British System (1)

Till 1893 – a political appointment

1893 – 1905 – J.A.G. was the President of the Probate, Divorce and Admiralty Division of the High Court of Justice

1905 to date – A person of suitable legal attainments appointed by the King and subject to the orders of the Secy of State for War.

Till 1949 – J.A.G. office ① advising on all questions in preparation for trial, ② prosecuting when required ③ safeguarding rights of accused ④ advising on exercise of summary jurisdiction

Prosecution

All in U.K.

More impt trials abroad by Staff or Field.

Judge at trial

in U.K. Furnishes at all general and the more serious cases of district courts, a judge advocate who at the conclusion of the evidence and arguments of parties or counsel sums up and advises the Court on the law of the case. Makes it clear that the finding is for the Court.

Review of all convictions

British system - 2.

Present ~~Since Jan 1947~~ -

(1) J.A.G. appted on recommendation of Lord Chancellor and be responsible to him.

(2) Army (Air Force) - Director of Army (Air Force) Legal Services. Should be under Adjutant General.

This composed of Officers

(3) J.A.G - a judicial department. -

(a) Furnish judge advocates

(b) Review ~~case~~ proceedings record

(c) Tendering advice arising out of (b).

This composed of Civilians

Title ~~Chief Judge Martial~~.

J.A. = Deputy Chief Judge Martial

= ~~Chief~~ Judges Martial

= Asst Judges Martial.

Courts-Martial Appeal Court - Civilian

Recommended - ~~Law only Scope of Review~~ - Read par. 141.

(1) Make up of Ct. C.J. Martial
Vice-C.J. Martial
Judges - Martial
Panel of K.C.'s recommend by Chancellor

British System -3-

Any 3 of these would constitute a Court.

(2) Scope of Review — "Whether some error of law had occurred... sufficiently serious to justify quashing the Conviction" — "Precisely the question" which the Jd. G now determines.

(3) Procedure - (a) Certificate of leave to appeal by the Court

(b) Petition by accused in wtg - specifying grounds to the C.J. Martial or Judge Martial of the Command. If he denies notify accused who may apply to appeal Ct.

(c) Application heard orally; accused may be legally represented

British System -3-

~~3 of the Court should~~

U. C. M. J.

1. Convening authority may review finding to advantage of accused.
2. Bd of Review both law and facts; and sentence.
3. Civilian court automatic review in death and gen'l officer. Otherwise like English. Trained App. Counsel provided.

4. Special Ct. only bad conduct discharge. English any case.

5. New trial or quashing. English affirmance or quashing.

English — From CM. to Appeals Court only.

Removal of Command Control

Court and Counsel.

U.M.C.J. Convening authority appoints Court - prosecutor and defense counsel.

English Convening authority appoints Court (and prosecutor so far as appears)
Counsel for accused seems to be on a quasi legal aid basis;

Judge.

~~U.M.C.J.~~ English - Chief Judge Martial furnishes one of his staff.
- Convening Authority appoints - Approval by J.A.G.

U.M.C.J. No doubt English makes a clearer separation so that the C.O. has no power over the ~~review~~ law either at trial or on review;
But the review is solely on law.
While U.M.C.J. gives BA of Review real supervisory power and on law the review is equally effective.

(1) The English do not attempt to interfere with the composition of the Court. If Congress is prepared to set up a corps of legal specialists to be assigned by Judicial Council to act as defense counsel and law officers, that would do the trick.

(2) Would assignment of defense counsel and law officer by J.A.G. do it?
Not if these were line officers.

(3) What does the Corps do?
1. It does not put the staff-J.A. out of C.O.'s control, unless (a) he is to be a member of the J.A.G. corps and (b) his efficiency rating is not to be made by the C.O. How can the J.A.G. supervise that?

1. The Corps. — All it does is to get away from the Chief of Staff at the top.

The J.A.G. still under Sec'y of War who will always cooperate with his Chief of Staff.

To make Corps effective to accomplish elimination of Command Control —

(1) impossible to do it so far as court is concerned, unless J.A.G. furnishes court

(2) same as to defense counsel unless J.A.G. furnishes it — as now proposed. Any military officer bound to be rated by his C.O.

(3) same as to law officer unless a J.A.G. corps man.

Then the prosecutor ought not to be a JAG. officer.