

## (b) PRECAUTIONS BY MILITARY JUDGES.—

(1) PRECAUTIONS IN ADMITTING CLASSIFIED INFORMATION INTO EVIDENCE.—The military judge in a trial by military commission, in order to prevent unnecessary disclosure of classified information, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evidence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein, unless the whole ought in fairness be considered.

(2) CLASSIFIED INFORMATION KEPT UNDER SEAL.—The military judge shall allow classified information offered or accepted into evidence to remain under seal during the trial, even if such evidence is disclosed in the military commission, and may, upon motion by the United States, seal exhibits containing classified information for any period after trial as necessary to prevent a disclosure of classified information when a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration setting forth the damage to the national security that the disclosure of such information reasonably could be expected to cause.

## (c) TAKING OF TESTIMONY.—

(1) OBJECTION BY TRIAL COUNSEL.—During the examination of a witness, trial counsel may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

(2) ACTION BY MILITARY JUDGE.—Following an objection under paragraph (1), the military judge shall take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring trial counsel to provide the military judge with a proffer of the witness' response to the question or line of inquiry and requiring the accused to provide the military judge with a proffer of the nature of the information sought to be elicited by the accused. Upon request, the military judge may accept an ex parte proffer by trial counsel 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.).

## (d) DISCLOSURE AT TRIAL OF CERTAIN STATEMENTS PREVIOUSLY MADE BY A WITNESS.—

(1) MOTION FOR PRODUCTION OF STATEMENTS IN POSSESSION OF THE UNITED STATES.—After a witness called by the trial counsel has testified on direct examination, the military judge, on motion of the accused, may order production of statements of the witness in the possession of the United States which relate to the subject matter as to which the witness has testified. This paragraph does not preclude discovery or assertion of a privilege otherwise authorized.

(2) INVOCATION OF PRIVILEGE BY THE UNITED STATES.—If the United States invokes a privilege, the trial counsel may provide the prior

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

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

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.

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

#### § 950b. Review by the convening authority

(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after the accused has been given an authenticated record of trial under section 949o(c) of this title.

(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

(3) The accused may waive the accused's right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing, and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

(2) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in the sole discretion of the convening authority, only—

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

(3)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

(B) Subject to regulations prescribed by the Secretary of Defense, action under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

(C) In taking action under this paragraph, the convening authority may, in the sole discretion of the convening authority, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

(4) The convening authority shall serve on the accused or on defense counsel notice of any ac-