

statements of the witness to the military judge during an ex parte presentation to the extent necessary to protect classified information from disclosure, in accordance with the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.).

(3) ACTION BY MILITARY JUDGE ON MOTION.—If the military judge finds that disclosure of any portion of the statement identified by the United States as classified would be detrimental to the national security in the degree to warrant classification under the applicable Executive Order, statute, or regulation, that such portion of the statement is consistent with the testimony of the witness, and that the disclosure of such portion is not necessary to afford the accused a fair trial, the military judge shall excise that portion from the statement. If the military judge finds that such portion of the statement is inconsistent with the testimony of the witness or that its disclosure is necessary to afford the accused a fair trial, the military judge, shall, upon the request of the trial counsel, review alternatives to disclosure in accordance with section 949p-6(d) of this title.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2596.)

#### REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsecs. (c)(2) and (d)(2), is Pub. L. 96-456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

#### SUBCHAPTER VI—SENTENCES

|       |  |
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| Sec.  |  |
| 949s. | Cruel or unusual punishments prohibited. |
| 949t. | Maximum limits.                          |
| 949u. | Execution of confinement.                |

#### § 949s. Cruel or unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2598.)

#### PRIOR PROVISIONS

A prior section 949s, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2617, prohibited cruel or unusual punishments, prior to the general amendment of this chapter by Pub. L. 111-84.

#### § 949t. Maximum limits

The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2598.)

#### PRIOR PROVISIONS

A prior section 949t, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2617, related to maximum limits

of punishment, prior to the general amendment of this chapter by Pub. L. 111-84.

#### § 949u. Execution of confinement

(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

(1) in any place of confinement under the control of any of the armed forces; or

(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2598.)

#### PRIOR PROVISIONS

A prior section 949u, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2617, related to execution of a sentence of confinement, prior to the general amendment of this chapter by Pub. L. 111-84.

#### SUBCHAPTER VII—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

|       |   |
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| Sec.  |   |
| 950a. | Error of law; lesser included offense.  |
| 950b. | Review by the convening authority.  |
| 950c. | Appellate referral; waiver or withdrawal of appeal.   |
| 950d. | Interlocutory appeals by the United States.   |
| 950e. | Rehearings.   |
| 950f. | Review by United States Court of Military Commission Review.  |
| 950g. | Review by United States Court of Court of Appeals for the District of Columbia Circuit; writ of certiorari to Supreme Court. <sup>1</sup> |
| 950h. | Appellate counsel.  |
| 950i. | Execution of sentence; suspension of sentence.  |
| 950j. | Finality of proceedings, findings, and sentences.   |

#### § 950a. Error of law; lesser included offense

(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2599.)

#### PRIOR PROVISIONS

A prior section 950a, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2618, related to error of law and

<sup>1</sup> So in original. Does not conform to section catchline.