may have previously voted in favour of an acquittal) and such opinions are taken in succession beginning with the junior member of the court. A majority of the court determines the sentence: but no person may be sentenced to death unless, in the case of a General Court-Martial there is a two-thirds majority in favour, or in the case of a Field General Court-Martial the vote is unanimous.

67. It is the duty of the judge advocate to take an adequate record of the proceedings at any court-martial if one is present, and the duty of the president to do so if one is not. At the conclusion of the trial this record is then forwarded to the superior officer having power to confirm the finding and sentence. In the case of a District Court-Martial this will be an officer authorised to convene a General Court-Martial or another officer whom he has authorised to confirm the proceedings of a District Court-Martial. In the case of a General Court-Martial the confirming authority is His Majesty in person or an officer whom His Majesty has authorised mediately or immediately to perform the duty of confirmation. This will normally be the General Officer Commanding-in-Chief a Command or an Army in the Field; or a Group Commander in the Royal Air Force. In the case of a District or a Field General Court-Martial it will usually be the officer who convened the court. In the Army such officer is not usually below the rank of Brigadier, and in the Royal Air Force not usually below the rank of Air Commodore.

68. The confirming officer may either confirm the finding or sentence, or direct the reassembly of the court for the purpose of revising their finding or sentence or both, or refer the record of the proceedings to a superior military authority competent to confirm, or seek legal advice from the Judge Advocate General or one of his deputies before confirming himself. He may also himself mitigate, remit or commute the sentence and, in some cases, suspend it.

69. The finding and sentence as they stand after confirmation are promulgated to the accused in such manner as the confirming authority directs, or, if no direction is given, according to the custom of the Service. It is usually done by oral communication to the accused, and not, as formerly, on parade. The officer confirming the sentence is also responsible for seeing that arrangements are made for its being carried into effect.

70. The record of the proceedings of all courts-martial are finally forwarded to the Judge Advocate General in London, by whom they are carefully reviewed to ensure that no irregularity or miscarriage of justice has occurred. If the Judge Advocate General comes to the opinion that an irregularity or miscarriage of justice has occurred, he so advises the Secretary of State for War or Air, as the case may be, who has power to quash the proceedings.

71. There is at present no right of appeal to a higher court against either the finding or the sentence of a court-martial, but any officer or soldier who so desires can submit a petition against the finding or sentence, or both, of a court-martial to any confirming or reviewing authority including His Majesty. (As to "reviewing authorities" see Section 57 (2) of the Army Act). There is no limit to the number of petitions which can be so presented, nor are they subject to any time bar.

Petition to confirm

72. The cases of those persons duly convicted by court-martial and serving sentences of penal servitude, imprisonment or detention are periodically reviewed by the Army and Air Force authorities having power to mitigate, remit or commute the sentence.

73. The following tables show the number of courts-martial of all three types held during the years 1st September, 1938 to 31st August, 1946, inclusive in the Army and in the Royal Air Force respectively in relation to the strengths of these Forces. At the present time the number of courts-martial of all kinds being held is about 15,000 in the Army and about 2,000 in the Royal Air Force per annum.

ARMY

STRENGTH OF ARMY (INCLUDING ROYAL MARINES WHEN SUBJECT TO ARMY ACT)

Date	At Home	Abroad	Total
1 Sep., 1938 ...	102,789	84,978	187,767
1 Sep., 1939 ...	127,917	96,271	224,188
1 Sep., 1940 ...	1,704,045	154,697	1,858,742
1 Sep., 1941 ...	1,913,621	352,995	2,266,616
1 Sep., 1942 ...	1,816,901	660,708	2,477,609
1 Sep., 1943 ...	1,563,068	1,154,977	2,718,045
1 Sep., 1944 ...	984,212	1,782,599	2,766,811
1 Sep., 1945 ...	1,220,489	1,640,134	2,860,623
1 Sep., 1946 ...	390,557	622,124	1,012,681

Number of Courts-Martial

Period	At Home	Abroad	Total	Average number per 1,000 personnel
1 Sep., 1938 to 31 Aug., 1939 ...	1,178	945	2,123	10.3
1 Sep., 1939 to 31 Aug., 1940 ...	3,795	2,945	6,740	6.5
1 Sep., 1940 to 31 Aug., 1941 ...	23,376	2,137	25,513	12.4
1 Sep., 1941 to 31 Aug., 1942 ...	26,866	5,837	32,703	13.3
1 Sep., 1942 to 31 Aug., 1943 ...	23,110	11,829	34,939	13.1
1 Sep., 1943 to 31 Aug., 1944 ...	21,545	15,238	36,783	13.4
1 Sep., 1944 to 31 Aug., 1945 ...	17,843	31,270	49,113	17.5
1 Sep., 1945 to 31 Aug., 1946 ...	10,094	14,176	24,270	16.9

These figures relate only to Army personnel. Women's Services, Home Guard and a few other small categories are excluded.

ROYAL AIR FORCE
STRENGTH OF ROYAL AIR FORCE

Date	At Home	Abroad	Total
1 Sep., 1938 ...	66,682	12,021	78,703
1 Sep., 1939 ...	103,708	14,182	117,890
1 Sep., 1940 ...	354,966	24,101	379,067
1 Sep., 1941 ...	653,726	92,787	746,513
1 Sep., 1942 ...	644,480	232,837	877,317
1 Sep., 1943 ...	653,733	328,705	982,438
1 Sep., 1944 ...	701,544	304,536	1,006,080
1 Sep., 1945 ...	633,349	307,518	940,867
1 Sep., 1946 ...	261,069	117,937	379,006

Number of Courts-Martial

Period	At Home	Abroad	Total	Average number per 1,000 personnel
1 Sep., 1938 to 31 Aug., 1939 ...	191	28	219	2.2
1 Sep., 1939 to 31 Aug., 1940 ...	326	74	400	1.6
1 Sep., 1940 to 31 Aug., 1941 ...	1,434	135	1,569	2.8
1 Sep., 1941 to 31 Aug., 1942 ...	2,610	574	3,184	3.9
1 Sep., 1942 to 31 Aug., 1943 ...	2,550	929	3,479	3.7
1 Sep., 1943 to 31 Aug., 1944 ...	2,323	1,329	3,652	3.7
1 Sep., 1944 to 31 Aug., 1945 ...	2,322	1,546	3,868	4.0
1 Sep., 1945 to 31 Aug., 1946 ...	1,749	934	2,683	4.1

These figures relate to Royal Air Force personnel. Women's Services and a few other small categories are excluded.

CHAPTER III

ALLEGED DEFECTS IN THE PRESENT SYSTEM

THE COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

74. We now come to criticisms which have been made to us of the existing court-martial system. They fall into four broad categories, namely:—

- (1) Delays before trial;
- (2) Insufficiency of legal aid both before and during trial;
- (3) Defects in procedure;
- (4) Insufficient right of appeal against conviction or sentence, or both, and in particular the lack of right to a hearing.

We will deal with these criticisms in the same order, reserving a separate chapter for the subject of Appeals.

DELAYS BEFORE TRIAL

75. The Army and Air Force (Annual) Act declares (as did the first Mutiny Act of 1689) that it is requisite that soldiers committing offences should be brought to a more exemplary and speedy punishment than the usual forms of law will allow.

76. Section 45 (1) of the Army Act provides that where an officer or soldier remains in military custody for longer than 8 days without a court-martial for his trial being ordered to assemble, a special report of the necessity for further delay is to be made by his commanding officer "in manner prescribed": and a further similar report every eight days thereafter until the court-martial is assembled, or the officer or soldier released from custody.

77. The Rules of Procedure provide, by Rule 1, that this special report is to be made by letter from the commanding officer to the general or other officer to whom application would be made to convene a court-martial for the trial of the officer or soldier concerned.

78. Section 45(1) of the Army Act has no application, however, where the officer or soldier who has been taken into military custody is on active service: and in such a case the special report above referred to is not required. And even in those cases where it is required, and is made, the Army Act lays no express duty upon the general or other officer receiving it to take any special steps to terminate the delay. It appears to be assumed that he will do all in his power to this end as part of his ordinary duty.

79. Section 21(1) of the Army Act provides that every person subject to military law who unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation, shall on conviction by court-martial be liable, if an officer, to be cashiered or suffer some less punishment, and if a soldier, to suffer imprisonment, or some less punishment. No evidence of any proceedings under this Section has been laid before us.

80. We have, however, had abundant evidence of great delay during the period of hostilities and immediately afterwards in bringing accused persons to trial by court-martial. Private "X", for example, was kept in close arrest for 7 months before being tried on a charge of desertion: and the witness who brought the case to our notice, and who was a Deputy Judge Advocate General during the war, said that delay of this kind was by no means rare. Another witness referred to the case of Private "Y" who had been kept waiting 300 days on a charge of being absent without leave. A further witness testified before us that three soldiers were at that moment being detained in close arrest on charges of being absent without leave, and had been so detained for three months. Yet there was nothing to prevent their speedy trial by court-martial. We asked for this case to be specially investigated, and the result of such investigation confirmed the truth of the evidence.

81. These delays, which make the insistence of the Army Act on a "speedier punishment than the ordinary forms of law will allow" somewhat unreal, have several unfortunate effects, apart from being a denial of an accused person's inherent right to a speedy trial. Thus a soldier (but not an officer) loses all pay while under close arrest awaiting trial which results in a conviction. The longer he is in such arrest, therefore, the greater is his loss of pay. Unnecessary delay in bringing him to trial thus operates as an arbitrary and unjust punishment, which cannot be wholly relieved by awarding a light sentence after trial and conviction. A long period spent

7 mos before desertion

300 days AWOL

in arrest is (and, we think, rightly) taken into account by a court-martial when awarding sentence, and in consequence a sentence may be substantially less severe than it otherwise would be. But light sentences in certain circumstances have little deterrent effect, and the publication in orders of such sentences, without any explanation, may encourage rather than discourage an offence prevalent at the time, e.g., absence without leave. Furthermore, a delayed trial in one case, and a speedy trial in another, may lead to widely different sentences for identical offences, and such disparity cannot be good for discipline.

82. The principal reasons for undue delay in holding trials appear to be these:—

- (a) The inexperience of staff officers and their clerks, who are responsible for examining applications from commanding officers for courts-martial, and for advising the convening officer thereon. This difficulty should not exist in peace-time though it might, under the existing system, be inevitable in time of war, due to the great and rapid expansion of the Forces.
- (b) The great pressure of work on such staff officers and clerks during the recent war, especially during active operations and the moves and difficulties of communication thereby entailed.
- (c) The difficulty, particularly under war conditions, of taking evidence from necessary witnesses, and securing their attendance at the trial.
- (d) The preferring of an undue multiplicity of charges against the accused.
- (e) Forgetfulness, in some cases, of the urgent importance of a speedy trial. In fairness to the War Office and the Air Ministry, however, we should say that detailed official instructions, stressing the need to avoid delay in holding courts-martial, have on many occasions been issued by both Departments.

83. It is clear, in our opinion, that the existing safeguards against unnecessary delay are inadequate, particularly in time of war. Stronger sanctions are, in our opinion, essential, and we make the following recommendations:—

- 8 day rept.
- (a) Whenever an accused person is in close arrest the 8-day report above mentioned to be rendered whether he is on active service or not, unless operational conditions make it impossible in any particular case.
 - (b) In such cases a copy of the report should be sent direct by the commanding officer to the Director of Legal Services in the Army or the Royal Air Force, as the case may be (to whom, as will be seen later, we propose that certain duties at present performed by the Judge Advocate General's Department should respectively be transferred). After receiving three of such reports in a particular case (which will mean that the accused has been in close arrest for at least 24 days without trial) the said Director should make further enquiries of the Service authorities, and he should be given the power, after consultation with these authorities, to issue such orders as he may think proper to secure a speedy trial. He should also be empowered to recommend to the general or air officer commanding the formation comprising the unit in which the accused is serving that the accused should be released forthwith or after a specified interval, failing his being tried in the meantime.

- (c) After being in close arrest for 28 days without a court-martial having been convened the accused should have the right to petition the Chief Judge Martial (the new title we suggest for the Judge Advocate General—see paragraph 114 below) against his continued detention, and be allowed to submit such petition direct but with the obligation to notify his commanding officer that he has done so. Upon receipt of such petition the Chief Judge Martial should make appropriate representations to the Secretary of State.
- (d) It should be made illegal to retain an accused in close arrest for longer than 90 days without a court-martial having been convened and having assembled. At the expiration of this period he should be released and not be subject to re-arrest for the same offence except on the written order of an officer having power to convene a court-martial for the trial of the offence.

84. Inasmuch as a good deal of time is now spent in obtaining statements from witnesses and ensuring their attendance although the evidence they are to give may be purely formal and/or undisputed, we further recommend that provision should be made enabling both the prosecution and the defence, subject to the safeguards hereinafter enumerated, to give evidence of facts by way of statutory declaration. The safeguards we suggest are these:—

- (a) A copy of the statutory declaration should be served by the party proposing to use it upon the other side at the earliest possible moment, and in any event at least 7 days before the date fixed for the court-martial unless the accused, being legally represented, or the prosecution, as the case may be, waives this last requirement.
- (b) Within 4 days after receiving such copy statutory declaration (inclusive of the day of such receipt) the party served to have the right to demand by notice in writing to the other side that the deponent to the statutory declaration shall personally attend the court-martial.
- (c) Notwithstanding the omission to give such notice, the prosecution or the defence to be entitled with the leave of the court to demand the personal attendance of the deponent to the statutory declaration, and the court itself to be entitled to require his presence if it thinks it desirable in the interests of justice.

We make this last suggestion because some unexpected development during the hearing may make it undesirable that the evidence of some fact should consist of a statutory declaration only. If this occurs, it may be necessary to adjourn the court for the particular witness to attend, but such occasions are much more likely to be the exception rather than the rule; and the advantages which will accrue in the shape of elimination of delay, if these proposals are accepted, will far outweigh the inconvenience of an occasional adjournment.

We also recommend that depositions on oath and being part of the Summary of Evidence should be likewise admitted as evidence at a court-martial, subject to the same safeguards.

85. The adoption of the foregoing recommendations will, we think, go a long way towards remedying a complaint that soldiers are frequently kept in close arrest for long periods without trial. In addition, however, we desire to emphasize the necessity for urging upon all concerned from time

to time, the fact that soldiers should be kept in open and not close arrest awaiting trial, or should be released, without prejudice to re-arrest (a kind of military "bail") unless considerations of security or discipline imperatively require otherwise.

INSUFFICIENCY OF LEGAL AID BOTH BEFORE AND DURING TRIAL

86. Many of the witnesses who gave evidence before us criticised the absence of a properly organised system to provide adequate facilities for the defence of an accused person.

87. Prior to the coming into force on the 19th July, 1947, of the new Legal Aid Scheme for the Army, to which we refer later, the provision of legal representation for an accused was dealt with under Rules of Procedure 87-93.

88. These Rules provide that if an accused person is not represented at his trial by counsel (briefed by him at his own expense), he may be represented by any officer subject to military law, known as "the defending officer", or assisted by any person, known as "the friend of the accused". The defending officer has the same rights and duties as counsel at the trial. A "friend" may advise the accused and suggest questions to be put by him to the witnesses but has himself no right of audience.

89. It is the duty of the convening officer to ascertain whether an accused person, not otherwise represented, desires to have a defending officer assigned to represent him at his trial, and if so, to use his best endeavours to ensure that a suitable officer is appointed for this purpose.

90. It is clear that, however liberally administered, this system was unsatisfactory in many respects and compared unfavourably with that in operation in the civil criminal courts. The Oliver Committee recommended that in proper cases legal aid should be provided on lines similar to those in operation in the case of civilians who are prosecuted, and this recommendation was being considered by the Service authorities at the outbreak of war in 1939.

91. The unsatisfactory features in the system, as then existing, were to some extent mitigated during the war by the fact that, owing to the large number of barristers and solicitors available in the forces, it was possible in many cases to provide the accused with a reasonably competent defending officer. But the lists of barristers and solicitors prepared by general officers commanding for this purpose included persons who, though holding the formal qualification, had no practical experience of the administration of either criminal or military law. Moreover, there were still a number of cases in which no barrister or solicitor of any kind could be provided for the defence. In some of these cases, whatever the result, it must have appeared both to the accused and to the court that the defence was not adequately presented. Presidents and judge advocates of experience have told us of cases in which it has been necessary for them to assist in the conduct of the defence, because of the inexperience of the defending officer.

92. Upon demobilisation the number of lawyers in the Forces diminished rapidly and the need for a permanent and more satisfactory scheme of legal aid became urgent. Accordingly, in April, 1946, a Committee was set up by the Army Council under the Chairmanship of Major-General H. Murray, C.B., D.S.O., then Director of Personal Services, to consider, in the light of the Oliver Report, the administrative procedure by which, in commands both at home and abroad, legal aid could be provided on lines similar to those upon which legal aid is provided for civilians in criminal courts.

93. This Committee recommended a scheme for the provision of competent legal aid without regard to rank (but subject to practicability and means) on a contributory basis whenever necessary in the interests of justice.

† (a) in cases of the same type as those which would come before criminal courts;

(b) in the case of purely military offences, where a legally qualified prosecutor is employed, or which involve points of legal difficulty, or expert examination of witnesses, or where the results of the case are of considerable consequence to the accused.

This scheme is now in operation in both Services (see Army Council Instruction 603 of 19th July, 1947, and Air Ministry Order A. 716 of 4th September, 1947).

94. We welcome this scheme and are of opinion that it is based upon the right principles. It is avowedly experimental and still incomplete, but any defects and possible improvements will appear from practical experience gained in the operation of the scheme, and criticism of administrative detail at this stage would serve no useful purpose.

95. There are, however, two matters to which we wish to refer in connection with the question of legal aid. The first is that apart from legal representation at the trial, we think it is very important that an accused person should have advice at the earliest possible moment after he has been charged with any offence. Many soldiers and airmen, both regulars and those called up under the National Service Act, will be under the age of twenty-one. They will often be remote from their family and friends, in many cases for the first time in their lives. They may have to decide questions of considerable difficulty and importance, e.g., whether or no they should elect to go for trial by court-martial or take their commanding officer's award, and the nature of the evidence that they should call in their defence in the early stages of the investigation of a charge against them. Apart from these practical considerations we consider that it is most desirable, from the point of view both of the accused and of his family, not to create the impression that a youth charged with an offence for the first time is left to his own devices without experienced and sympathetic advice on the conduct of his defence in the early stages.

96. We realize that it would be impracticable to have a lawyer available to advise at this stage in every case, nor do we consider it necessary or desirable that an accused person should be legally represented before his company or commanding officer. But we consider that it should be the duty of every commanding officer to ensure, as is now frequently done, that, before a man is brought in front of him charged with an offence for which the man may be tried by court-martial, he shall be advised by a suitable person of any rank, either of his own choice or, failing such choice, selected by the commanding officer. Such adviser should be competent to inform the accused of his rights and advise him as to the conduct of his defence at that stage.

97. The second matter to which we desire to refer is the question of the representation of an accused person at the taking of the Summary of Evidence. As we have shown earlier in this Report, under the existing system a Summary of Evidence has to be taken in every case to be tried by court-martial in which the accused is below commissioned rank. This necessitates the examination

of witnesses in the presence of the accused and the taking down of their evidence either by the commanding officer or by some other officer appointed by him. The evidence may be taken on oath, if the accused so demands, or the commanding officer so directs. The accused is not entitled to be legally represented.

98. In the case of an officer a Summary of Evidence need not be taken unless the accused so requires; otherwise an Abstract of Evidence, not prepared in the presence of the accused, takes the place of the Summary. We have been informed that this system works satisfactorily and that it is exceptional for an officer, when asked, not to consent to the use of an Abstract.

99. The Summary and Abstract resemble, in many respects, depositions taken in Magistrates' Courts. It is to be observed, however, that whereas depositions are taken only in indictable cases, the Summary or Abstract is taken or made in every case, however trivial, which has to go to court-martial for trial.

100. There have been criticisms of the method of taking the Summary. It has been suggested:—

- (a) that as the Summary is frequently taken by a person with little or no knowledge of the criminal law, inadmissible evidence sometimes appears in the Summary, and that the existing safeguards to expunge such evidence from the Summary before it is made available to the president of the court-martial are inadequate;
- (b) that the fact that the accused is not entitled to be represented at the taking of the Summary may operate unfairly to him;
- (c) that the person taking the Summary has frequently been actively engaged in the investigation of the case and appears, in effect, to be the prosecutor; and
- (d) that the evidence should always be on oath.

101. While we consider that there is some substance in these criticisms in difficult and complicated cases, it would not, in our opinion, be practicable to require that in every case the Summary should be taken by a legally qualified person with legal representation both of the prosecution and the accused and with all testimony on oath. Apart from the lack of persons with the necessary qualifications, it seems clear that so elaborate a form of preliminary trial is unnecessary and must increase the delay in disposing of a large number of straightforward cases.

102. In approaching this problem we have first considered whether there is any valid reason for maintaining the distinction between the treatment of officers and other ranks in this respect. It appears to the Committee that this difference probably dates from the time when many soldiers below commissioned rank were unable to read, and we see no reason why, in existing conditions and subject to appropriate safeguards, the Abstract of Evidence, which has been found satisfactory in the case of officers, should not normally be used in straightforward cases irrespective of the rank of the accused.

103. Accordingly, we recommend that:—

- (a) at an investigation of a charge which is not disposed of summarily the commanding officer should record or cause to be recorded a short précis of the evidence of each witness giving the name and address and attach any relevant documents;

- (b) the commanding officer should forward the report of the case, together with the précis of the evidence and material documents to the proper superior authority with a view to the case being brought before a court-martial;
- (c) if the convening officer decides that there is a *prima facie* case for trial by court-martial the accused should be served free of charge with a copy of the Abstract as soon as practicable, and in any event not less than 48 hours before the trial commences;
- (d) except in cases in which a sentence of death or penal servitude for life may be passed, a Summary need not be taken unless ordered by the convening officer or required by the accused;
- (e) the accused should not be entitled to require a Summary without leave of the convening officer, if charged with any offence for which the maximum punishment does not exceed two years' imprisonment, but should be entitled to require a Summary as of right in all other cases;
- (f) the accused in every case should be asked in writing and should reply in writing, whether he desires to apply for, or to exercise his right to require the taking of, a Summary;
- (g) in cases in which a Summary is taken the officer detailed to take it should be appointed by the convening officer and should be either a permanent president (*see* our recommendation in paragraph 206 below) or other officer with suitable experience or legal qualifications. In cases of exceptional difficulty or importance, a member of the Chief Judge Martial's Department might be appointed;
- (h) the Summary should be taken in the presence of the accused who should be entitled to be represented, and his representative should have all the rights and duties of counsel.
- (i) all evidence taken at the Summary should be on oath.

104. We would observe that under this system the soldier will still be treated more favourably than the civilian, who when tried summarily does not know the evidence against him until it is called at the trial.

DEFECTS IN PROCEDURE

(1) *The Judge Advocate General*

105. The first, and one of the most important, criticisms under this head relates to the present method of appointing the Judge Advocate General, and to the conflicting nature of the duties at present laid upon the holder of that office in relation to courts-martial. These questions can, we think, properly be considered under the heading of "Defects in Procedure" though the defect in this case is fundamental.

106. The Oliver Committee recommended in para. 15 of its Report "That the Judge Advocate General should be appointed on the recommendation of, and be responsible to, some Minister other than the Secretary of State for War or Air".

The Oliver Committee made this recommendation in view of the importance of removing from the mind of the public any impression that the Judge Advocate General, whose duty it is, among other things, to review all

convictions of court-martial and to advise the Secretaries of State for War and Air on questions of law arising out of such review, is in any sense a subordinate official of the War Office or the Air Ministry. The Oliver Committee was satisfied that the Judge Advocate General, although appointed on the recommendation of the Secretary of State for War, in fact enjoyed, in the discharge of his duties, complete independence; but considered it most desirable that steps should be taken to remove any possible misunderstanding on this point.

Adopted

107. We have come to the same conclusion and for the same reason; and we recommend that in future the Judge Advocate General should be appointed on the recommendation of the Lord Chancellor and should be responsible to him. In relation to the Secretaries of State for War and Air the duties of the Judge Advocate General should continue to be advisory in character: and while, no doubt, there will be few occasions upon which such advice will not be accepted, and acted upon, no invariable rule to this effect should, in the Committee's view, be prescribed. The ultimate responsibility in the matter should be left where it is at present, namely in the two Secretaries of State.

108. We have also considered the present constitution of the Judge Advocate General's Office. It consists of three separate departments: the Military Department, the Air Force Department, and the Judge Advocate General's Office proper, which we will call the "Judicial Department". The Military and Air Force Departments are staffed by serving officers with legal qualifications, whose duties include the preparation of cases for trial by court-martial, and, where necessary, the conduct of the prosecution at such trials. The Judicial Department is staffed by civil servants with legal qualifications and serving officers seconded from the Military and Air Force Departments, who act as Judge Advocates at courts-martial and, under the Judge Advocate General, review the proceedings afterwards. No Judge Advocate, however, reviews the proceedings of any court-martial at which he acted as a Judge Advocate. During the recent war many lawyers, both barristers and solicitors of eminence and standing in their profession, who had joined His Majesty's Forces worked in this Judicial Department.

109. In the Committee's view, and in order to secure that justice is not only done but is seen to be done, these three departments should cease to be combined in one office. We recommend the following changes:—

- Adopted*
- (a) There should be constituted under the Secretary of State for War a separate Department in charge of a "Director of Army Legal Services" or some other appropriate title. The functions and staff of the present Military Department of the Judge Advocate General's Office should be transferred to this new Department. It should be what is known in the Army as an "Adjutant-General's service", the staff thus coming under the Adjutant-General for purposes of discipline and general administration.
 - (b) There should be constituted under the Secretary of State for Air a separate Department in charge of a "Director of Air Force Legal Services" or some other appropriate title. The functions and staff of the present Air Force Department of the Judge Advocate General's Office should be transferred to this new Department. It should be under the Air Member for Personnel of the Air Council, the staff thus coming under him for purposes of discipline and general administration.

- (c) This separation of functions should extend also to Commands abroad where the Judge Advocate General, the Director of Army Legal Services and the Director of Air Force Legal Services would each have his own Deputy with the necessary staff.
- (d) The Judge Advocate General should in future be responsible only for the work at present done by the Judicial Department. Pending the changes which we recommend later in this Report this work will consist of the supply of Judge Advocates, the review or court-martial proceedings, and the tendering of advice on questions of law arising out of such proceedings.

110. In this way what may with substantial accuracy be called the prosecuting and judicial sides of the Judge Advocate General's work will be completely separated, and he and his staff will be confined to the latter. Clearly this is as it should be; and the Committee finds itself in this respect in complete agreement with the similar recommendations made by the Oliver Committee.

111. It will be a matter for consideration and decision by others whether the two new legal departments above recommended should perform other legal work for the Army and the Royal Air Force, in addition to work in connection with courts-martial.

112. We have attempted to give an outline of the establishment of the proposed new departments, the details of which are in Appendix C. The establishments shown there represent a considerable increase on the present establishment of the Judge Advocate General's Department and, though we realize the importance of avoiding unnecessary expenditure, the position must be faced that the complete separation of the judicial and prosecuting sides of the Judge Advocate General's work (a reform which we consider is long overdue) will cost money.

113. Furthermore, it is most important that the rates of pay, pension, terms of service and promotion in the new Departments should be such as to attract lawyers of skill and experience who would inspire confidence in the minds of the public and of those serving in the Army and Royal Air Force. In this connection the Committee desires to recommend that, irrespective of the period they may have been in outside legal practice, special consideration should be given to those candidates of either Service who have satisfactorily borne the heavy and responsible burden during the war as Deputy Judge Advocates General.

114. Finally, under this head we recommend that the title of "Judge Advocate General" be changed. As we have pointed out in paragraph 30 above, this title is misleading as tending to suggest that the holder of the office is both an advocate and a judge. If our proposals are accepted the functions of the Judge Advocate General and his staff will be exclusively judicial and advisory, and we think in future he should be known as the "Chief Judge Martial", a title which will indicate the judicial character of the office as well as its association with the Services. In view of the responsibility of the post, the qualifications required, and the necessity for complete independence, we further recommend that the status and remuneration of the Chief Judge Martial should be not less than that of a puisne Judge of the High Court of Justice, except that he should retire at 70 years of age unless his tenure of office is specially extended, and that it should not be necessary to have an address from both Houses of Parliament before he could be removed.

(2) *The Judge Advocate*

115. Early in our deliberations we reached the conclusion that the practice of the judge advocate retiring with the court when the court was considering its findings should cease forthwith. Almost every witness who appeared before us took this view. One or two expressed the opinion that the presence of the judge advocate was of assistance to the court during its deliberations on the guilt or innocence of the accused; but there were two answers to any suggestion that for this reason the present practice should be allowed to continue. The first was that if the tribunal, when considering its verdict, found itself in need of assistance from the judge advocate on some point of law, it was preferable, and quite easy, for the court to be re-opened, and for the advice to be given by the judge advocate in the hearing of the accused and of the prosecution. The second (and in the minds of the Committee, the conclusive) answer was that inasmuch as the judge advocate in his summing-up of the case may, in the proper discharge of his duty, have been compelled to make observations damaging to the defence, the spectacle of his retiring with the court to consider the verdict could not fail to cause the gravest misgivings in the mind of the accused. The latter might well conclude that if the tribunal were in any doubt about his guilt, the judge advocate would soon resolve that doubt to his prejudice. Although justice might be done, it would not appear to the accused to have certainly been done: and since the appearance of justice having been done is next in importance to the fact, we concluded that a change in the practice should be made without delay. The Oliver Committee made a similar recommendation.

116. The Chairman communicated this recommendation to the Secretaries of State for War and Air by letters dated the 17th April, 1947. It was accepted and put into effect. If the further recommendations as to the composition of a General Court-Martial which are made hereafter in this Report are accepted, a different procedure, not requiring the presence of a judge advocate, will be followed. #

(3) *Finding and Sentence—Announcement*

117. In the letters of the 17th April, 1947, above referred to, it was recommended that all findings of guilt should be announced in open court at once, as were all verdicts of "Not guilty". Previously when the court considered that the accused was guilty (even of a less offence than that actually charged) it merely said that it had no pronouncement to make, that its findings were subject to confirmation, and if confirmed would be promulgated to the accused. Thus, although the accused might have been found guilty of common assault instead of manslaughter, he would not know this, and might not know it for weeks until the findings were promulgated. In the meantime his state of mind could well be imagined. He might similarly be left in ignorance that he had been found guilty of the charge of absence without leave only, instead of the graver charge of desertion with which he was actually charged. It was not to the point, therefore, to say that the accused knew that he had been found guilty by the mere statement that the court had no findings to announce. Again, the circumstances that the accused might have been found guilty of some less offence than that charged made it extremely difficult for his advocate properly to discharge his task, when invited by the court to address it in mitigation of sentence.

118. The argument advanced in favour of the system was that it might avoid an adverse effect on discipline in cases where an officer or non-commissioned officer was found guilty of an offence, but the finding was

afterwards not confirmed, or was quashed. In such a case it was said, if the finding had been publicly announced at the trial, the officer or non-commissioned officer in spite of the final result, could hardly command the same respect from his subordinates as before, and this would, or might, react upon the discipline of those under his command. We were not impressed by this argument, and it was not endorsed by the majority of the service witnesses who have appeared before us. The situation postulated already arose when a conviction, after being confirmed and promulgated, was quashed on review.

119. The majority of the Committee also took the view that the sentence of the court should likewise be announced in open court as soon as it was determined.

120. Our recommendations in these respects were accepted, and findings of guilt, and the sentence are now announced forthwith in open court.

(4) Findings by a Majority

121. We have considered whether, in view of the new procedure that we have recommended, any alteration should be made in the existing practice whereby the finding by a court-martial of guilt or innocence is decided by a majority of votes. In cases tried by Magistrates whether in Petty Sessions or in the Appeal Committee of Quarter Sessions the verdict may be decided by a majority; but in all indictable cases tried by a jury the verdict must be unanimous. In the event of a jury not being able to agree upon the verdict the case may be tried again before another jury. Such disagreements are very infrequent.

122. The evidence before us on this matter was conflicting. Some experienced presidents and judge advocates informed us that majority verdicts were practically unknown and others that they were of frequent occurrence. The explanation of this may well be that some presidents are prepared to accept a majority verdict without further argument, whereas others are reluctant to take this course and spend time discussing the doubts of the minority with the result, in some cases, that the verdict becomes unanimous. This latter practice has much to commend it. Not only is it unsatisfactory to the accused, his legal representatives and friends, to feel that he may have been convicted of a serious offence involving heavy punishment, by a bare majority, but it is also undesirable that any member of a court-martial should feel that due consideration has not been given to his opinion.

123. We have heard no convincing argument as to why the salutary rule that the verdicts of juries must be unanimous, should not be applied in the case of courts-martial. We do not consider, once this necessity is realized, that any greater difficulty should be experienced in securing unanimity in courts-martial than in the civil courts.

124. It was suggested that if this rule were adopted it should be confined to a finding of guilt and that a majority verdict should suffice for an acquittal. Though the suggestion is superficially attractive we do not agree with it. If adopted it would mean that in every case in which a disagreement occurred it would be known that a majority was in favour of the conviction, a fact which might prejudice the accused in any further trial. We realise that in difficult cases this recommendation may result in courts-martial taking a longer time to consider their findings, but we think that a small amount of extra time will be well spent in the interests of justice.

125. Accordingly we recommend that all findings of guilt or innocence should be unanimous. In the event of a disagreement the accused should be liable to be retried before another court-martial with different membership.

126. As regards sentence we do not consider that unanimity is necessary and we see no reason to recommend any alteration in the existing practice whereby sentence is decided by a majority of votes.

(5) *Lack of Shorthand Writers*

127. At all trials by court-martial of the more serious charges, and particularly where the accused if found guilty may be sentenced to death, the presence of a shorthand writer to take a verbatim note of the proceedings is most desirable.

128. By "shorthand writer" we mean a shorthand writer capable of taking down the proceedings of a court verbatim and with accuracy such as those who practise in the Royal Courts of Justice. The ordinary shorthand typist is not, as a rule, capable of performing this highly skilled work, and in the result might do more harm than good.

129. There have been one or two instances of trials for murder by court-martial on the Continent of Europe since the war where no shorthand writer was employed. In our view it is essential that a shorthand writer should be employed in all capital cases tried by General Court-Martial. We suggest that it should be the absolute duty of the convening officer to notify the Judge Advocate General (or, in due course, the Director of Legal Services of the Army or the Royal Air Force) whenever he issues an order convening a court-martial for the trial of a capital offence, and to ask that arrangements be made for a shorthand writer to attend the trial. The convening officer should send a similar notification and request in relation to any other case which, in his opinion, is sufficiently serious or complicated to justify the employment of a shorthand writer.

130. The responsibility for supplying a shorthand writer should then be upon the Judge Advocate General (or the said Director) who should supply one from his own staff or, if this is not possible, should secure one from an outside firm. If, in spite of all effort, no shorthand writer can be obtained, the Judge Advocate General (or the said Director) should notify the convening officer to that effect. He in turn should similarly notify the president of the court-martial and this latter notification should be read in open court at the commencement of the trial.

131. The supply of shorthand writers is unfortunately limited, and it must be expected that trials by court-martial will continue to take place without a shorthand writer, although his presence would be most desirable. We hope, however, that this will never be the case at the trial of a capital offence.

132. There is no easy long term solution of this problem. On the evidence we have heard we do not think it is possible for the Services to train recruits up to the standard of shorthand writers (as we have defined them). And if shorthand writers are to be attracted into the Service from outside, the terms of service will have to be made very exceptional seeing that these experts may earn up to £1,000 per annum in civil life. In these circumstances we can do no more than to emphasize the importance of supplying shorthand writers at trials of the kind above referred to, although in many cases this may mean securing them from outside firms.

(6) Other Points

133. (i) Power should be given to the president of a court-martial to allow the amendment of a charge upon similar conditions to those prescribed in Section 5 of the Indictments Act, 1915.

(ii) A court-martial should be empowered in its discretion to take into consideration for the purposes of sentence other offences admitted by the accused, subject to the qualifications (a) that such other offences should be similar in character and triable by court-martial, and (b) that stoppages of pay (where such punishment is appropriate) may be imposed for each offence which the accused wishes to be taken into consideration as though a separate conviction had been recorded in respect of each such offence but (c) that, subject as aforesaid, the sentence should not exceed the maximum for the offence actually charged.

If this recommendation is accepted it should reduce the present practice of preferring a multiplicity of charges, particularly where this is necessary under the present system to recover losses by means of stoppages of pay.

(iii) A court-martial should be given, wherever possible, after finding but before sentence, the same kind of record of the accused's career as is now given at that point in a civil criminal trial.

(iv) *Form for the convening of a Field General Court-Martial.*—The form prescribed in the Second Appendix to the Rules of Procedure for the convening of a Field General Court-Martial contains the following recital:—

“Whereas it appears to me, the undersigned, an officer in command of on active service that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned;”

It has been represented to us that this wording may lead the members of a court-martial to think that the convening officer is satisfied as to the guilt of the accused.

The point is a minor one, but we think it deserves attention while Field General Courts-Martial are retained in their present form.

(v) An attempt should be made to define the offence of mutiny. In the light of present-day conditions it is capable of too wide an interpretation.

CHAPTER IV

APPEALS

134. At present there is no right of appeal to a higher court against conviction or sentence (or both) by a court-martial, corresponding to the right of appeal possessed by a civilian who is convicted on indictment and sentenced by a civil court. Any officer or soldier convicted and sentenced by a court-martial may (see paragraph 71 above) submit a petition against the finding or the sentence or both; but has no right to be heard when such petition is being considered. All court-martial proceedings are also reviewed by the Judge Advocate General in London (see paragraph 70 above) in order to ensure that no irregularity or miscarriage of justice has occurred, but this review takes place in private and the convicted person is not present.

135. The Committee which sat in 1919, under the chairmanship of Lord Darling (hereinafter called the Darling Committee) to consider court-martial procedure, recommended that no formal Court of Appeal from the decisions of courts-martial should be set up. That Committee thought that the system of

confirmation of findings and sentence, followed by the review of the proceedings by the Judge Advocate General, together with the right on the part of the accused person to present a petition, put the latter in a better position than a civilian convicted and sentenced by a civil court. Three members of the Darling Committee dissented from this view, and signed a separate report recommending that a Court of Appeal should be set up.

136. The Oliver Committee, reporting in 1938, also considered that a Court of Appeal was unnecessary. They said:—

“ we have come unanimously to the conclusion that in the light of the evidence no such experiment is necessary, desirable or practicable, and that the present system as a system has fully justified itself ”.

137. The Oliver Committee were impressed with the fact that most offences tried by courts-martial were offences against discipline and they thought that such offences were better handled at every stage by persons familiar with Service discipline.

138. In the light of these pronouncements we have considered the question of appeals with especial care. Circumstances have changed since the Darling and Oliver Committees reported. Service under the National Service Act in peace-time, the effect of which they did not have to consider, emphasizes the importance of the principle which we think no one would dispute, namely, that in the matter of legal safeguards, citizens should be no worse off when they are in the Forces than in civil life unless considerations of discipline or other circumstances make such a disadvantage inevitable. We have endeavoured to keep this principle in the forefront of our minds throughout this Report.

139. Neither the Darling nor the Oliver Committee, so far as their reports disclose, made any recommendation upon the question of granting a right of appeal on a question of law as distinct from a question of fact. The Oliver Committee after indicating that there were these two distinct rights of appeal open in certain cases in civil life, proceeded to reject the suggestion of the right of appeal from a court-martial for reasons which, though weighty as regards appeals on questions of fact, have much less weight as regards appeals on questions of law. The Committee in its recommendation made no distinction between the two, and the Report does not disclose whether the Committee considered granting an appeal on questions of law, as distinct from fact, nor, if they did consider this question, what reasons led that Committee to reject the idea.

140. We do not recommend that a right to a rehearing of a case tried by court-martial should be given. The civilian himself has no such right except where he is convicted at Petty Sessions and appeals against his conviction to Quarter Sessions. Such an appeal is in fact a rehearing of the case. But the civilian convicted on indictment, either at Quarter Sessions or Assizes, has no such right to a rehearing. Moreover, it would be impossible in many cases, especially on active service, to get all the witnesses together again for a second trial, and would impose a wholly undue burden upon the Forces.

141. These objections, in our opinion, do not apply to an appeal on a point of law. The case would not be retried, the appeal being directed simply to the question whether some error of law had occurred in the proceedings sufficiently serious to justify quashing of the conviction. This is precisely the question which the Judge Advocate General already has to determine under the present system of review. The drawback of that system

is, however, that the Forces do not see it in operation nor does it necessarily take place at once. All that is known is that somebody in an office in London (whom the soldier probably, though erroneously, regards as a War Office official) is supposed to look through the case after conviction to see that all is according to rule. The Forces also know that a petition against conviction and sentence may be presented, but nobody knows, not even the accused, the reasons which lead to a petition being dismissed if that is its fate.

142. A further disadvantage was well described to us by a witness who at the time he was giving evidence was engaged in drafting a petition against the conviction of a number of soldiers by a court-martial at which he himself had appeared as counsel for the defence. He said in effect "I can put down my various reasons of law on paper, but when reading them the Judge Advocate General may form in his own mind some ground for thinking that they are not well founded. If I knew what that ground was, I might be able to show him by argument that his view was wrong. But I shall never get the opportunity of doing so such as I would have if there were an oral hearing of an appeal".

143. We have come to the clear conclusion that a right of appeal on a question of law ought to be granted against conviction by court-martial whenever the accused has pleaded "Not guilty"; and that such right of appeal should, in cases of conviction after some date to be announced, take the place of the present system of review of the proceedings by the Judge Advocate General.

144. This Court of Appeal should not, in our opinion, be the Court of Criminal Appeal. The Judges who constitute that Court have also to do their ordinary work as Judges of the King's Bench Division, and we think that the addition of the work of hearing appeals against convictions by court-martial would throw an undue strain upon the Court of Criminal Appeal. We think the Court should consist of the Chief Judge Martial, the Vice-Chief Judge Martial and the Judges Martial, all of the Department of the Chief Judge Martial which we have already recommended should be formed to replace the present Department of the Judge Advocate General. In addition there should be formed a panel approved by the Lord Chancellor of King's Counsel willing to serve on such a Court should occasion arise. Any three of the foregoing persons should constitute a Court. The Court should normally sit in London and at other convenient centres in the United Kingdom but in exceptional circumstances might sit abroad. It should have power in exceptional cases (as has the Court of Criminal Appeal) to allow fresh evidence to be called. It should have power to quash a conviction by court-martial in any case where it comes to the conclusion that an error of law has occurred sufficiently serious to make it unsafe to allow the conviction to stand. But it should have power to affirm conviction even if an error of law has occurred, provided the Court is satisfied that no substantial miscarriage of justice has thereby taken place. We refer hereinafter to this Court as the "Courts-Martial Appeal Court".

145. On conviction by court-martial the Court itself should be empowered to grant a certificate of leave to appeal or the accused should be entitled to apply within fourteen days for leave to appeal. This application should be in writing, signed by the accused or his legal representative, and should specify the grounds upon which the application is made. It should be sent to the Chief Judge Martial or to the Judge Martial in the Command in which the accused is serving, being a person who had taken no part in the court-martial itself. It will be for the Chief Judge Martial or the said Judge

Martial to grant or refuse leave to appeal according to the view he takes of the grounds of the application. Either way he will notify his decision in writing to the accused or his legal representative, and if the decision is adverse, the accused should have the right within a further fourteen days from the receipt of such decision (with power in the Courts-Martial Appeal Court to extend the time in suitable cases) to apply to the Courts-Martial Appeal Court itself for leave to appeal, and stating whether he wishes to be present when the application is heard.

146. This application would be heard orally by the Court sitting in public and the defence should have the right of audience and to be legally represented. At this stage it would not normally be necessary for the accused to attend or for the prosecution to be represented. If the application were refused, that would be the end of the matter. If leave to appeal were granted, then the appeal would be argued either there and then or at some later convenient date. At such hearing the accused should have the right to be present in capital cases and in other cases by leave of the Courts-Martial Appeal Court.

Leave to appeal
147. The requirement that leave to appeal should be obtained either from the Judge Martial in the Command, or from the Courts-Martial Appeal Court, is necessary in order to stop frivolous appeals. A further stop on such appeals may be desirable in the shape of power in the Courts-Martial Appeal Court to order, in the case of a frivolous application for leave to appeal, that the accused's sentence shall begin to run as from the date when such application is dismissed, so that any part of the sentence served up to that date shall not count. We may say here that we do not recommend that the sentence passed by a court-martial should be suspended automatically merely because the accused makes an application for leave to appeal. It may well be that in some cases where a light sentence is inflicted, an application may be lodged and may turn out to be successful after the sentence has been served. This unfortunately is true in civil life as well and cannot, we think, be avoided. Conviction and sentence must be assumed to be valid and have their effect until they are displaced. It should, however, be open to the court-martial, the Judge Martial in the command or the Courts-Martial Appeal Court on giving leave to appeal to recommend to the appropriate military authority that the sentence be suspended pending the determination of the appeal.

148. It will not be easy to work out the foregoing system of appeal in war-time (particularly where the accused may be serving at the time of the court-martial in a beleaguered garrison), nor in peace-time in relation to a conviction overseas. In the Colonies, however, local barristers of repute, and local judges might be put on the panel of Appeal Judges above referred to and help to form the Court. We do not think, however, that we would be justified in imagining the most difficult cases that are likely to arise, and recommending or not recommending an institution of the Court of Appeal according to its practicability in such extreme cases. Administrative ingenuity and goodwill should, we think, overcome most of the difficulties; but even otherwise the case for an oral hearing of an appeal on a question of law is too strong to be withheld simply because of its difficulty in a minority of possible cases. By the institution of such a right of appeal justice will not only be done, but it will be seen to be done, and justice is not, in this respect, seen to be done at present.

~~149. If our recommendation is adopted the system of confirmation should be abolished; so also should the review of court-martial proceedings which at present takes place by the Judge Advocate General.~~

150. If the change suggested by us is approved and put into force, that change should not be made retrospective. In other words persons convicted before any change is put into force would be unable to make use of the machinery of a Court of Appeal but would continue to have the right of review—so that for a time at least the two systems would run concurrently. But we think that a time limit should be set on the length of time during which the persons convicted under the present system should have their cases reviewed. The right to petition the Sovereign should continue, and it would be the duty of the Chief Judge Martial's Department to advise upon the new petitions, when required.

151. In cases where the Attorney General certifies that a point of law of exceptional public importance is involved and that it is desirable in the public interest that a further appeal should be brought, and gives his fiat accordingly, there should be a right of final appeal to the Judicial Committee of the Privy Council. We suggest the Judicial Committee because such an appeal may come from various places abroad and may concern a Colonial soldier.

APPEAL AGAINST SENTENCE

152. The question whether a right of appeal against the sentence of a court-martial should be granted raises different issues, and cannot be automatically decided by reference to the same considerations as those which have led us to recommend a right of appeal against the finding.

153. A trial by court-martial involves the application of a fairly complicated system of law and procedure, such complication being due, in a large measure, to the desire to be scrupulously fair to the accused. In applying this system to the cases which come before them, and which may exhibit every shade and variety of circumstances, courts-martial must almost inevitably from time to time make mistakes. Some such mistakes may be purely venial and occasion no injustice. Others, however, such as the wrongful admission of certain evidence, may be so serious as to make it unsafe for the finding to stand. There is, therefore, an obvious need for some right of appeal against the finding of a court-martial so that if any such mistake as aforesaid is alleged, the matter can be investigated and decided.

154. In the case of the sentence, however, the position is different. For example, if a court-martial awarded a sentence of imprisonment in excess of the maximum for the offence charged, the accused person who was the victim of such a legal error would have a right of legal redress. He could apply to the King's Bench Division by way of *certiorari* proceedings and have the sentence quashed. It is in the highest degree unlikely, of course, that the Service authorities would let any case proceed so far before themselves correcting the error.

155. It follows that a right of appeal against sentence can be advocated and justified only on the ground that a court-martial may award a sentence which is too severe, and that review by some independent Tribunal should, therefore, be available if the accused person so desires.

156. No evidence of a general tendency on the part of courts-martial towards undue severity in the matter of sentence has been given before us. If anything, the evidence we have had tends to suggest that the soldier frequently gets a lighter sentence from a court-martial than he would get from a civil court for the same offence. This consideration does not, however, lead us very far towards a solution of the problem; for however courts-martial

may have acted in the past, they will not necessarily act in the same way in the future. We think we must face this question: if a civilian who thinks his sentence too severe may appeal, why not a soldier?

157. Earlier in this Report (*see* paragraph 11) we have said the tasks of a soldier, and the circumstances under which he may have to perform them, call for a high degree of discipline: and that it has always been recognized that in order to maintain such discipline a special code of military law is necessary. If this be accepted, it follows that the treatment of a soldier convicted of an offence against military law may in some respects have to be different from the treatment of a civilian convicted of an offence against the civil law. In our opinion, the case of a soldier sentenced by court-martial is one of the cases where considerations of discipline inevitably involve a difference between the rights which can be afforded to a soldier who is aggrieved by his sentence, and those which have been accorded to a civilian.

158. A civilian, for example, can appeal to a higher civil court. In our view, however, it would be a mistake to give a soldier the right to appeal to a civil court against his sentence. It would tend to be subversive of discipline if a soldier, sentenced by court-martial, could appeal to a court composed of civilians with a prospect of getting his sentence reduced. The final word upon punishment must, in our opinion, remain with the Service authorities, upon whom the duty of maintaining discipline is laid. We would not, therefore, recommend that the Courts-Martial Appeal Court should be given jurisdiction to hear appeals against sentence as well as against finding.

159. Should there, however, be a right of appeal to a Military Court? Before answering this question we think it would be useful to recall what the position is at present:—

- (a) After sentence has been pronounced by the court-martial it requires confirmation by the confirming officer. (*See* section 54(6) of the Army Act.) The confirming officer may mitigate, remit or commute the sentence.
- (b) The accused may submit a petition against his sentence, as finally determined, to any confirming or reviewing authority, including the King. As to "reviewing authorities", *see* section 57(2) of the Army Act. There is no limit to the number of such petitions.
- (c) The sentence is periodically reviewed by the Service authorities, having power to mitigate, remit, or commute it.

In the sense that he may submit a petition, the accused has already a right of appeal against his sentence; and his position is better than that of a civilian to this extent, that whether he exercises such a right or not, the sentence is automatically brought under review, first by the confirming officer, and at intervals thereafter by other Service authorities.

160. The granting of a right of appeal to a Military Court would, we think, make only one material difference in the present position, namely, that the accused could be represented before such a court, and oral representations made on his behalf.

161. Such a court could either be composed of officers serving in the same Command as that in which the offence was committed, or the court-martial was held, or it could be a permanent court sitting centrally, and composed of fairly senior officers. We would reject the first alternative. To adopt it would, in effect, mean summoning a second court-martial finally to determine the sentence; and we do not think that such a course would be warranted. The appeal against sentence must lie, if at all, to some permanent court.

162. Adequate safeguards would, however, have to be provided against frivolous appeals: and to make sure that appeals would be made only in those cases where reasonable grounds for questioning the sentence existed. Otherwise there would be danger of the court being overwhelmed with appeals. The obvious safeguard would be to make it incumbent upon the would-be appellant to obtain leave to appeal; and some authority would therefore have to be invested with the duty of examining applications for leave to appeal, and granting or withholding leave.

If, however, a court-martial inflicts an unreasonable sentence, the number of cases where the matter would not be corrected by the confirming officer, or, following a petition, by a reviewing authority, would in our opinion be a very small percentage of the total number of cases. And it would be for this very small percentage of cases that the new Military Court would be set up, and some authority invested with the duty of examining every application for leave to appeal to the court. All this would be for the sake of the oral argument of the appeal, either by the accused or his representative, which is the one material difference which such a system would make.

163. In our view, oral argument, though of prime importance to the presentation of an appeal against finding, is not of such importance to an appeal against sentence. All that can be urged in mitigation of sentence can, we think, be equally well urged by way of written submissions (as in a petition) as by oral address. In any event there is not such a distinct advantage in the latter as would warrant setting up a special Military Court, with the necessary safeguards against frivolous appeals. It has, moreover, to be remembered that such a court, sitting in some central place, is less likely to be conversant with conditions in the locality where the offence was committed, than the members of the court-martial which inflicted the sentence, and the confirming officer who considered it. Yet such local conditions might be a very relevant factor in the determination of a proper sentence.

164. These considerations lead us to the following conclusions, which may also be treated as our recommendations:—

- (a) That jurisdiction over sentence should remain entirely with the Service authorities.
- (b) That accordingly no right of appeal against sentence to a tribunal composed of civilians should be instituted.
- (c) That there are not sufficient grounds for the grant of a new right of appeal to a military tribunal. ✓
- (d) That the power of the Service authorities to mitigate, remit or commute the sentences of courts-martial should be preserved. ✓
- (e) That while confirmation, as a condition of the validity of a sentence, should be abolished, the officer who would otherwise be the confirming officer should consider and review the sentence as soon as possible after it has been passed, and that he should, if he thinks fit, exercise in relation thereto his existing powers to mitigate, remit or commute. ✓
- (f) That the Department of the Adjutant-General in the War Office, and of the Air Member for Personnel in the Air Ministry, which at present review sentences by court-martial periodically during the currency of the sentence, should continue to do so. ✓
- (g) That the right of the convicted person to petition against his sentence to any reviewing authority, including the King, should be preserved.

CHAPTER V
PUNISHMENTS

165.

A. BY COURTS-MARTIAL

The punishments which can at present be awarded by courts-martial are as follows (see Section 44 of the Army and Air Force Acts):—

(i) *Officers.*

- (a) Death.
- (b) Penal servitude for a term not less than three years.
- (c) Imprisonment, with or without hard labour, for a term not exceeding two years.
- (d) Cashiering.
- (e) Dismissal from His Majesty's service.
- (f) Forfeiture of seniority of rank, or, in the case of an Army officer whose promotion depends upon length of service, forfeiture of service for the purposes of promotion.
- (g) Severe reprimand, or reprimand.
- (h) Stoppages.

(ii) *Soldiers and Airmen (including Warrant Officers)*.*

- (a) Death.
- (b) Penal servitude for a term not less than three years.
- (c) Imprisonment, with or without hard labour, for a term not exceeding two years.
- (d) Detention for a term not exceeding two years.
- (e) Discharge with ignominy from His Majesty's service.
- (f) In the case of a non-commissioned officer, reduction to the ranks or to a lower grade, or forfeiture of seniority of rank.
- (g) In the case of a non-commissioned officer, severe reprimand or reprimand.
- (h) Forfeitures, fines and stoppages.

On active service the following additional punishments may also be awarded:—

Field Punishment.

Forfeiture of all ordinary pay for a period not exceeding three months.

B. BY AUTHORITIES HAVING POWER TO AWARD PUNISHMENTS UNDER
SECTION 47 OF THE ARMY AND AIR FORCE ACTS

In the case of Army officers below the rank of lieutenant-colonel and of R.A.F. officers below the rank of squadron leader and of warrant officers:—

- (a) Forfeiture of seniority of rank, or, in the case of an Army officer whose promotion depends upon length of service, forfeiture of service for the purposes of promotion (subject to the right of the accused to elect trial by court-martial).

* Note 1—A District Court-Martial may not try an officer, nor award the punishment of death or penal-servitude.

Note 2—A warrant officer may be dealt with as if he were a non-commissioned officer but a District Court-Martial may not sentence him to any of the punishments referred to in items (c), (d) and (e) under this head. It may, however, sentence a warrant officer to dismissal from the service.

- (b) Severe reprimand or reprimand.
- (c) Deductions authorised by Sections 137 and 138 of these Acts to be made from ordinary pay (subject to the right of the accused to elect trial by court-martial).

C. BY COMMANDING OFFICERS AND BY DETACHMENT COMMANDERS*

- (i) In the case of non-commissioned officers:—

Summary Punishment

- (a) Deductions authorised by Section 138 of these Acts to be made from ordinary pay (subject to the right of the accused to elect trial by court-martial).

Minor Punishments

- (b) Severe reprimand, or reprimand.
- (c) Admonition.

- (ii) In the case of private soldiers, aircraftmen and R.A.F. apprentices and boy entrants (subject to the right of the accused to elect trial by court-martial):—

Summary Punishments

- (d) Detention, not exceeding 28 days.
- (e) A fine (for drunkenness only) not exceeding £2.
- (f) Deductions authorised by section 138 of these Acts to be made from ordinary pay.
- (g) Field Punishment (on active service only) not exceeding 28 days.
- (h) Forfeiture of all ordinary pay (on active service only) for a period not exceeding 28 days.
- (j) Forfeiture of all ordinary pay for a period not exceeding 14 days (applicable to R.A.F. apprentices and boy entrants only).

- (iii) In the case of private soldiers, aircraftmen and R.A.F. apprentices and boy entrants, the accused having no right to elect trial by court-martial:—

Minor Punishments

- (k) Confinement to barracks (or camp) for any period not exceeding 14 days.
- (l) Extra guards or piquets for minor offences or irregularities when on, or parading for, these duties (not applicable to R.A.F. apprentices and boy entrants).
- (m) Extra duties for any period not exceeding 14 days (applicable to R.A.F. apprentices and boy entrants only).
- (n) Admonition.

D. BY SUBORDINATE COMMANDERS

A commanding officer or detachment commander having the full powers of a commanding officer may delegate power to subordinate commanders to dispose of any offence which he himself may dispose of, provided that the punishments which may be awarded by company, etc., commanders in the

* Note—A commanding officer or detachment commander if of or below the rank of captain (or flight lieutenant) may not normally award detention exceeding seven days, except for offences of absence without leave in excess of seven days, for which he may award detention up to 28 days but not exceeding the number of days of absence.

Army and by an officer of or below the rank of flight lieutenant in the Royal Air Force do not exceed the following:—

- (a) To a non-commissioned officer below the rank of serjeant—reprimand or admonition.
- (b) To a private soldier or aircraftman—seven days' confinement to barracks (or camp), extra guards and piquets, fines for drunkenness, and admonition.

A commanding officer may further limit the powers of punishment delegated to subordinate commanders.

166. We have considered these punishments from the following stand-points:—

- (a) The suitability of the punishments themselves;
- (b) Comparison between punishments awarded to officers, warrant officers and other ranks;
- (c) Powers of commanding officers.

167. Subject to any changes which may become necessary consequent upon the Criminal Justice Bill becoming law we do not think that any change is required with regard to penal servitude, imprisonment and detention. Ample powers exist under section 57 of the Army and Air Force Acts to mitigate, remit or commute sentences which appear to higher commanders to be unduly harsh, and under section 57A of the same Acts to suspend sentences when it appears to the superior military authority that it is in the interests of the Service and of the person sentenced to do so. This latter power was, we understand, widely used during the late war with excellent results. Moreover, provision has now been made in the Army and Air Force (Annual) Act, 1947, for Military Corrective Establishments, the purpose of which will be to make better soldiers and airmen, and better citizens, of those undergoing punishment. This development will, we think, meet the views of some of those who gave evidence before us to the effect that something in the nature of a probation system was required in the Services.

168. The summary and minor punishments for other ranks, set out above, so far as they go, have stood the test of time and we do not think that any recent Service changes or war-time experience warrant alteration in their character, or in the method of awarding them. Their administration is, in practice, bound up with day-to-day service life. When discipline and leadership in the unit is good the results are good and, conversely, bad results, if they occur, are due to failures in leadership and not, we think, to defects in the system.

169. It is, however, very noticeable when comparing the military with the civil code that there is no general provision for fines as a punishment. Under Sections 137 and 138 of the Army and Air Force Acts, pay is forfeited for each day of absence, and stoppages of pay can be inflicted to make good damage or loss, but fines are not authorised in the sense in which they are understood under the civil code for any military offence save drunkenness, which is comparatively rare in the Services to-day.

170. The military code of punishment in its present form dates from 1881, a period when cash was far less plentiful among the population at large and when the offences for which soldiers or officers needed to be punished were no doubt simpler and fewer. It is not therefore, perhaps, surprising that fines were levied only for drunkenness, an offence which the lack of cash would obviously minimise.

171. In this respect, we think, a new situation has arisen. Service pay is higher and with compulsory service in peace-time there will always be serving in the ranks persons from all classes of the community. We deal later with the problem of officers. Offences by other ranks may well be better dealt with in some cases by a fine than by restrictions on their personal liberty. Such restrictions are wasteful in that they occupy the time of others who have to supervise the punishment, *e.g.*, orderly serjeants or non-commissioned officers in charge of defaulters or the staff of Military Prisons and Detention Barracks. It is possible that offences connected with equipment and breaches of signal or transport discipline are better dealt with by fines, and that the improving education of the soldier may cause him to respond better, in many instances, to such a punishment.

172. We recommend, therefore, that "reduction to a penal rate of pay" under that name should be introduced as a punishment for appropriate cases. We do not consider ourselves called on to advise on its details, but we think that in framing such a system the following principles should be observed:—

- (a) The scheme should be framed in such a way as not to hit those "behind the soldier", that is to say, it must not be allowed to prejudice allotments of pay or dependants' allowances so long as the man is not an absentee or deserter.
- (b) It must leave the man with a reasonable minimum sum to be drawn at the pay table. In this respect it should be related to the existing scale of deductions for recovery of sums overpaid.
- (c) There should be a right to elect trial by court-martial.

We consider that the power to award reduction to a penal rate of pay should rest with the same officers who are now empowered to award detention, namely, those with powers of a commanding officer or detachment commander, and with a court-martial.

173. We have given considerable thought to the problem of officers' punishments which is more complex than that of punishment for other ranks.

174. The present punishments are cashiering (whether or not accompanied by penal servitude or imprisonment), dismissal, forfeiture of seniority, severe reprimand and reprimand, and also deductions from pay to make good losses and damage. There is a big gap between the severe and the more trivial punishments, which we cannot believe arose accidentally. It is probably due, we imagine, to the view that an officer who committed a serious offence thereby lost the confidence of the troops and was therefore not worth continuing in His Majesty's service. The wording of section 44 of the Army and Air Force Acts supports this view.

175. We wish to make it clear beyond doubt that nothing in modern Service developments leads us to think that a lower standard of conduct should be now accepted for officers than was accepted in the past. A moment's consideration of the officer's place as a leader in battle will dispose of any such idea. For this reason, if for no other, we have rejected a suggestion, made in evidence given before us, that punishments for officers and other ranks should be similar.

176. A number of offences have, however, made their appearance in the Army and Royal Air Force which are not serious enough to warrant dismissal or cashiering, and yet are too serious to be adequately punished by less punishment such as a reprimand. Some of the offences connected with vehicles, with security or with accounts and stores come within this category.

177. We are not in favour of restrictions on an officer's liberty, such as confinement to quarters, nor of introducing stoppage of leave into the disciplinary code as a punishment for officers. Indeed, leave is a privilege and not a right, and the granting of leave should be regulated within the necessities of the Service by the need to maintain efficiency. Confinement to quarters and similar punishments are not, in general, consistent with the exercise of leadership. For this good reason they are not at present awarded to warrant or non-commissioned officers, and we are not in favour of their being awarded to officers.

178. Forfeiture of seniority is provided for by sections 44 and 47 of the Army and Air Force Acts and is, we think, a punishment well adapted for regular officers under peace-time conditions, as indeed it is for regular warrant and non-commissioned officers. Its financial effect on the individual is easy to gauge, in that the delay in time promotion, where this applies, and the loss in qualifying service for retired pay or gratuity can be accurately estimated before a sentence is passed.

179. If, in addition to forfeiture of seniority, there were introduced for officers a system of "reduction to a penal rate of pay" such as we have proposed for other ranks, the result would be a more flexible system of punishment.

180. We have also considered whether reduction in rank should be introduced as a punishment. It is not now provided for in the Army or Air Force Act and if introduced would in all probability be rarely made use of, particularly for regular officers; but after discussion with authoritative witnesses we have come to the conclusion that it would be desirable to introduce it as a punishment awardable by court-martial, and we believe that its existence would prove a wholesome deterrent, particularly for non-regular officers.

181. The problem of punishment for non-regular officers, as well as for the short service officer in the Royal Air Force, is much more difficult than in the case of the regular officer, and the problem for officers as a whole much more difficult in war than in peace.

182. The non-regular officer has generally no expectation of retired pay, nor as a rule in the Army, of time promotion above the rank of lieutenant; and forfeiture of seniority, therefore, has no substantial effect on him. In war-time, a system of acting and temporary ranks is put into force and for this reason also forfeiture of rank or seniority might prove to be no real punishment, except in so far as it would involve loss of prestige.

183. Probably, therefore, of the new punishments which it is possible to devise to fill the present gap between dismissal and severe reprimand, only that of reduction to a penal rate of pay is likely to have a wide application. Loss of rank is, however, in our opinion useful as a deterrent, for which reason we recommend its introduction.

184. We have considered whether the summary powers of commanders and commanding officers require alteration.

185. If our recommendations are accepted in regard to reduction to a penal rate of pay for officers or warrant officers, power should be given for a summary award of this punishment under section 47 of the Acts, subject to the right of the accused to elect trial by court-martial.

186. Apart from this we do not recommend any changes in commanders' powers.

187. As to the powers of commanding officers, we have heard evidence for and against their extension, but have come to the conclusion that while the existing powers are necessary and should not be reduced, there is no good case for their extension generally.

188. It is possible that a case might be made out for the extension of summary powers in cases of desertion or absence without leave exceeding 21 days which call for an award of no more than, say, 56 days' detention but, on balance, we do not favour a change. While it may be true that in peace-time commanding officers are usually sufficiently experienced to award sentences above the present limit of 28 days' detention, subject always to the right of the accused to elect trial by court-martial, the same cannot be said of commanding officers in war-time, some of whom will have received quick promotion because of their qualities in battle, while others, such as those in command of technical or administrative units may well be men of little experience in command of troops. It would not, in our opinion, be practicable to distinguish between one commanding officer and another in regard to powers of punishment.

189. If, however, reduction to a penal rate of pay is introduced, commanding officers should, we consider, be authorised to award reductions for a period of 14 days, subject to the right of the accused to elect trial by court-martial.

190. We do not recommend any change in the powers of subordinate commanders in regard to minor punishments, and we are satisfied that there is no general demand for such a change either in the Army or the Royal Air Force.

CHAPTER VI

COURTS-MARTIAL FOR THE FUTURE

THE COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

191. The Army Act, and the Rules of Procedure made thereunder, contemplate, quite understandably, that trials by court-martial will normally be conducted by officers having no legal qualifications and with little, if any, experience of the proceedings before an ordinary criminal court. It is only in the case of a General Court-Martial that the law requires that a judge advocate must be appointed to advise and assist the court, and he need not be legally qualified. Rule of Procedure 101 merely lays down that he must be "a fit person to act as judge advocate". Hence presumably the safeguards (a) of confirmation before the findings and sentences can become valid, and (b) of subsequent reviews by staffs and legal advisers of higher formations, and finally in the Office of the Judge Advocate General. These reviews, during which some flaw in the proceedings may be detected, are automatic in the sense that no action on the part of the convicted person is required to set them in motion. A convicted person may, however, submit any number of petitions, and each petition entails a further review or series of reviews. The Oliver Committee in its Report stated that this system provides "a series of safeguards at least equal to those which apply in the case of civilians convicted of crime in the civil courts".

192. The expenditure of time and labour which the system involves is, however, prodigious especially in time of war. As one witness put it, "The number of reviews a set of proceedings may receive is astounding. If a court is convened at Brigade level the proceedings may well receive a review at Brigade Headquarters, another at Divisional Headquarters, another at Corps Headquarters, another at Army Headquarters, and yet another at General Headquarters before reaching the War Office. In addition they may receive legal reviews from members of the Judge Advocate General's staff at four different levels culminating with the review in London. It should be noted too that in the higher formations each review may entail the reading of the proceedings and the making of a minute by perhaps three different staff officers each feeling it incumbent upon him to write something for the benefit of his immediate superior".

193. Some idea of the demands upon time and labour of this system during the last war can be formed when it is stated that the number of courts-martial held in the Army and the Royal Air Force in that period reached a total of 203,595, over 53,000 being held during the year ending 1st September, 1945.

194. Another unsatisfactory feature of the present system is that the standard of knowledge and experience of the District Court-Martial, as normally constituted, that is without the assistance of a judge advocate, is not now equal to all the tasks that are imposed upon it. Today there is a tendency, which is certain to increase, for the prosecution and the defence to be conducted by legally qualified persons, resulting in disputes on law and procedure upon which it is unfair to ask a lay court to adjudicate.

195. The position of the judge advocate at a trial by court-martial is also anomalous and unsatisfactory. At present the members of a court-martial are judges both of law and of fact, and on matters of law and procedure the judge advocate is merely an adviser. On the other hand he has, like a Judge at an Assize Court, the important duty of summing up. He has, therefore, considerable responsibility but no power, and can make no decision. His very title is also a handicap, but we have dealt with this already.

196. In our view all these defects can be removed, and the value of the court-martial system, as an instrument of justice, at the same time enhanced. The way to do this is to reconstitute General Courts-Martial and District Courts-Martial in the manner indicated below and to provide a right of oral appeal against conviction as already recommended. These changes will go far towards relieving the ordinary officer of responsibility for deciding disputed questions of law, for which he seldom has the necessary knowledge and experience, and at the same time render the existing procedure of confirmation and automatic review of conviction with all its demands upon time and labour unnecessary.

197. We accordingly make the following recommendations:—

General Courts-Martial.

*These
entirely* In future these should be composed of a Judge Martial, or Deputy Judge Martial, and five officers, having the eligibility and qualifications at present required for membership of a General Court-Martial except that of having held a commission for a minimum period of three years. We were informed that this essential qualification had been found in time of war to be unduly restrictive, especially in the case of officers holding emergency commissions who, by reason of experience in civil life, would have been eminently suitable

for appointment as members. We understand this was one of the reasons why Field General Courts-Martial were so frequently resorted to in the last war. We think, however, that no officer should be eligible unless he is at least of the rank of lieutenant in the Army or of flying officer in the Royal Air Force, in order to ensure that he has a reasonable amount of Service experience.

198. The Judge Martial or Deputy Judge Martial would be the president and act in all respects as a Judge at an Assize Court. In other words he would be the sole judge of questions of law arising during the trial which he would decide, when necessary or desirable, in the absence of the other members of the court. He would sum up the case and his direction on the law would be binding upon the court. The officers would be the sole judges of whether the accused was guilty of the offence charged or not—in other words they would discharge, to this extent, the same function as a jury in a civil criminal court. When the officers retire to consider their finding they should retire alone, *i.e.*, the president should not retire with them. When they retire a second time, however, after hearing any plea in mitigation, to decide upon sentence, we think that the president might well retire with them. His experience would be of value to the other members of the court in securing a desirable degree of uniformity of sentence, and this being so, we think he ought to be entitled to vote upon the question, and, if the votes are equally divided, to have a casting vote.

199. The finding should be announced in open court forthwith upon its determination and should be so announced by the senior officer in reply to a question by the president as to whether the military members of the court were agreed upon their finding, and if so, whether they found the accused guilty or not guilty of the offence charged. The sentence should be pronounced in open court forthwith upon its determination and should be so announced by the president as being the sentence of the court. It should not require confirmation for its validity, although, as we have already recommended, the power of the Service authorities to mitigate, remit or commute the sentence should be preserved. In these circumstances it would be desirable to provide that the sentence should not be put into execution until the convening officer had approved it, so as to provide an immediate opportunity for someone in authority to decide whether the power to mitigate, remit or commute the sentence should be exercised. Such an opportunity is particularly desirable in cases where a person is sentenced to be cashiered or dismissed or discharged with ignominy.

200. The accused should have the right to appeal against the finding of the court, as distinct from its sentence, on the lines already indicated.

201. There should be no change in the jurisdiction and powers of a General Court-Martial. In saying this, however, we are expressing no opinion as to whether or not the power of the court to inflict the punishment of death should be retained, which we regard as outside the scope of our enquiry.

202. When sitting as president of a General Court-Martial, the Judge Martial or the Deputy Judge Martial, as the case may be, should wear the same robes as a King's Counsel.

District Courts-Martial.

203. The majority of cases which are tried by District Court-Martial relate to comparatively trivial offences meriting not more than six months' imprisonment, *e.g.*, purely military offences and petty thefts, and many of these are cases in which the accused has elected to be tried by court-martial

rather than accept his commanding officer's award. Some serious offences of desertion are also brought before this court, but are not difficult to try, though they deserve more severe punishment than six months' imprisonment.

Cases coming before a District Court-Martial which raise difficult questions of law, or where the offence is serious enough to merit a sentence up to the limit of its powers, *i.e.*, two years' imprisonment, are a minority of the total.

204. The considerations which have led us to recommend that a General Court-Martial should always have a trained lawyer as a president do not apply with the same force in the case of a District Court-Martial. Any case which might otherwise be tried by the latter court, but which is seen to raise difficult questions of law or complicated technical matters, can always be tried instead by a General Court-Martial. It is not really necessary to have a trained lawyer to preside over the hundreds of simple straightforward cases that are dealt with by District Courts-Martial every year. Moreover, in practice such a rule would probably be unworkable owing to the difficulty in securing such presidents in sufficient numbers. What is required for such cases is a system which will give a reasonably competent court, capable of being convened with the least difficulty under all conditions, with safeguards in favour of the accused such as a limitation on the power of the court in the matter of punishment, and a right of appeal against conviction. In more serious cases, however, where the court should have power to inflict the maximum punishment open to a District Court-Martial (*i.e.*, two years' imprisonment) these safeguards should be supplemented by a rule requiring that the president of the court should be a person with suitable legal qualifications.

205. With regard to the trial of comparatively simple cases, the first question is who should be the president of the court. We would recall that during the last war there grew up a practice of selecting a number of officers for continuous duty as presidents of Field General or District Courts-Martial. They were known as "Permanent Presidents". These officers, though not necessarily legally qualified, acquired through practice a sound working knowledge of military law and procedure. We are informed that cases which come before courts-martial presided over by them were generally well tried, and that the scheme has operated successfully both in the Army and in the Royal Air Force.

206. In the future, as in the past, owing to the narrowing pyramid of promotion in the higher ranks, many officers in the Army and in the Royal Air Force will retire at a time when they are still fit and active and are possessed of valuable Service experience. In such cases, all this goes to waste so far as the Services are concerned. It would be possible from among these officers to select a number for the position of permanent president to be held for a period of three to five years (say) from the date when they would otherwise retire. For this appointment they could be given a short course in military law and procedure. We recommend, therefore, that for the cases now being considered (subject to the next paragraph) the officer to preside over a District Court-Martial should be such a permanent president.

207. An adequate number of such permanent presidents should be borne on the peace-time establishments of the Army and the Royal Air Force. But as there are bound to be occasions when such a president is not available it should not be made a rule of law that only an officer holding the appointment of permanent president should preside over a District Court-Martial. Those officers at present eligible to preside should continue to be so, but should not be appointed president of a District Court-Martial unless the convening officer

certifies that a permanent president is not available, or that the case is of such a nature that a president with up-to-date technical qualifications is required.

208. We further recommend that the jurisdiction of a District Court-Martial which is not presided over by an Assistant Judge Martial (*see* paragraph 213 below) should be limited to those military or air force offences for which the maximum punishment prescribed by the Army and Air Force Acts is imprisonment: and to soldiers and airmen below the rank of warrant officer. No offence under section 41 of the said Acts should be triable by such a court.

209. A District Court-Martial presided over as aforesaid should have power to inflict any punishment authorised by the said Acts up to but not exceeding six months' imprisonment for any one offence, with an overriding maximum of twelve months for two or more offences. In the case of a single charge of desertion, however, the aforesaid maximum of six months might be extended to a maximum of twelve months.

210. Two other officers (at least) should sit with the president of the court, as is the case at present. The existing requirement that an officer must have held a commission for two years in order to be eligible to serve on a District Court-Martial might, however, be dispensed with in war-time, or when the court is presided over by a permanent president or by an Assistant Judge Martial (as to which *see* below).

211. A District Court-Martial, constituted and functioning as above, will, in our opinion, provide a satisfactory means of trial of the less serious cases, both in the Army and in the Royal Air Force. We accordingly recommend it for this purpose.

212. Coming now to the comparatively few more serious and difficult cases that come before a District Court-Martial, we recommend that the president should be a person legally qualified and having practical experience in criminal proceedings. We are informed that in such cases it is now the practice, under the present system, to appoint a judge advocate to advise and assist the court; but if the recommendations we have made elsewhere in this Report are accepted, judge advocates will cease to exist.

213. The president of the court convened to try the more serious cases should, in our opinion, be an Assistant Judge Martial appointed *ad hoc* by the convening officer to whom the necessary powers for this purpose should be given, to be exercised in his discretion. Such a president should sit with at least two other officers and we refer in this connection to what we have said in paragraph 210 above. There would be no summing-up and the president would have an equal voice with the other members of the court as regards finding and sentence. The convening officer should have power to appoint as president of a District Court-Martial any serving officer who may be on the panel referred to in paragraph 217 (b) below.

214. The jurisdiction and powers of a District Court-Martial which is presided over by an Assistant Judge Martial should remain as they are at present. We have carefully considered a suggestion that officers should be tried by District Court-Martial, but, in our opinion, the interests of discipline would not be served by such a change and we do not recommend it.

215. In all trials by District Court-Martial, whoever may be the president of the court:—

- (a) Finding and sentence should be pronounced in open court forthwith upon their determination.

- (b) The Court should be judge of both law and fact but there should be a right of appeal (with leave) against conviction, as recommended in Chapter IV. If such a right of appeal is given, the system of "confirmation" and legal review of the proceedings should be abolished.
- (c) The sentence should be reviewed with the minimum delay by an authority having power to mitigate, remit or commute the the sentence with a view to deciding whether or not to exercise such power: and the sentence should not be put into effect in the meantime.

216. It has been suggested to us that the number of trials by District Court-Martial might be greatly reduced by:—

- (a) increasing the powers of commanding officers; or
 (b) introducing a system of "Military Magistrates", sitting alone.

We do not recommend an increase in the powers of commanding officers for the reasons given in paragraph 188. The second alternative needs some explanation and we deal with it at the end of the present chapter.

Generally.

217. Certain considerations of a general kind affecting the foregoing proposals must be mentioned. They are as follows:—

(a) In order to remove any doubt, we would say that our recommendations in paragraphs 125 and 126 of this Report that findings of guilt or innocence should be unanimous, but that sentences should continue to be decided by a majority, apply to the courts reconstituted as above.

(b) Occasion will in all probability arise, both at home and abroad, when no Judge Martial, Deputy Judge Martial or Assistant Judge Martial is available to preside at a General or District Court-Martial as the case may be. We therefore recommend that a panel should be formed by the Chief Judge Martial, with the approval of the Lord Chancellor, of practising counsel in the United Kingdom willing to act as presidents of such courts-martial at home or abroad. When the occasion arises the selection of a member of the panel to preside at a General or District Court-Martial should be made by the Chief Judge Martial or his Deputy, and the person selected should be appointed *ad hoc* a Deputy Judge Martial (in the case of a General Court-Martial) or an Assistant Judge Martial (in the case of a District Court-Martial) and a suitable fee should be paid.

In the colonies, local judges and counsel might be willing to serve on such a panel.

(c) There will also be occasions in time of war, or even in times of peace, in remote stations or on board ship, when the necessity will arise to hold a General Court-Martial or a District Court-Martial presided over by an Assistant Judge Martial without delay, but it will be impossible to secure the services of Judge Martial or Assistant Judge Martial. Provision must, therefore, be made for such cases. This brings us to a consideration of the Field General Court-Martial, by which, under the existing system, an emergency which makes it impossible to convene the normal type of court is met.

The Field General Court-Martial.

218. We have already described this court in paragraph 37 of our Report. During the war, owing partly to the difficulties frequently encountered in securing officers with the necessary qualifications (*i.e.*, three years' commissioned service in the case of a General Court-Martial and two in the case of a District Court-Martial) to enable them to sit, many cases which would otherwise have been tried by General or District Court-Martial were tried instead by Field General Court-Martial.

219. We do not believe that such a state of affairs was contemplated by the Legislature, in authorising trial by Field General Court-Martial when in the opinion of the convening officer "it is not practicable that the offence should be tried by an ordinary General Court-Martial". (*See* section 49 of the Army Act.) Bearing in mind that a Field General Court-Martial may consist of three officers only (or exceptionally two), that any officer with at least one year's commissioned service can sit on the court, and that the court, when composed of three officers, can inflict sentences of penal servitude and death, it is obvious that stringent precautions are necessary to ensure that this court is convened only in a real emergency, and when it is genuinely impracticable to convene a normal type of court-martial. These considerations were, we think, largely overlooked during the recent war.

220. The need to retain a distinctive type of court-martial, such as the Field General Court-Martial, for an emergency is inescapable. Assume, for example, the case of a beleaguered garrison, such as the garrison which held Tobruk in the last war. A soldier in the garrison assaults an officer. It is obviously necessary in the interests of justice and discipline that the soldier should be tried without delay, and if found guilty should be punished. A similar problem may arise upon a troopship at sea, many hundreds of miles from land. It clearly is not possible to convene a General or District Court-Martial, complete with a Judge Martial or Assistant Judge Martial as president. Some kind of emergency court-martial is, therefore, a necessity. In these circumstances we make the following recommendations:—

- (a) The Field General Court-Martial should be retained. In order to impress on all concerned, however, that it is an emergency court, and not a court to be convened merely because it is convenient to do so, the name should be changed to "Emergency Court-Martial".
- (b) The provisions of the Army Act relating to persons having power to convene a Field General Court-Martial, to the circumstances in which the court may be convened, to the composition of the court, and to its jurisdiction and powers of punishment, should apply to an Emergency Court-Martial: with the qualification that the court should be permitted only when it is not "possible" (*i.e.*, as distinct from "practicable") to convene a General Court-Martial or a District Court-Martial presided over by an Assistant Judge Martial as the case may be. The fact that a body of troops is on active service should no longer be regarded as, in itself, a sufficient justification for recourse to an Emergency Court-Martial.
- (c) Findings of guilt or innocence should be unanimous, but sentences should continue to be decided by a majority. Such finding and sentence should be announced in open court forthwith upon their determination, but should require for their validity the confirmation of the senior officer in the vicinity, not being an officer who served on the court. Such officer should have power to mitigate, remit or commute the sentence.

- (d) The accused person should have the right to appeal against conviction by submitting an application in writing to the officer commanding his unit. This application should be forwarded as soon as circumstances permit to the Deputy Chief Judge Martial of the formation of which the unit forms part, or if this is impracticable or might occasion undue delay, direct to the Chief Judge Martial in London. If leave is granted the appeal to be heard as soon as circumstances permit.
- (e) No Emergency Court-Martial to be held in peace-time in the United Kingdom.

221. There is a type of case where further special provision will be necessary. Assume the case of a force cut off from the main body of the army and a soldier in that force is found to be in treacherous communication with the enemy. He is tried by Emergency Court-Martial, is found guilty and sentenced to death. It may be essential in the interests of the discipline and safety of the force that the sentence shall be carried out forthwith. To meet this type of case we suggest the following procedure:—

The convening officer plus the next two senior officers in the force who did not sit upon the court-martial should consider, after hearing the accused if he so desires, the validity of the conviction, and the appropriateness of the sentence. If they unanimously affirm the conviction and unanimously come to the conclusion, to be certified by them in writing, that both the interests of discipline and safety of the force imperatively require that the sentence should be carried out forthwith, then it may be immediately put into execution.

222. We recognise that this is an instance where the necessity of the case will override all other considerations. Nevertheless, such cases are likely to be very few and far between, and it may be informative if we here state that the total number of death sentences carried out in the Army and in the Royal Air Force during the recent war was 36.

223. It may occasionally happen that a person convicted by Emergency Court-Martial may secure the quashing of the conviction on appeal, but in the meantime will have served his sentence. It is impracticable, however (just as it is in civil life) to provide that sentences shall be automatically suspended upon the lodging of a notice to appeal. Some of the other effects of a conviction, e.g., loss of rank or pay, would, however, be corrected as the result of a successful appeal.

224. It is true, of course, that an Emergency Court-Martial, constituted and functioning as above proposed, will mean that to this extent the old system (with the addition of a right of appeal) will co-exist with the new, if our recommendations as to other courts-martial are put into effect. This should not create any great difficulty, and the very differences between an Emergency Court-Martial and every other type of court-martial should serve as a continual reminder that it is to be convened only when the normal court is impossible.

One Type of Court-Martial only.

225. We considered a suggestion that there should be one type of court-martial only. It would have the full power of a General Court-Martial and exercise jurisdiction over officers and other ranks and try all offences.

226. Superficially the proposal is attractive, but in our opinion it is impracticable. In the first place it would in war-time, and in peace-time on isolated stations, frequently be impossible to convene a General Court-Martial

constituted as we propose, and resort to an emergency type of court would, as we have just pointed out, be unavoidable. At the outset, therefore, the idea of one court for all offences breaks down. There are other objections. Thus in civil life the idea of one court for all offences with High Court Judges presiding would be recognised at once as impracticable. There would not be enough Judges to go round, and in any event it would be a waste of legal resources to put Judges on to trying trivial cases. In civil life, therefore, we find Petty Sessions, Quarter Sessions for Counties, Quarter Sessions for Boroughs, and Assizes. In principle the same objection would apply to the suggestion of a single court-martial, though naturally in less degree. It would be a waste of the time of senior officers and of legal personnel to make them deal with all offences, however trivial.

Other Ranks to Serve on Courts-Martial.

227. We also considered a suggestion that in future other ranks should serve as members of courts-martial.

228. The first proposal was that if a private were being tried, another private should be a member of the court. Such a private would, however, if he were a national serviceman, normally be 18 or 19 years of age or thereabouts, and be possessed of very little Service experience. If, however, he were a regular soldier, and had several years' Service experience he would be a soldier who, in spite of this, had failed to gain promotion to non-commissioned rank. The suggestion that either of these persons should serve upon a court-martial would not, we think, be generally acceptable: and indeed after pointing out the difficulty in question, we heard no satisfactory answer to it.

229. The next proposal was that if a private soldier were being tried by a District Court-Martial he should have the right to require that one member of the court should be a non-commissioned officer of the rank of full corporal: that a corporal being tried should similarly be entitled to elect that one member of the court should be another corporal; and a serjeant another serjeant and so on. The non-commissioned officer to sit upon the court should be selected by his own commanding officer.

230. The basis of the proposal was that just as in civil criminal courts a man "is tried by his peers" so also, subject to the requirements of discipline, should he be tried in the Services. Another suggested reason was that a mixed court of the kind proposed would be less of a "class" court than one composed entirely of officers. Other witnesses said that if, for example, a corporal were being tried for an offence it would be an advantage to have a member of the court who would understand more about a corporal's life as such than an officer could be expected to do.

231. If trial by one's "peers" means trial by one's equal in rank, then no such thing exists in civil life. If a civilian is tried by Justices either in Petty or Quarter Sessions he has no right to require that one member of the court shall be of the same rank in life as himself, or of the same occupation. Nor has he any such right in relation to a jury if he is tried at Assizes. Moreover, the proposal now being considered would grant trial by one's "peers" (in this sense) to all non-commissioned and warrant officers above the rank of lance-corporal, but deny it to the much larger number of lance-corporals and privates. We feel, therefore, that if the proposal is to be justified it must be on some other ground than the suggested analogy with civil rights.

232. We have considered the suggestion in relation to three questions. First, would it tend to improve the quality of the court? Second, would it tend to improve the prospect, or the appearance, of justice being done? Third, would it tend to improve or impair discipline?

233. In considering the first question we do not limit ourselves to District Courts-Martial. If the proposal be a good one it seems to us it would be equally good for all kinds of court-martial. The prime consideration here is to select the best kind of court, and one offering the greatest prospect of doing justice. This problem necessarily has to be dealt with on general lines. It would not be possible on each occasion when a court-martial had to be convened to conduct a preliminary enquiry as to who, of the persons available, and irrespective of rank, were best fitted by training and temperament to sit upon the court. But in general, those who have attained commissioned rank, are by their education, training and experience best fitted for this duty. It cannot reasonably be asserted that the quality of the court would necessarily be improved by the addition of a non-commissioned officer selected by the accused's commanding officer or the accused himself.

234. Would the prospect of justice being done, however, be thereby improved? Assuming a corporal were being tried, a court whose members were ignorant of a corporal's duties and difficulties, and the general conditions of his life as such, might be less likely to do justice than a court possessed of such knowledge. In the days when all officers came into the Army from Sandhurst or Woolwich or the public schools, there may have been some sort of touch with the lives of the non-commissioned officers and men under them that they ought not to sit in judgment upon them: though they would be bad officers if this were the case. But today, when nearly all officers have to graduate from the ranks, the danger in question is a remote risk. Furthermore, as the scheme for legal aid in the Army develops, more and more accused persons will be legally represented: and one of the things any reasonably competent defending solicitor or counsel would not fail to do would be to remind the court by evidence or otherwise of any difficulties peculiar to the accused's rank or duties which it was relevant to consider.

235. So far as concerns the appearance of justice being done this does not, in our view, depend primarily upon the composition of a court. It depends upon the way the court discharges its duties: whether it is patient, impartial, ready to assist the accused where it is proper that he should be assisted, in a word whether the court is judicial. It depends also upon the rights which the particular system of trial accords to the accused, and the safeguards which it provides in his favour. The presence of a person of equal rank to the accused upon the court *per se* affects none of these matters.

236. As to discipline, the proposal in question seriously perturbed the senior officers of the Army and the Royal Air Force to whom it was put. Their view was that it might have a very damaging effect upon discipline; and their opinion was all the more impressive because in relation to almost every other change which we have recommended in this Report, we found their outlook both enlightened and progressive. As regards this particular suggestion, however, they said that in the Services discipline is finally in the hands of officers, and that courts-martial, which are one of the instruments of discipline, should be wholly manned by officers. They also attached great importance, now that officers are graduating from the ranks, to maintaining strictly the status an officer has hitherto enjoyed.

237. We report, therefore:—

- (a) That the proposal would not tend to improve the quality of the court, nor the prospect or appearance of justice being done.
- (b) That senior officers in the Army and in the Royal Air Force consider that the proposal, if carried into effect, would impair discipline.

238. Certain difficulties would in any event arise. For example, from what unit should the non-commissioned officer in question be selected? To try a fellow non-commissioned officer would be an invidious task to impose upon a non-commissioned officer from the same unit as the accused. Yet if the selection is made from some other unit, the court would not have the benefit of the knowledge of local conditions, etc., which is one of the arguments by which the proposal is supported. Again assume, as might happen, that a warrant officer, serjeant and corporal are being jointly tried. What then should be the composition of the court?

239. These, however, are procedural difficulties, and no doubt could be overcome. The fundamental objections are that in the emphatic opinion of those who ought to know the suggested innovation would damage discipline, and that in our opinion it would not improve the administration of justice. In fact there would be a danger that the non-commissioned officer selected to sit would tend to regard himself as being on the court in a representative rather than in a judicial capacity.

240. For these reasons, we do not recommend the proposal.

Military Magistrates.

241. Finally in this chapter we refer to a proposal that a number of "military magistrates" should be appointed. The main virtues of the proposal are the saving of manpower and speed of trial.

242. At the outset we should say that if the term "magistrate" is thought to have too civilian a connotation, we are not wedded to it. It is the word which we happen to have used during our discussions, and no more. Some other suitable title could no doubt be found.

243. Briefly, the scheme would be to locate at the Headquarters of a Command or lower formation a number of military magistrates who would be available to travel to any unit in the Command or formation and there hold a summary trial. These magistrates would be officers who had had experience as commanding officers and had undergone a special course of training in military law and procedure to fit them for these duties. Convening officers would be given a discretion, unless the accused had elected trial by District Court-Martial, to remit cases referred to them by commanding officers for summary trial by a military magistrate. Military magistrates would try only the less serious cases and their powers of punishment would be limited. They would not try officers or warrant officers. No confirmation would be required but a right of appeal against conviction to the Courts-Martial Appeal Court would be given, subject to leave being obtained.

244. This scheme found support from Army witnesses on the ground that it would make for a speedy trial and be conservative of manpower. In their view, moreover, particularly as there would be a right of appeal with leave, the risk of injustice being done by a one-man court was small. They pointed out that many officers of the rank of lieutenant-colonel have to retire at a time when they are fit and active and have many years of experience in responsible positions behind them. Military magistrates could

be appointed from among these officers. Those selected would be given the rank of colonel, or, in the Royal Air Force, group captain, and the post could be held for three to five years.

245. Senior officers in the Royal Air Force were not enamoured of the proposal. In general they did not like the idea of a one-man court, and in particular they did not wish to grant to such a magistrate such a high rank as air commodore. This they thought would be necessary inasmuch as in the Royal Air Force many commanding officers hold the rank of group captain. They were also averse to the idea of military magistrates trying airmen subject to military law while temporarily attached to the Army—an objection with which we would agree.

246. Other witnesses thought that cases which were too serious to be dealt with summarily by a commanding officer should not be dealt with summarily by another slightly senior officer sitting alone and with considerably greater powers of punishment, as such a procedure would cast grave doubts on the qualifications of the commanding officer.

247. A somewhat similar scheme was put into operation in the Canadian Army during the last war but applied only in Canada. There was established by Order in Council under the Canadian War Measures Act a "Standing Court-Martial" consisting of a number of officers being qualified lawyers. Any one member of the Standing Court-Martial was empowered to exercise all the jurisdiction, powers, duties and functions of the Standing Court-Martial, which, subject to the power of limitation by the Minister of National Defence, were the same as those of a General, District or Field General Court-Martial. Originally the Standing Court-Martial had jurisdiction over all officers and other ranks, but later this was limited by the Minister to personnel under warrant rank. Powers of punishment extended to penal servitude, and the court was empowered to try all offences.

248. We were informed that there were some 25 members of the Standing Court-Martial. They were officers of field rank and called presidents. They were posted to various Military Districts in accordance with the needs of the District concerned.

249. The procedure was briefly as follows:—

No summary of evidence was required. Instead the commanding officer submitted a "Precis of Evidence" setting out the nature of the evidence available to prove the charge or charges set out in the charge sheet. When cases were reported to the District Headquarters from a particular area, a trained prosecutor went to that area and prepared the case. A president, accompanied by a qualified court reporter, followed a few days later. The president sat, as a one-man court, in that area until all the cases listed for that sitting were disposed of. In each area a special court room furnished with a bench, witness stand, etc., was provided. Findings and sentences were announced in open court, became immediately effective, and no confirmation was required. The proceedings went from the president first to the Judge Advocate General of Canada for legal review, and then to the General Officer Commanding or District or Camp Commander in whose Command, District or Camp the trial took place, for review of the sentence.

250. The advantage claimed for this system is that military justice is administered speedily by trained personnel legally qualified. We were informed that over a period of some eighteen months approximately 10,000 cases were dealt with by Standing Court-Martial in Canada, amounting to at

least 90 per cent. of the cases that would have been tried by normally constituted courts-martial, and that the average length of time between the date of the apprehension of an accused and the date his punishment commenced was approximately eight days.

251. The General Officer Commanding or other Commander to whom application for trial by standing court was submitted, had an absolute discretion to order the case to be tried instead by a normally constituted court-martial. Thus trial by Standing Court-Martial ran parallel with trial by normal court-martial and was not necessarily a substitute for it.

252. We understand the Canadian military authorities regard the experiment as a success. So far as we are aware, it has not been operated in the Royal Canadian Air Force.

253. We have set out these details regarding the Canadian Scheme for convenience of reference only, and not because the Committee has reached the conclusion that a similar scheme would be equally successful in the Army and in the Royal Air Force. For example, it would be impossible in peacetime to provide a sufficient number of qualified lawyers here, where a far larger number of cases would arise for trial as compared with the numbers tried during the war by Standing Court-Martial in Canada. In these circumstances the Military Magistrate would have to be a serving officer of the kind described in paragraph 243 above who had been given a special course of training in military law and procedure.

254. Having given the matter careful consideration the Committee does not recommend the imposition of a system of Military Magistrates upon the Army or the Royal Air Force. But the proposal is eminently one upon which a final judgment can be pronounced only after it has been tried out. We suggest, therefore, that both Services should be given a permissive power to institute such a scheme as an experiment in the first place. If this were done in peacetime and the experiment turned out to be a success, the scheme might have considerable value in the event of war, when it could be quickly expanded.

CHAPTER VII

SUMMARY OF RECOMMENDATIONS AND CONCLUSION

Delays before Trial

Paragraph.

83. (a) 8-day Report to be rendered whether accused is on active service or not, unless operational conditions make it impossible in any particular case.
- (b) A copy of the report to be sent direct by the commanding officer to the Director of Army Legal Services or the Director of Air Force Legal Services. After receiving three such reports the said Director to make further inquiries of the Service authorities and be given power, after consultation with these authorities, to issue orders to secure a speedy trial. Director should also be empowered to recommend to the general officer commanding or air officer commanding the formation that accused should be released forthwith or after a specified interval, failing his being tried in the meantime.

Paragraph.

- (c) After being in close arrest for 28 days without a court-martial having been convened accused to have the right to petition Chief Judge Martial against continued detention. Chief Judge Martial to make appropriate representations to Secretary of State.
 - (d) It should be made illegal to retain an accused in close arrest for longer than 90 days without a court-martial having been convened and having assembled. At the expiration of this period accused should be released and not subject to re-arrest for same offence except on written order of an officer having power to convene a court-martial for the trial of the offence.
84. Provision should be made enabling prosecution and defence to give evidence of facts by way of statutory declaration, subject to safeguards enumerated in (a) to (c) of paragraph 84. Depositions on oath, being part of the Summary of Evidence, also to be admissible in evidence.
85. All concerned to be urged that soldiers should be kept in open and not close arrest awaiting trial, or released without prejudice to re-arrest, subject to considerations of security or discipline.

Legal Aid before and during Trial

96. Commanding Officer to ensure that, before a man is brought in front of him charged with an offence for which the man may be tried by court-martial, he shall be advised by a suitable person of any rank.
103. (a) At investigation of charge not disposed of summarily commanding officer should record short précis of evidence.
- (b) Commanding officer to forward report of case with précis of evidence and material documents to superior authority with a view to the case being brought before a court-martial.
- (c) If convening officer decides that there is *prima facie* case for trial by court-martial accused to be served free of charge with copy of précis of evidence not less than 48 hours before trial commences.
- (d) Summary of Evidence need not be taken unless (i) ordered by convening officer or (ii) required by accused, or (iii) case is one in which sentence of death or penal servitude for life may be passed.
- (e) Accused not to be entitled to require a Summary without leave of convening officer, if charged with any offence for which maximum punishment does not exceed two years' imprisonment, but entitled to require Summary as of right in all other cases.
- (f) Accused to be asked in writing in every case whether he desires to apply for, or to exercise his right to require the taking of, a Summary and should reply in writing.
- (g) Officer detailed to take Summary to be appointed by convening officer and should be a permanent president or other officer with suitable experience or legal qualifications. In cases of exceptional difficulty or importance a member of Chief Judge Martial's Department might be appointed.

Paragraph.

- (h) Summary to be taken in presence of accused who should be entitled to be represented, and his representative to have all the rights and duties of counsel.
- (i) All evidence taken at Summary to be on oath.

Judge Advocate General

- 107. Judge Advocate General to be appointed on recommendation of Lord Chancellor and to be responsible to him. In relation to Secretaries of State the duties of Judge Advocate General should continue to be advisory in character.
- 109. (a) Separate Department in charge of " Director of Army Legal Services " to be constituted under Secretary of State for War.
(b) Separate Department in charge of " Director of Air Force Legal Services " to be constituted under Secretary of State for Air.
(c) Separation of functions to extend to Commands abroad where the Judge Advocate General and these Directors would each have a Deputy with necessary staff.
(d) Until new system introduced Judge Advocate General to be responsible only for work at present done by the Judicial Department, *i.e.*, supply of judge advocates, review of court-martial proceedings, and tendering of advice on questions of law arising out of such proceedings.
- 112. Establishment of proposed new departments (*see* Appendix C).
- 113. Rates of pay, pension, terms of service and promotion in new departments should be such as to attract lawyers of skill and experience. Special consideration should be given to those who have been Deputy Judge Advocates General abroad.
- 114. Title to be changed to " Chief Judge Martial ". Status and remuneration should be not less than that of a puisne Judge of the High Court of Justice but a resolution of both Houses of Parliament not to be a pre-requisite to removal.

The Judge Advocate

- 115. So long as judge advocates are retained they should not retire with court when the latter is considering its findings. (Recommendation accepted and put into effect.)
- 116.

Finding and Sentence—Announcement

- 117. Findings of guilt to be announced in open court at once.
to
- 120. Sentence to be announced in open court as soon as determined. (Recommendations accepted and put into effect.)

Findings by a Majority

- 125. All findings of guilt or innocence to be unanimous. On disagreement accused liable to be retried by another court-martial with different membership.
- 126. Unanimity on sentence not necessary. No alteration in existing practice.

Paragraph.

Shorthand Writers

129. Shorthand writer should be employed in all capital cases tried by General Court-Martial. Convening officer to notify Judge Advocate General (or, in due course, Director of Army Legal Services or Director of Air Force Legal Services) asking for shorthand writer to be provided in capital cases and in others which, in his opinion, are sufficiently serious or complicated to justify employment of shorthand writer.
130. Responsibility for supplying shorthand writer to be upon Judge Advocate General (or Director) who should supply one from own staff or secure one from outside firm. If none available convening officer to be notified to that effect and he in turn to notify president of court-martial, notification being read in open court at commencement of trial.

Other Points

133. (i) President of court-martial to be given power to amend charge upon similar conditions to those prescribed in Section 5 of the Indictments Act, 1915.
- (ii) Court-martial to be empowered to take into consideration other offences admitted by accused.
- (iii) Court-martial to be given same kind of record of accused's career as is now given in a civil criminal court.
- (iv) Form for convening Field General Court-Martial—Opening recital to be altered.
- (v) Attempt to be made to define the offence of mutiny.

Appeal against Conviction

143. Right of appeal on question of law to be granted against conviction whenever accused has pleaded "Not guilty", such right of appeal taking the place of the present system of review of proceedings by Judge Advocate General.
144. Court of Appeal to consist of Chief Judge Martial, Vice-Chief Judge Martial and the Judges Martial. In addition, there should be formed a panel approved by the Lord Chancellor of King's Counsel willing to serve on such a Court. Any three to constitute a Court. Court should normally sit in London or at other convenient centres in United Kingdom but in exceptional circumstances might sit abroad. Court should have power in exceptional cases to allow fresh evidence to be called. It should have power to quash a conviction by court-martial where error of law has occurred sufficiently serious to make it unsafe to allow conviction to stand, but should have power to affirm conviction even if error of law has occurred provided it is satisfied that no substantial miscarriage of justice has thereby taken place. Court referred to as "Courts-Martial Appeal Court".
145. Leave to appeal, by certificate of court-martial or on accused's application within 14 days. Application to be sent to Chief Judge Martial or to the Judge Martial in Command in which accused is serving. Chief Judge Martial or the said Judge

Paragraph.

Martial to grant or refuse leave, notifying his decision in writing to accused or legal representative. If decision adverse accused to have right within further 14 days to apply to Courts-Martial Appeal Court.

146. Application to be heard orally, defence having right of audience and to be legally represented. If leave to appeal granted appeal to be argued there and then or at some later convenient date. Accused to have right to be present in capital cases and in others by leave of Courts-Martial Appeal Court.
147. Courts-Martial Appeal Court to have power to order in the case of a frivolous application for leave to appeal that sentence shall begin to run as from date of dismissal of application. Sentence not to be suspended automatically merely because accused applies for leave to appeal, but it should be open to the court-martial, the Judge Martial in the Command or the Courts-Martial Appeal Court on giving leave to appeal to recommend to appropriate military authority that sentence be suspended.
148. In Colonies, local barristers of repute and judges might be put on panel of Appeal Judges and help to form Court.
149. Confirmation to be abolished, as well as review by Judge Advocate General.
150. Present and new system to run concurrently for a time, with time limit set for persons convicted under present system to have their cases reviewed. Right to petition the Sovereign to remain, Chief Judge Martial's Department advising upon new petitions, when required.
151. Right of appeal to Judicial Committee of the Privy Council on Attorney General's fiat when important point of law is involved.

Appeal against Sentence

158. Courts-Martial Appeal Court not to hear appeals against sentence.
164. Jurisdiction over sentence to remain entirely with Service authorities.
Power of Service authorities to mitigate, remit or commute sentences to be preserved.
Officer who would have been confirming officer to consider and review sentence as soon as possible after it has been passed and, if he thinks fit, mitigate, remit or commute.
Adjutant-General's and Air Member for Personnel's Departments to continue to review sentences as at present.
Right to petition any reviewing authority, including the King, to be preserved.

Punishments (Other Ranks)

168. No alteration in character or method of awarding them.
172. "Reduction to a penal rate of pay" to be introduced as a punishment (with right to elect trial by court-martial) awardable by same officers who are now empowered to award detention, and by a court-martial.

Paragraph.

187. Existing powers of commanding officers not to be reduced and
188. not extended, save as next indicated.
189. Commanding officers to be empowered to award "reduction to a
penal rate of pay" for 14 days, subject to right to elect trial
by court-martial.

Punishments (Officers)

177. Not in favour of restrictions on an officer's liberty (*e.g.*, confinement to quarters) nor stoppage of leave.
179. "Reduction to a penal rate of pay" to be introduced as a punishment as for other ranks.
180. Reduction in rank to be introduced as a punishment awardable
and 183. by court-martial.
183. Reduction in rank would be a useful deterrent and, with "reduction to a penal rate of pay", would fill the present gap between dismissal and severe reprimand.
186. No other changes in commanders' powers.

Courts-Martial for the Future

General Courts-Martial

197. To be composed of a Judge Martial, or Deputy Judge Martial, and five officers of at least the rank of lieutenant (or flying officer).
198. Judge Martial to be president and act as a Judge at an Assize Court. Officers to retire alone to consider finding, but president to retire with them to decide sentence.
199. Senior officer to announce finding in open court in reply to question by president. Sentence to be pronounced in open court by president as being the sentence of the court. No confirmation, but sentence not to be put into effect until convening officer has approved it so as to provide immediate opportunity for mitigation, remission or commutation.
200. Accused to have right of appeal against finding.
201. No change in jurisdiction and powers of General Court-Martial.
202. Judge Martial or Deputy Judge Martial sitting as president to be robed.

District Courts-Martial

206. Permanent president to preside, save as indicated in paragraphs 207 and 213.
207. Officers at present eligible to preside to continue to do so, but not to be appointed president unless the convening officer certifies that a permanent president is not available or that a president with up-to-date technical qualifications is required according to the nature of the case.

Paragraph.

208. Jurisdiction to be limited to military or air force offences for which maximum punishment prescribed in Army and Air Force Acts is imprisonment, and to soldiers and airmen below warrant rank. No offences under section 41 to be triable by District Court-Martial, so constituted.
209. Punishment to be restricted to six months' imprisonment for any one offence, with overriding maximum of twelve months for two or more offences. In a single charge of desertion, maximum of six months might be extended to twelve months.
210. Two officers to sit with president, but dispense with qualification of two years' commissioned service in war-time or when court is presided over by a permanent president or Assistant Judge Martial.
213. President of court to try more serious and difficult cases to be an Assistant Judge Martial appointed *ad hoc* by convening officer to whom necessary power should be given. No summing-up but president to have equal voice with other members as regards finding and sentence. Convening officer to have power to appoint as president any serving officer who may be on the panel referred to in para. 217 (b).
214. Jurisdiction and powers of District Court-Martial presided over by an Assistant Judge Martial to remain as at present. Officers not to be tried by District Court-Martial.
215. In all trials by District Court-Martial, whoever may be president,
(a) Finding and sentence to be pronounced in open court.
(b) Court to be judge of both law and fact but there should be right of appeal (with leave) against conviction. Confirmation and review to be abolished.
(c) Sentence to be reviewed by an authority having power to mitigate, remit or commute, sentence not being put into effect meanwhile.
217. (a) Findings of guilt or innocence to be unanimous, but sentences to continue to be decided by majority.
(b) Panel to be formed by Chief Judge Martial, with approval of Lord Chancellor, of practising counsel in United Kingdom willing to act as presidents of courts-martial. Selection of member of panel to preside to be made by Chief Judge Martial or his Deputy.

The Field General Court-Martial

220. (a) Field General Court-Martial to be retained but name to be changed to "Emergency Court-Martial".
(b) Provision of Army Act as to powers to convene, composition of court, jurisdiction and powers of punishment to apply to Emergency Court-Martial with the qualification that court should be permitted only when it is not "possible" to convene a General Court-Martial, or a District Court-Martial presided over by an Assistant Judge Martial.

Paragraph.

- (c) Finding and sentence to require confirmation of the senior officer in the vicinity (not being an officer who served on the court), such officer having power to mitigate, remit or commute the sentence.
 - (d) Accused to have right of appeal against conviction by submitting application to officer commanding his unit, application being forwarded to Deputy Chief Judge Martial or, if this is impracticable, to Chief Judge Martial. If leave granted appeal to be heard as soon as circumstances permit.
 - (e) No Emergency Court-Martial to be held in peace-time in United Kingdom.
221. In special cases, *e.g.*, sentence of death for treachery, when interests of discipline and safety of the force require immediate carrying out of sentence, the convening officer plus the next two senior officers in the force (who did not sit on the court-martial) to consider validity of conviction and appropriateness of sentence. If conviction unanimously affirmed and they unanimously come to conclusion, to be certified in writing, that interests of discipline and safety of force require that sentence should be carried out forthwith, it may be immediately put into execution.

One Type of Court-Martial only

226. Not recommended.

Other Ranks to Serve on Courts-Martial

240. Not recommended.

Military Magistrates

254. System not to be imposed upon the Services, but both Services to be given a permissive power to institute the scheme as an experiment in the first place.

Functions of the Chief Judge Martial

83. (c) To receive and act upon petitions against undue delay in trials by court-martial.
109. (d) To give advice on questions of law arising out of court-martial proceedings, as does the Judge Advocate General at present.
144. To preside over Courts-Martial Appeal Court.
197. To supply Judge Martial or Deputy Judge Martial for trials by General Court-Martial.
213. To supply Assistant Judge Martial for more serious cases tried by District Court-Martial.

CONCLUSION

We conclude this Report by saying that our task has been neither short nor easy. But it would have taken longer and been much more difficult but for the great help rendered to us by our Secretaries, Colonel W. R. F. Osmond, O.B.E., Group Captain E. H. Hooper, C.B.E., and Lieutenant-Colonel R. J. H. de Brett. They brought to the aid of the Committee a fund of technical knowledge and experience which was invaluable; and they responded willingly and efficiently to all the calls we made upon them. For the assistance thus rendered the Committee desires to record its great indebtedness, and to express its thanks.

(Sgd.) WILFRID LEWIS (Chairman).

„ P. BABINGTON.

„ RAYMOND BLACKBURN*.

„ BRIDGEMAN.

„ TERENCE DONOVAN.

„ THEOBALD MATHEW.

„ JOHN MAUDE.

„ R. A. F. THORP.

(Sgd.) W. R. F. OSMOND, Colonel.

„ E. H. HOOPER, Group Captain.

„ R. J. H. DE BRETT, Lieut.-Colonel.

} Joint Secretaries.

13th April, 1948.

*See addendum below

ADDENDUM TO THE REPORT

BY MR. A. R. BLACKBURN, M.P.

While subscribing to the Report as a whole, I regret that on one subject I do not wholly agree with my colleagues on the Committee, namely on the composition of the Court in Courts-Martial. I believe:—

- (a) That a private soldier, lance-corporal, or corporal (or lance-bombardier or bombardier) should have the right to demand that one corporal (or bombardier) should sit on a Court-Martial composed of three persons trying him, or that two corporals (or bombardiers) should sit on a Court-Martial composed of five persons trying him.
- (b) That a serjeant or warrant officer should have the right to demand that one serjeant or warrant officer, as the case may be, should sit on a Court-Martial composed of three persons trying him, or that two serjeants or warrant officers should sit on a Court-Martial composed of five persons trying him.
- (c) That the remaining members of the Court should be officers and should be the only members of the Court determining sentence.

Under this proposal the other ranks serving on a Court-Martial would always be at least of the rank of non-commissioned officer and would only decide whether the accused was or was not guilty.

In general, no person, whether in civilian life or in the services, should be liable to conviction for any serious offence except through the lawful judgment of his peers. These words come down the ages from Magna Carta, 1216, where it was agreed that no free man should be imprisoned " nisi per legale iudicium parium vel per legem terræ ". In civilian life a man charged with a serious offence has in effect the right to demand trial by his peers, because a jury is taken at random from all sections of the community to try him.

In the services, one cannot introduce a similar provision to ensure that a jury is drawn at random from all members of the services, because to do so would conflict with discipline. The central problem in Courts-Martial is the reconciliation of discipline with justice. But I suggest that an attempt should be made to assimilate Court-Martial procedure to civilian procedure in this important respect, if it can be done without affecting discipline.

Most private soldiers are today so young that it would be wrong for them to serve on Courts-Martial. Moreover, there is no guarantee that a private soldier has a proper understanding of the requirements of discipline. But corporals (or bombardiers) are men who have received promotion because they have a sense of responsibility and discipline. If they can be trusted with the lives of their sections in the exacting predicaments of battle, surely they can be trusted to serve as members of a jury. The proposal which I have made would limit their functions to serving as jurymen, as they would not be consulted on sentence.

It has been suggested that many other ranks would strongly object to having other ranks sitting in judgment upon them. I have some doubts whether this is so, but in any event the point is met by the requirement that other ranks will sit only if the accused so demands.

The proposal which I have made should be considered in the light of the Committee's recommendation that all verdicts should be unanimous. It is an attempted compromise between a number of conflicting considerations. If it were tried out for a certain period it might well be found wrong in some respects, and consequent changes could be made. But in my view, in the interests of ensuring that the fundamental principles of British justice and freedom derived from Magna Carta shall extend even to Courts-Martial, some attempt should be made to give other ranks the right to ensure that if they so wish they shall not be convicted unless by the verdict of at least one other rank as well as officers.

(Sgd.) RAYMOND BLACKBURN.

APPENDIX A
(Referred to in paragraph 2)

LIST OF PERSONS AND ORGANISATIONS WHO GAVE ORAL EVIDENCE
BEFORE THE COMMITTEE

Bar Council	Represented by Mr. G. O. Slade, K.C., Mr. Eric Sachs, K.C., Sir Andrew Clark, Bart., K.C., and Mr. Cecil Havers, K.C.
Barker, Lieut.-General Sir Evelyn, K.B.E., C.B., D.S.O., M.C.	General Officer Commanding-in-Chief, Eastern Command.
Bare, Major A. R., D.S.O., M.C.	Permanent President Courts-Martial, Southern Command.
Barracrough, Group Captain J.	Directorate of Personal Services, Air Ministry.
Beak, Colonel W. H., O.B.E.	Governor of Bedford Gaol.
Cassel, The Rt. Hon. Sir Felix, Bart., K.C.	Formerly Judge Advocate General of the Forces.
Cochrane, Air Marshal the Hon. Sir Ralph A., K.B.E., C.B., A.F.C.	Air Officer Commanding-in-Chief, Transport Command, Royal Air Force.
Collins, Group Captain H. J., C.B.E. ...	Staff Officer in charge of Administration, No. 28 Group, Royal Air Force.
Crocker, General Sir John T., K.B.E., C.B., D.S.O., M.C.	General Officer Commanding-in-Chief, Southern Command.
Ende, Mr. T. A.	
Giles, Major E., M.B.E.	Q.M.G.'s Department, War Office.
Graham, Major J. F. C.	Permanent President Courts-Martial, London District.
Gurney, Major-General R., C.B., A.D.C. (ret.).	Formerly Director of Personal Services (B), War Office.
Haldane Society	Represented by Mr. P. T. Kerrigan, Barrister-at-Law, and Mr. Wm. Sedley, Solicitor.
Hardy-Roberts, Brigadier G. P., C.B., C.B.E. (ret.).	Formerly D. A. and Q.M.G., Second Army.
Hobday, Colonel R. E., D.S.O.	President, Review of Sentences Board.
Kirkman, Lieut.-General Sir Sidney C., K.B.E., C.B., M.C.	Deputy Chief of the Imperial General Staff.
Lawrence, Mr. W. Russell	Barrister-at-Law. Formerly of the Judge Advocate General's Office.
Law Society	Represented by Sir Hugh M. Foster and Colonel W. A. Gillett.
Lock, Mr. H. H.	Secretary of the Institute of Shorthand Writers.
McCall, Captain J.	Royal Army Service Corps (Supply Training Wing).
MacGeagh, Sir Henry D. F., K.C.B., K.B.E., T.D., K.C.	Judge Advocate General of the Forces.
MacGregor, Air Vice-Marshal A., C.B.E., D.F.C.	Air Officer in charge of Administration, Fighter Command, Royal Air Force.
Machon, Mr. G. C. S.	Assistant Secretary, War Office.
Manningham-Buller, Lieut.-Colonel R. E., K.C., M.P.	Formerly of the Judge Advocate General's Office.
Moore, Mr. E. Garth	Barrister-at-Law. Formerly of the Judge Advocate General's Office.
Moorhead, Major-General C. D., C.B., D.S.O., M.C.	Formerly Deputy Adjutant-General, Middle East.
Morgan, Mr. W. Gwynn	Solicitor (late Royal Air Force Volunteer Reserve).
Murray, Major-General H., C.B., D.S.O. ...	Director of Personal Services (A), War Office.
O'Connor, General Sir Richard N., K.C.B., D.S.O., M.C., A.D.C.	Adjutant-General to the Forces.
Pensotti, Mr. C. J. T.	Barrister-at-Law. Formerly of the Judge Advocate General's Office.
Pritt, Mr. D. N., K.C., M.P.	
Pullar, Squadron Leader L. J. L., M.C. ...	Royal Air Force Member of the Review of Sentences Board.
Robinson, Lieut.-Colonel E. B., M.C. (ret.)	Late the East Yorkshire Regiment.
Saunders, Air Marshal Sir Hugh W. L., K.B.E., C.B., M.C., D.F.C., M.M.	Air Officer Commanding-in-Chief, Bomber Command, Royal Air Force.
Savill, Lieut.-Colonel K. E., D.S.O. ...	Directorate of Personal Services, War Office.

Schuster, Lord, G.C.B., C.V.O., K.C.	
Shapcott, Brigadier H., C.B., C.B.E., M.C.	Officer in charge of Military Department, Judge Advocate General's Office.
Slessor, Air Chief Marshal Sir John C., K.C.B., D.S.O., M.C.	Air Council Member for Personnel.
Stevenson, Major Melford S., K.C.	... Formerly of the Judge Advocate General's Office.
Stirling, Mr. C. L., C.B.E., K.C.	... Deputy Judge Advocate General of the Forces.
Stopford, General Sir Montagu, K.C.B., K.B.E., D.S.O., M.C.	General Officer Commanding-in-Chief, Northern Command.
Thomson, Captain F. W., M.B.E.	... Judge Advocate General's Office.
Veale, Colonel Geoffrey	... Formerly of the Judge Advocate General's Office. (Barrister-at-Law.)
Wheatley, Lieut-Colonel R. H., D.S.O.	... Directorate of Personal Services, War Office.
Woodroffe, Captain J. E.	... Royal Army Service Corps.

NOTE.—Some names are not given on the above list for the reason stated in paragraph 2 of the Report.

APPENDIX B

(Referred to in paragraph 2)

LIST OF PERSONS AND ORGANISATIONS WHO SUBMITTED MEMORANDA, ETC., TO THE COMMITTEE

Archdale, Lieut.-Colonel A. Q. (ret.).	
Ashton, Mr. C. P.	
Bailey, Mr. J. W.	
Bar Council.	
Barnett, Wing Commander O. C., O.B.E.	Judge Advocate General's Office.
Beak, Colonel W. H., O.B.E.	... Governor of Bedford Gaol.
Benham, Major G. C.	... Solicitor.
Buller, Major L. M. (ret.)	... Formerly Permanent President, Courts- Martial.
Butler, Mr. H.	
Cassel, The Rt. Hon. Sir Felix, Bart., K.C.	Formerly Judge Advocate General of the Forces.
Central Board for Conscientious Objectors.	
Clark, Mr. Adrian (per Mr. J. Wilson)	... Late Solicitor General, Singapore.
Cohen, Captain M.	... Late Royal Artillery.
Conn, Mr. J.	... Late Royal Engineers.
Cranfield, Mr. L. S. W.	... Solicitor.
Director of Personal Services	... Air Ministry.
Director of Personal Services	... War Office.
Ende, Mr. T. A.	
Evans, Major E. A. G.	... Formerly D. A. J. A. G., Eastern Command, India.
Fairweather, Captain E. R.	... The Loyal Regiment.
Fleming-Sandes, Mr. T.	... Late Judge of the High Court, Khartoum.
Freedom Defence League.	
Friend, Mr. A. G.	... Barrister-at-Law.
Gane, Mrs. K. M.	
Garston, Mr. L.	
Gilmore, Mr. B.	
Goff, Mr. E. W.	... Late Royal Air Force.
Gorman, Wing Commander Wm., K.C.	... Formerly of the Judge Advocate General's Office.
Gould, Mr. A. B.	
Greaves, Sir John, C.B.E.	... Formerly Sheriff of Bombay.
Haldane Society.	
Harpley, Mr. D. A.	... Late The Parachute Regiment.
Hawkins, Mr. H. N.	
Hennessy, Mr. R. G.	
Hooton, Major A. C.	... Permanent President Courts-Martial.
Hosford, Mr. H. J.	... Late Home Guard.
Jenkins, Mr. J. H.	... Solicitor
Kinnaird, Mr. C.	

Langriell, Mr. J.	Late The Irish Guards.
Lathey, Mr. J. T.	Barrister-at-Law, Alexandria.
Lawrence, Mr. W. Russell	Barrister-at-Law. Formerly of the Judge Advocate General's Office.
Law Society.	
Leicester, Lieut.-Colonel Sir Charles, Bart. (ret.).	King's Dragoon Guards, Royal Armoured Corps.
Levington, Mr. A.	Late Royal Air Force.
Lickfold, Messrs. J. E. & Sons	Solicitors.
Lock, Mr. H. H.	Secretary, Institute of Shorthand Writers.
Lucas-Tooth, Lieut.-Colonel Sir Hugh, Bart, M.P.	
MacGeagh, Sir Henry D. F., K.C.B., K.B.E., T.D., K.C.	Judge Advocate General of the Forces.
MacLeod, Mr. A. C.	
Manningham-Buller, Lieut.-Colonel R. E., K.C., M.P.	Formerly of the Judge Advocate General's Office.
Marshall, Mr. H.	Late Royal Air Force Volunteer Reserve.
Moore, Mr. E. Garth	Barrister-at-Law. Formerly of the Judge Advocate General's Office.
Morgan, Mr. W. Gwynn	Solicitor (late Royal Air Force Volunteer Reserve).
Nield, Lieut.-Colonel Basil, M.B.E., K.C., M.P.	Formerly of the Judge Advocate General's Office.
New, Flight Lieutenant A. H., M.B.E....	Royal Air Force.
O'Connor, General Sir Richard N., K.C.B., D.S.O., M.C., A.D.C.	Adjutant-General to the Forces.
O'Donovan, Mr. J.	
Pensotti, Mr. C. J. T.	Barrister-at-Law. Formerly of the Judge Advocate General's Office.
Price, Mrs. L. G.	
Pritchard, Lieut.-Colonel F. E., M.B.E., K.C. (now Mr. Justice Pritchard).	Formerly of the Judge Advocate General's Office.
Ross, Mr. A. K.	Solicitor.
Salmon, Mr. Cyril, K.C.	Formerly of the Judge Advocate General's Office.
Sanderson, Captain R. A. G.	
Sandford, Mr. H. R.	
Schuster Lord, G.C.B., C.V.O., K.C.	
Silver, Mr. G. R. J.	
Smith, Lieut.-Colonel J. R. Bickford ...	Formerly staff of the Judge Advocate General-in-India.
Smith, Lieut.-Colonel S. H., M.C. ...	War Office.
Smythe, Flight Lieutenant J. H.	
Snuggs, Mr. E. H.	
Stanton, Lieut.-Colonel J. B. M. ...	The King's Own Scottish Borders (R.A.R.O.).
Stevenson, Lieut.-Colonel J. (ret.) ...	Legal Branch, Control Commission for Germany.
Stewart, Mr. A. R.	
Stewart-Smith, Major D. C.	Judge Advocate General's Office.
Streatfeild, Lieut.-Colonel G. H. B., M.C., K.C. (now Mr. Justice Streatfeild).	Formerly of the Judge Advocate General's Office.
Taylor, Mr. M. J.	Solicitor.
Veale, Colonel Geoffrey	Formerly of the Judge Advocate General's Office. (Barrister-at-Law.)
Waldron, Squadron Leader E. N. E. (ret.)	Late Royal Air Force.
Way, Lieut.-Commander A. E., M.B.E. (ret.)	Late Royal Navy
Webb, Private R. G.	The Royal Berkshire Regiment.
Westley, Mr. E.	
White, Wing Commander C. Montgomery, K.C.	Formerly of the Judge Advocate General's Office.
Wilkins, Mr. B.	
Williams, Squadron Leader H. L. ...	Late Royal Air Force.
Wilson, Mr. S. C.	Late Royal Air Force Volunteer Reserve. (Barrister-at-Law.)
Woodroffe, Captain J. E.	Royal Army Service Corps.

NOTE.—Some names are not given on the above list for the reason stated in paragraph 2 of the Report.

APPENDIX C

(Referred to in paragraph 112)

PROPOSED NEW DEPARTMENTS

Outline of Establishment

1. It is necessary first to establish the probable future volume of court-martial work. In the recently published White Paper on Defence (Cmd. 7327) the strengths of the Army and the Royal Air Force are assessed as follows :—

	1st April, 1948	31st March, 1949
Army	534,000	345,000
Royal Air Force	261,000	226,000
	<hr/>	<hr/>
	795,000	571,000
	<hr/>	<hr/>

2. The ratio of trials by court-martial to strength in the Army has varied between 1.1 per cent. in 1938 to 1.75 per cent. in 1944/5. In the Royal Air Force the corresponding figures are 0.2 per cent. and 0.4 per cent. The increases in the war-time years are no doubt due in the main to the increase of desertion and absence without leave and to other offences which, because of the circumstances of active service, are more frequent in war than in peace.

3. The 1938 figures refer only to the regular army and the regular air force, and it must therefore be considered whether the introduction of compulsory service is likely to cause an increase in the ratio of offences to strength. It is certain, on the one hand, that the result of National Service will be to bring into the Forces, especially into the Army, a number of young men with criminal records and tendencies. This may be especially so during the immediate post-war period. Whether or not this will raise the ratio of trials by court-martial to strength permanently above the pre-war level remains to be seen, and in the calculations which follow we have made no allowance for this possibility.

4. We have endeavoured to determine the likely minimum figure of courts-martial on which to base our estimate for the legal staff necessary to implement our recommendations as to organisation. In the light of the best evidence available to us, and after consultation with the Judge Advocate General's Department, we are of opinion that the number of courts-martial in the Army and Royal Air Force is likely to be about 1 per cent. of overall strength, that is to say, not less than 5,500 courts-martial each year, ranging from the most trivial to the most complicated.

5. Of this number at least 10 per cent. are, we think, likely to be General Courts-Martial. We assume that there will be a negligible number only of Emergency Courts-Martial.

6. On the basis of a total of 5,500 courts-martial a year, we estimate that approximately 550 will be General Courts-Martial with a Judge Martial as president, and 1,500 will be District Courts-Martial with an Assistant Judge Martial as president.

7. On these figures we have made an estimate of requirements in legal staff. In doing so we have assumed that the Judge Advocate General's present commitment in regard to war crimes has been liquidated. We have also assumed, after consultation with the Judge Advocate General, that separate legal staffs, both for the Chief Judge Martial's Department and for the Directorates of Legal Services, will be maintained in three overseas commands only, namely, Rhine Army, Middle East and Far East, and that the requirements of other commands will be met either from home or from one of the foregoing three overseas commands.

8. The office of the Chief Judge Martial is likely to require the following, all of whom will be civilians :—

- 1 Chief Judge Martial.
- 1 Vice-Chief Judge Martial.
- 13 Judges Martial.
- 13 Assistant Judges Martial.
- 1 Legal Assistant (Establishment Officer).
- 1 Registrar (legally qualified) for the Court of Appeal and office.
- 1 Assistant Registrar (legally qualified).

Total 31

9. In addition, subordinate staff will be required, not legally qualified, to include a Chief Clerk for the Appeal and Court-Martial Registry, a Librarian and a proper number of note takers.

10. Of the legally qualified staff, the Chief Judge Martial, the Vice-Chief Judge Martial, the Legal Assistant, the Registrar and the Assistant Registrar will be required irrespective of the number of actual trials. The numbers of Judges Martial and Assistant Judges Martial can be adjusted according to the actual volume of work.

11. This establishment would provide for the following staff in each of the three main overseas commands referred to above:—

- 1 Judge Martial (appointed Deputy Chief Judge Martial for the command abroad)
- 1 Judge Martial (for use on trial work and to relieve the Deputy Chief Judge Martial)
- 2 Assistant Judges Martial.

12. These figures have been calculated in order to allow for leave, sickness and the normal incidence of posting. It has also been assumed that if the volume of work proves temporarily too large for this irreducible minimum of staff to handle, then it would be possible to make use of lawyers appointed *ad hoc*, say, to the Courts-Martial Appeal Court in London, or as presidents of courts-martial at home or in Germany, and that reinforcements could be similarly obtained in certain stations abroad from local lawyers. We wish, however, to make it clear that unless the number of permanent staff, albeit kept to a minimum, allows for postings, leave and sickness, the service will not be attractive to suitable candidates and the new scheme would inevitably then make a bad start.

13. Similarly, the minimum staff required for the Directorates of Legal Services in the Army and the Royal Air Force would be as follows:—

*Directorate of Army Legal Services
(and Legal Instruction)*

War Office

(Regular Officers)

1	Brigadier—in charge—	Director of Army Legal Services (D.A.L.S.).	
2	Colonels	1 D.D.A.L.S. and Second-in-Command.	
		1 D.D.A.L.S. (instruction).	
6	Lieut.-Colonels	3 abroad.	
		3 at home (1 instruction).	
9	Majors	3 abroad.	
		6 at home (1 instruction).	
12	Captains	3 abroad.	
		9 at home.	
1	Captain	Administrative officer (not legally qualified).	

Total 31

*Directorate of Air Force Legal Services
(and Legal Instruction)*

Air Ministry

(Regular Officers)

1	Air Commodore—in charge—	Director of Air Force Legal Services (D.A.F.L.S.).	
1	Group Captain	Prosecution and instruction (D.D.A.F.L.S.).	
5	Wing Commanders	3 abroad.	
		2 at home (1 instruction).	
6	Squadron Leaders	3 abroad.	
		3 at home (1 instruction).	
6	Flight Lieutenants	3 abroad.	
		3 at home.	
1	Flight Lieutenant	Administrative Officer (not legally qualified).	

Total 20

In these cases also allowance has been made for the Directorates to be represented in three major commands abroad.

14. Both the Chief Judge Martial's Department and the said Directorates will be numerically small and care must be taken to attract the right type of candidate by good salaries and, what is even more important, by reasonable prospects of promotion. It may be necessary, particularly if the service is formed by taking in the majority of the entrants at the same date, to provide for time promotion up to the rank of lieutenant-colonel, with similar financial prospects for the civilian staff of the Chief Judge Martial's Department.

15. To provide for expansion of the said Directorates in war time, and also to facilitate the temporary use of lawyers in addition to the establishments, we think it desirable that a reserve of officers should be established for these two Directorates, composed initially of lawyers who during the late war have been engaged on Service legal work, and who are prepared to join such a reserve. A panel of lawyers available for temporary work with the Chief Judge Martial's Department could well be organised on similar lines.

16. If full use is to be made of the expert knowledge of the officers of these departments, particularly of prosecuting branches, they must have transport allocated to them so that, for example, delay in taking summaries of evidence does not arise through difficulty in taking the officer to the spot.

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