

THE COURT MARTIAL AND THE SUMMARY APPEAL COURT GUIDANCE

**Volume 1:
Guide to Procedure**
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CONTENTS

	Page
Section 1: Definitions & Introduction	
1.1 Definitions	3
1.2 Introduction	4
Section 2: The Court Martial	
2.1 Ceremony	4
2.2 Terms of address	4
2.3 Responsibility of Judge Advocate	4
2.4 Role of Board Members	5
2.5 – 2.6 Interests of Justice	5
Section 3 Roles	
3.1 The Judge Advocate	5
3.2 – 3.3 President of the Board	5
3.4 Board Members	6
3.5 <i>Morris</i> Direction	6
3.6 <i>Newton</i> Hearings	7
3.7 – 3.8 Sentencing	7
Section 4: Courtroom, Officials & Dress	
4.1 Court Orderly	7
4.2 Layout of the Court Martial	7
4.3 Dress: Uniform	8
4.-4 Head-dress	8
4.5 Service Witnesses	8
4.6 Legal and Civilian Dress	9
Section 5: Procedure	
5.1 Order of Procedure in the Court Martial	9
5.2 Use of Video Live Link	9
Section 6: Other Types of Hearings	
6.1 Custody Hearings, Applications for Search Warrants and Arrest Warrants	9
6.2 Plea and Trial Preparation Hearings	9
6.3 Service Civilian Court Hearings (adult)	9
6.4 Service Civilian Court Hearings (young person)	10
Section 7: The Summary Appeal Court (SAC)	
7.1 Origins of the SAC	10
7.2 Constitution of the SAC	10
7.3 Nature of Hearing	10
7.4 Layout of the SAC	10
7.5 Dress	11
Annexes	
A Layout of the Court Martial (Diagram)	12
B Ceremonial Procedure in the Court Martial (Table) ...	13
C Layout of the Summary Appeal Court (Diagram)	15

Section 1: Definitions & Introduction

1.1 Definitions

- Judge Advocate:**..... is the statutory term for a judge who has been specified by the Judge Advocate General to preside over proceedings in the Court Martial, the Summary Appeal Court or any other Service court.
- The court:** means the Court Martial or the Summary Appeal Court in the appropriate sections of this guide. The court can comprise *either* the Judge Advocate and the board *or* the Judge Advocate sitting alone, depending on the type of proceedings.
- The board:** means the group of Service (or sometimes civilian) persons who have been specified as lay members of the court and who may also be referred to collectively as the “members”.
- The President of the Board:**... means the most senior of the lay members of a Service board.
- The Military Court Service:** ... is an independent branch of the Ministry of Defence whose role is to administer the Service courts.
- The Court Administration Officer:**..... is usually the Director of the Military Court Service who is responsible, by their staff, for the administration of the court and for specifying the board members.
- The Court Officer:**..... is an official of the Military Court Service responsible for running day-to-day operations at a Military Court Centre.
- The defendant:**..... is a person prosecuted in the Court Martial for an offence of which they may or may not be guilty.
- The offender:**..... is a person who has pleaded guilty or been found guilty of an offence.
- The appellant:** is a person who makes an appeal to the Summary Appeal Court

Introduction

1.2 This Guide is issued under the authority of the Judge Advocate General and the Director of the Military Court Service jointly as an aid to those who practise in the Service Justice System, and it is to be used in all hearings. Volume 1 provides information about procedure generally and it deals with all types of proceedings in the Court Martial as well as in the Summary Appeal Court. Volume 2 provides information specifically for members of boards.

Section 2: The Court Martial

Ceremony

2.1 All proceedings in the Court Martial are formal occasions which, in addition to the normal courtesy of a court, include a certain amount of military ceremony as befits the traditions of the Armed Forces. Nevertheless, it is the fairness of the trial process which is the most important factor

Terms of Address

2.2 In court the judge advocate is addressed as “Your Honour” and referred to as “His/Her Honour the Judge”. On the rare occasion when a High Court Judge presides, they are addressed as “My Lord/My Lady” and referred to as “His Lordship/Her Ladyship”.

Responsibility of Judge Advocate

2.3 This Guide does not provide guidance on the law, as sole responsibility for the law lies with the Judge Advocate who presides throughout in the Court Martial. It is the responsibility of the judge advocate to give directions on questions of law including questions of procedure and practice¹ and only the judge advocate has the authority to vary the procedures in this Guide in individual proceedings. All the participants in the court process receive all direction on the law including legal procedure and practice from the judge advocate. The judge advocate is empowered² to follow the procedures of the Crown Court, or procedures analogous to those of the Crown Court, where appropriate.

Role of Board Members

2.4 In trial proceedings in the Court Martial the board members alone are required to make a finding of fact based on the evidence that the judge advocate determines is admissible for them to hear and see, presented to them by the prosecution and the defence. The judge advocate guides the board through the trial at all stages, leaving members to concentrate on the task of listening to, assessing, and analysing the facts and evidence presented to them in court. Any questions the members may have can only be raised through the judge advocate who will decide whether the question may be asked. In the event of a finding of guilt and consequent sentencing proceedings, the members of an all Service or a mixed Service and civilian board take part in deciding the sentence together with the judge advocate. If the board is all civilian, the members take no part in sentencing.

¹ Armed Forces Act 2006 s 159

² Armed Forces (Court Martial) Rules 2009 r 26

Interests of Justice

2.5 All trials must be conducted in a way that is, and is seen to be, impartial and fair. At a trial the interests of justice must take priority over all other considerations. As in any other criminal court, defendants are presumed to be innocent until such time as they may plead guilty or be found guilty of an offence.

2.6 Members must pay particular attention to any directions given by the judge advocate. Failure to follow judicial directions could result in dissolution of the court, or a finding of guilt being quashed later which could have the added impact of being perceived as unfair to a victim. The requirements imposed on members are set out in detail in Volume 2 of the Guide. The Guide may be taken into court.

Section 3: Roles

The Judge Advocate

3.1 The function of the judge advocate is to ensure the trial is conducted fairly, decide what evidence the members hear and see, rule on legal issues, and ensure the correct interpretation and application of the law and procedures. The judge advocate's role is the same as the role of the judge advocate presiding over a jury trial in the Crown Court until it comes to the sentencing stages. The judge advocate guides the board through the trial at all stages, leaving members to concentrate on the task of listening to, assessing, and analysing the facts and evidence presented to them in court. Any questions the members may have can only be raised through the judge advocate who will decide whether the question may be asked.

President of the Board

3.2 The President of the Board is shown as such in the notice summoning members to attend the Court Martial, except that an all-civilian board chooses a foreman from among their number. The judge advocate, however, presides over the court which means that the judge advocate conducts the proceedings and gives directions to the board. The role of the President of the Board is not dissimilar to that of the foreman of a jury in the Crown Court during the trial proceedings stage after a Not Guilty plea. Under no circumstances may the President of the Board use rank to influence other members of the board concerning either finding or sentence.

3.3 If there is concern that the correct uniform, drill, and forms of address are not being properly observed, subject to the judge advocate's responsibility for conducting the trial, the President of the Board should raise the matter with the judge advocate by means of a written note. This must always be done in open court, with the expectation that the contents of the written note to the judge advocate will be disclosed to the prosecution and defence representatives.

The Board Members

3.4 A Service board comprises the President of the Board and at least two other Service lay members, who are referred to in this guide as "members", and who are both qualified and eligible to serve. Those who are appointed to perform their duties as members of a board must do so independently and impartially in accordance with the evidence and the law. They are specified by the Court Administration Officer. If the defendant is a civilian who is not being

tried for offences allegedly committed when he was a Service person, the board is usually composed wholly of civilians. The size of the board depends on the nature and seriousness of the offence(s) charged.

3.4.1 During the trial proceedings where there is a Not Guilty plea, the members are acting in a similar way to a jury. The members exclusively decide the guilt or otherwise of the defendant, based on the evidence presented to them. The judge advocate takes no part in this decision. All members of the board have an equal vote and voice; there is no casting vote at this stage. The President of the Board chairs the discussions of the board and reports the verdict(s) to the court. If there is equality of votes, the court must acquit the defendant.

3.4.2 The judge advocate may need to rule upon legal issues in the absence of the board at the start of the trial or during the proceedings, which may take some time to resolve. Members should not speculate or try to ascertain what is occurring in court in their absence, and those who find themselves in this situation should be patient. Members may not leave the court centre without the judge advocate's permission, but they may do other non-case related work while waiting. The Military Court Centre layout ensures that the judge advocate and the members are segregated from other participants throughout the trial. Access to and movement within the Military Court Centre is controlled overall by the Court Officer assisted by the Court Orderly while proceedings are in progress, and the safety and security of all participants are maintained. Members should not venture beyond their designated area.

3.4.3 In the event of a verdict of Guilty and consequent sentencing proceedings, the members of an all Service or a mixed Service and civilian board take part in deciding the sentence together with the judge advocate. If the board is all civilian, the members take no part in sentencing.

***Morris* Direction**

3.5 Early in trial proceedings the judge advocate gives specific directions, in open court on the record (known as the *Morris* direction), which ensure the board understands its duties in respect of the trial.

***Newton* Hearings**

3.6 Sometimes following a Guilty plea there is a dispute about the factual basis of the plea, which may affect subsequent sentencing considerations, and which needs a hearing to resolve (known as a *Newton* hearing) as part of the sentencing proceedings. Under these circumstances the judge advocate and the members all take full part in the hearing to decide the issue. The finding is by a majority of votes (judge advocate and members combined). If there is equality of votes, the court must decide the issue in favour of the offender.

Sentencing

3.7 If a Guilty finding has been recorded in the Court Martial, the members and the judge advocate hear submissions and together determine the appropriate sentence for the offence. Each member and the judge advocate have an equal vote, irrespective of their Service rank, subject to the casting vote of the judge advocate in the event of an equality of votes. Members must accept the judge advocate's directions on what sentencing options are available in law, and on the legal principles of sentencing.

3.8 Where there are applicable guidelines issued by the Sentencing Council, the guidelines are considered by judges when giving directions on sentence to the members. The Court Martial may depart from Sentencing Council guidelines if the departure is justified by any features of Service life or of the Service disciplinary system that are relevant (Armed Forces Act 2006 s 259(2)). Relevant factors are contained in the publication *Guidance on Sentencing in the Court Martial* issued by the Judge Advocate General which contains judicial guidance on appropriate sentencing tariffs taking into account uniquely Service offences and punishments and reflecting Service discipline policy.

Section 4: Courtroom, Officials & Dress

Court Orderly

4.1 The Court Orderly is a key court official, who is responsible to the Court Officer for ensuring the smooth running of the court. The Court Orderly is given written instructions and a detailed briefing on their duties from the Court Officer which will reflect the specific needs of the location, the proceedings due to take place there, and the directions of the judge advocate. Once a trial has begun, the Court Officer and the Court Orderly (and other members of the court staff and the court administrative party as authorised by the Court Officer) are the only contacts permitted between the members and anyone else involved with the trial. It is essential that the Court Orderly does not reveal to any member anything which has occurred while the board is outside the courtroom.

Layout of the Court Martial

4.2 A schematic layout of a typical courtroom for the Court Martial is shown at **Annex A**.

Dress: Uniform

4.3 Units are responsible for ensuring that all personnel attending court are correctly dressed. Service personnel (including the defendant if still serving and including members of the Special Investigation Branch) normally wear formal dress uniform in the Court Martial, including preliminary and arraignment proceedings. The Services have directed that the following are worn:

- Royal Navy:** No 1C.
- Royal Marines:** Lovats (without medals and gloves).
- Army:** Officers: Service Dress with No 1 Dress hat or equivalent (without medals, gloves, cane or Sam Browne).
Soldiers: No 2 Dress (without medals).
- RAF:** No 1 (without medals or gloves).
- Medal ribbons should be worn.

The Service personnel of the court administrative party may wear working dress, as appropriate to their assigned tasks. It is not appropriate to make direct comments on the turnout or dress of the defendant; any issues on this subject are handled by the Court Officer via the defendant's unit. In hot weather the President of the Board may permit shirt-sleeve order to be worn.

Head-dress

4.4 Head-dress is worn by all Service personnel, in the courtroom at the beginning of the hearing. The judge advocate gives instructions as to removal and replacing of head-dress when required. Head-dress is replaced and worn during the announcement of verdicts, during the passing of sentences, and at the conclusion of a case when the judge advocate and the members leave the courtroom. It is not necessary to replace and remove head-dress every time the court rises or resumes. The Court Orderly keeps head-dress on throughout.

Service Witnesses

4.5 Service witnesses wear head-dress, and salute on entering the court. They remove head-dress for the swearing of the oath and whilst giving evidence. Before leaving the courtroom, they replace head-dress and salute. Service personnel appearing as witnesses who would normally be required to wear uniform may be authorised exceptionally by the Court Officer to attend court in civilian clothes where justified by operational, travel or other practical considerations. Persons attending to give evidence (except character witnesses) are not allowed to observe proceedings in court before they are called. After witnesses have completed their evidence, they may be asked to remain available for recall, may be released and usually may observe proceedings from the public area.

Legal and Civilian Dress

4.6 Legal representatives appear in the Court Martial robed as if appearing in the Crown Court, as appropriate for their qualification. Otherwise, civilians dress as they choose, provided styles adopted are not likely to cause offence. If asked, the Court Officer advises civilian attendees to wear clothing which is neat, tidy, restrained, and commensurate with the dignity of the court.

Section 5: Procedure

Order of Procedure in the Court Martial

5.1 The detailed order of procedure is set out in the table at **Annex B**. The judge advocate may depart from the standard procedures exceptionally in particular cases, in which event they will give directions.

Use of Video Live Link

5.2 Either prosecution or defence may apply for live link to be used in proceedings, and the judge advocate may give leave for an advocate, a defendant, or a witness to appear at any type of proceedings by means of a live link to a remote location. The judge advocate may also give leave of their own motion. Application for the use of a live link should be made in accordance with the Armed Forces (Court Martial) Rules 2009.

Section 6: Other Types of Hearings

Custody Hearings, Applications for Search Warrants and Arrest Warrants

6.1 All participants wear whatever dress they have on at the time. Service personnel attending are on duty and are therefore normally in uniform. Proceedings are relatively informal, at the discretion of the judge advocate.

Plea and Trial Preparation Hearings (PTPH) – this section applies for live and virtual hearings

6.2 Plea and Trial Preparation Hearings are preliminary proceedings and arraignment proceedings held in advance of trial proceedings in the Court Martial. The judge advocate sits alone. All participants are robed and uniformed and wear head-dress as for trial proceedings.

Service Civilian Court Hearings (adult)

6.3 The judge advocate sits alone and is not robed. Legal representatives are not robed. Civilians attending, including the defendant, wear dress of their choice. If any Service personnel attend, they must appear in uniform. The procedures maintain the dignity befitting a court but being characteristically civilian they avoid the drill typical of a Service court.

Service Civilian Court Hearings (young person)

6.4 The judge advocate sits alone and is not robed. Legal representatives are not robed. Civilians attending, including the defendant, wear dress of their choice. Service personnel, including the prosecutor, wear civilian clothing. The procedure is informal, and it is most important to avoid intimidating or confusing the young defendant. The judge advocate gives instructions concerning any special arrangements which need to be put in place.

Section 7: The Summary Appeal Court (SAC)

Origins of the SAC

7.1 The SAC was established under provisions of the Armed Forces Discipline Act 2000 and is now constituted under the Armed Forces Act 2006 s 140 et seq. Summary hearings by Commanding Officers are not of themselves compliant with the European Convention of Human Rights (ECHR). It is the opportunity to appeal to the SAC together with the unfettered right to elect trial in the Court Martial, both of which are ECHR compliant courts, which makes the summary hearing process compliant. Everyone who is dealt with summarily has an automatic right to appeal to the SAC. A person may appeal against both finding and punishment, or against the punishment only.

Constitution of the SAC

7.2 The SAC comprises a Judge Advocate specified by the Judge Advocate General to conduct the hearing, and two 'lay members' (referred to below as members), who are officers or warrant officers qualified and eligible to sit, specified by the Court Administration Officer. The duties and responsibilities of the members of the SAC are set out in detail in Volume 2 of the guide at paragraphs 4.1 to 4.9. The members sit on the bench alongside the judge advocate throughout. All participants are robed and uniformed and wear head-dress as in the Court Martial. Procedure is broadly like the Court Martial except that the judge advocate and members enter and exit the courtroom together unless the judge advocate has to consider legal issues, in which case they will sit alone.

Nature of Hearing

7.3 To ensure compliance, an appeal against both finding and punishment is an entire re-hearing of the facts of the case. In an appeal against punishment only, the facts of the case are often undisputed and can be read to the court on that basis before the submissions on mitigation from the appellant. On rare occasions in an appeal against punishment only the appellant accepts that he committed the offence but disputes the alleged facts as presented at the summary hearing, so a "*Newton* hearing" is held. A *Newton* hearing is a limited hearing of only the evidence relevant to the disputed facts of the offence, so that the court can decide upon which version of the facts the punishment should be based. The court then hears any submissions or evidence on mitigation from the appellant before considering the punishment.

Layout of the SAC

7.4 A schematic layout is shown at **Annex C** which is typical of a courtroom in which an appeal is heard.

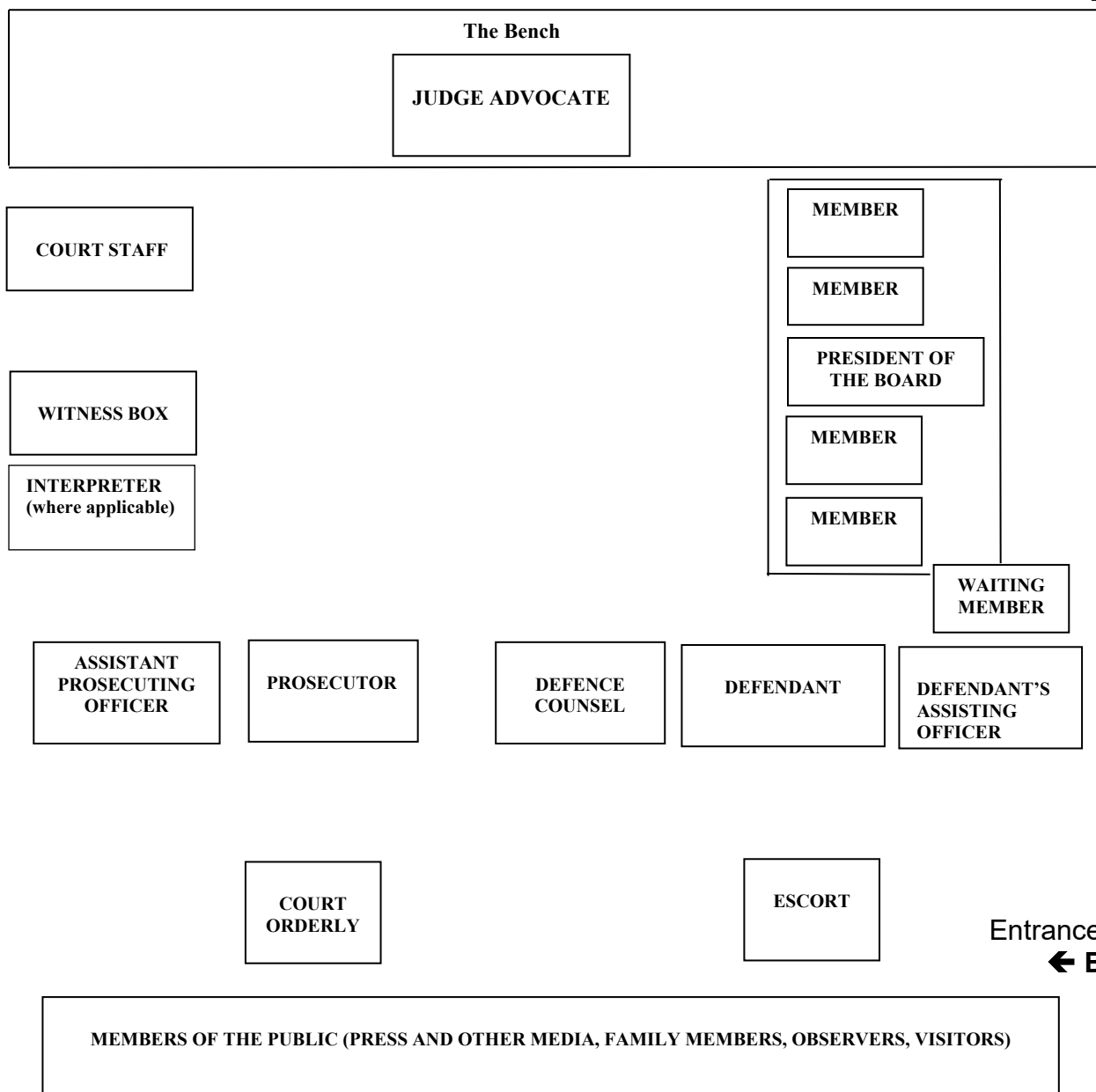
Dress

7.5 Dress in the SAC is the same as in the Court Martial.

LAYOUT OF THE COURT MARTIAL

[Royal Coat of Arms]

Entrance
← A
← A



Notes

1. The above layout is schematic but typical. Details of the layout vary between Military Court Centres and are modified as necessary if there is more than one Defendant.
2. The number of board members is between a minimum of three and a maximum of seven, depending on the seriousness of the alleged offence and as directed by the judge advocate. The diagram shows five as an example.
3. Arrows indicate separate entrances (A) for the judge advocate and members; and (B) for all others.
4. This is also the courtroom layout for the Service Civilian Court.

The ceremonial procedure to be followed in all courts in the Service Justice SystemTrial

1. Judge enters. All rise. Head-dress on.
2. Judge deals with any preliminary matters. If lengthy, head-dress removed during discussions.
3. Board enter court. Head-dress on. All rise (except judge advocate). Court Orderly calls salute. Service personnel excluding the board salute. President returns salute. All sit.
4. Judge directs head-dress to be removed. Defendant identified. Board members identified. Objections taken and dealt with.
5. Swearing in of board. All rise. Oaths administered.
6. Trial commences.

Adjournments

7. For any adjournment, other than overnight and retirement to deliberate on finding, board leave court. All rise. No head-dress (left in court). No saluting.
8. After any adjournment, other than overnight and to deliberate on finding, board re-enter court. All rise. No head-dress. No saluting.
9. For overnight adjournments and when board retires to consider verdict: Head-dress on. All rise. Court Orderly calls salute. Service personnel salute excluding the board salute. President returns salute.
10. After overnight adjournment and when board return from deliberations with verdict: Head-dress on. All rise. Court Orderly calls salute. Service personnel excluding the board salute. President returns salute.
11. After President has delivered verdict, board retires. Head-dress remains on. All rise. Court Orderly calls salute. Service personnel excluding the board salute. President returns salute. Board leaves.

Sentencing

12. Board enters (either with or after judge advocate has entered court). Head-dress on. All rise. Court Orderly calls salute. Service personnel excluding the board salute. President returns salute.
13. Head-dress removed. Defendant identified. Board members identified. Objections taken and dealt with.
14. Swearing in of board. All rise. Oaths/affirmation administered.
15. Sentencing hearing commences.
16. At the conclusion of the sentencing hearing the Judge will adopt one of two procedures

in order to start their deliberations:

- a. Judge and board leave court to consider sentence. Head-dress on. All rise. Court Orderly calls salute. Service personnel excluding the board salute. President returns salute.
- b. Judge and board remain in court to consider sentence. Judge directs Court Orderly to clear the court. All personnel leave court having replaced head-dress and Court Orderly calls salute.

17. Having concluded their deliberations, the Judge will adopt one of two procedures in order to re-open the court and pass sentence (depending on how the court was closed at para 16 above):

- a. Judge notifies Court Orderly to reassemble the court. Judge and board return to court to pass sentence. Head-dress on. Court Orderly calls salute. Service personnel excluding the board salute. President returns salute. Head-dress remains on during sentencing hearing.
- b. Judge rings bell to notify Court Orderly to re-open the court. Board will have head-dress on. All personnel enter with head-dress on and salute the court as they enter the courtroom.

18. At end of hearing Judge and board leave together. All rise. Court Orderly calls salute. Service personnel excluding the board salute. President returns salute. All depart.

Service witnesses in uniform

19. Witness salutes at court door on entering court and on leaving court.

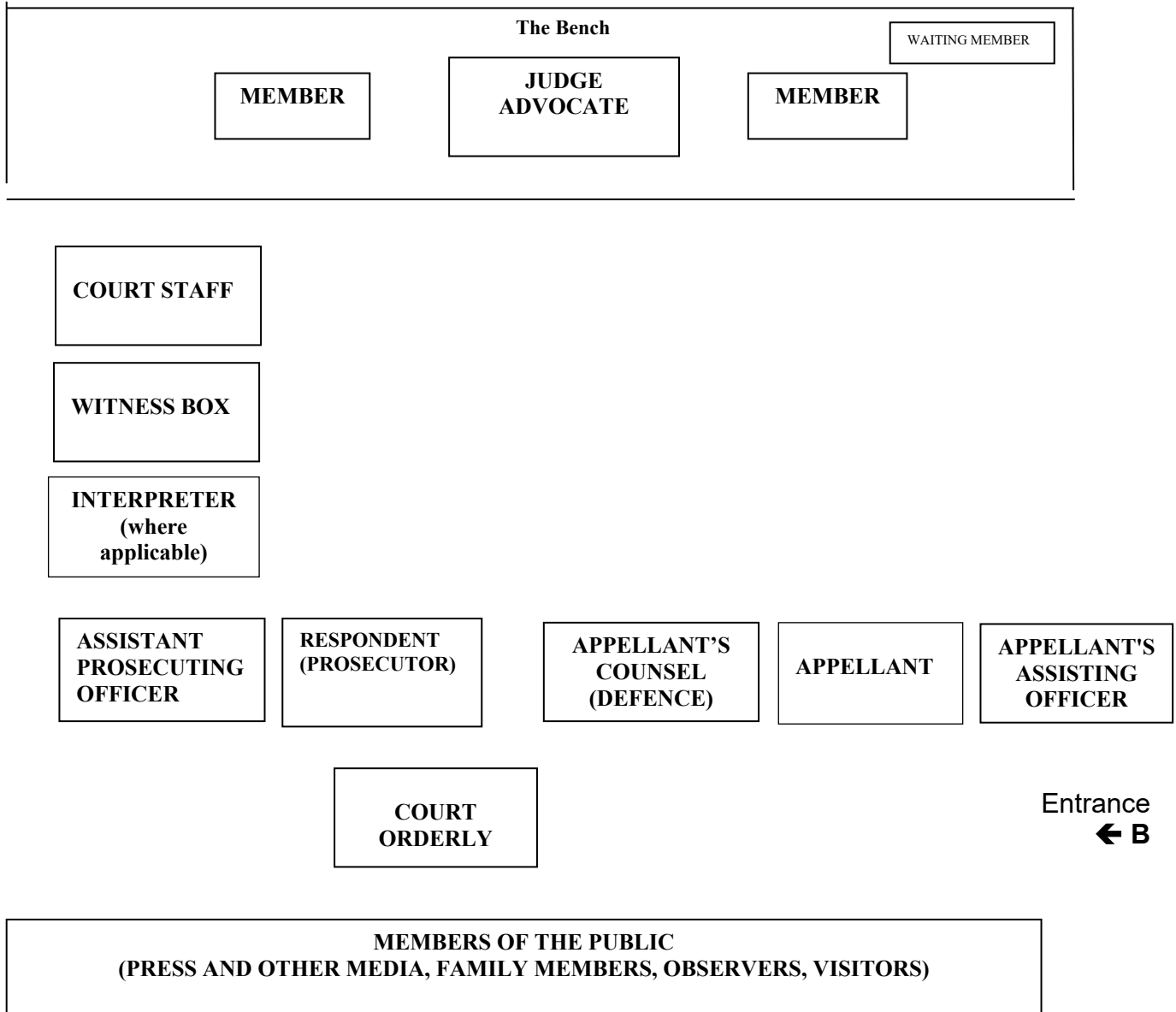
Defendants giving evidence

20. Defendant salutes in accordance with procedure above. They do not take their head-dress with them to give evidence, nor do they salute when entering or leaving the witness box.

LAYOUT OF THE SUMMARY APPEAL COURT

[Royal Coat of Arms]

Entrance
← A



Notes

1. The above layout is schematic but typical. Details of the layout vary between Military Court Centres and are modified as necessary if there is more than one Appellant.
2. The Court Officer may also have a desk in the courtroom.
3. Arrows indicate separate entrances (**A**) for the judge advocate and members; and (**B**) for all others.