

(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

(c) OATH DEFINED.—In this section, the term “oath” includes an affirmation.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2587.)

PRIOR PROVISIONS

A prior section 949g, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2613, related to oaths, prior to the general amendment of this chapter by Pub. L. 111–84.

**§ 949h. Former jeopardy**

(a) IN GENERAL.—No person may, without the person’s consent, be tried by a military commission under this chapter a second time for the same offense.

(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2587.)

PRIOR PROVISIONS

A prior section 949h, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2614, related to former jeopardy, prior to the general amendment of this chapter by Pub. L. 111–84.

**§ 949i. Pleas of the accused**

(a) PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, including a charge or specification that has been referred capital, a finding of guilty of the charge or specification may be entered by the military judge immediately without a vote by the members. The finding shall constitute the finding of the military commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(c) PRE-TRIAL AGREEMENTS.—(1) A plea of guilty made by the accused that is accepted by a military judge under subsection (b) and not withdrawn prior to announcement of the sentence may form the basis for an agreement reducing the maximum sentence approved by the convening authority, including the reduction of a sentence of death to a lesser punishment, or that the case will be referred to a military commission under this chapter without seeking the

penalty of death. Such an agreement may provide for terms and conditions in addition to a guilty plea by the accused in order to be effective.

(2) A plea agreement under this subsection may not provide for a sentence of death imposed by a military judge alone. A sentence of death may only be imposed by the unanimous vote of all members of a military commission concurring in the sentence of death as provided in section 949m(b)(2)(D) of this title.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2587; amended Pub. L. 112–81, div. A, title X, § 1030(b), Dec. 31, 2011, 125 Stat. 1570; Pub. L. 113–291, div. A, title X, § 1071(f)(9), Dec. 19, 2014, 128 Stat. 3510.)

PRIOR PROVISIONS

A prior section 949i, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2614, related to pleas of the accused, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2014—Subsec. (b). Pub. L. 113–291 substituted a comma for “,” after “referred capital”.

2011—Subsec. (b). Pub. L. 112–81, § 1030(b)(1), in the first sentence, inserted “, including a charge or specification that has been referred capital,” after “military judge”, “by the military judge” after “may be entered”, and “by the members” after “vote”.

Subsec. (c). Pub. L. 112–81, § 1030(b)(2), added subsec. (c).

**§ 949j. Opportunity to obtain witnesses and other evidence**

(a) IN GENERAL.—(1) Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense. The opportunity to obtain witnesses and evidence shall be comparable to the opportunity available to a criminal defendant in a court of the United States under article III of the Constitution.

(2) Process issued in military commissions under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

(A) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

(B) shall run to any place where the United States shall have jurisdiction thereof.

(b) DISCLOSURE OF EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel in a military commission under this chapter shall disclose to the defense the existence of any evidence that reasonably tends to—

(A) negate the guilt of the accused of an offense charged; or

(B) reduce the degree of guilt of the accused with respect to an offense charged.

(2) The trial counsel shall, as soon as practicable, disclose to the defense the existence of evidence that reasonably tends to impeach the credibility of a witness whom the government intends to call at trial.

(3) The trial counsel shall, as soon as practicable upon a finding of guilt, disclose to the defense the existence of evidence that is not sub-