

quirements of national security. A decision not to declassify evidence under this section shall not be subject to review by a military commission or upon appeal.

(d) CONSTRUCTION OF PROVISIONS.—The judicial construction of the Classified Information Procedures Act (18 U.S.C. App.) shall be authoritative in the interpretation of this subchapter, except to the extent that such construction is inconsistent with the specific requirements of this chapter.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2590.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (d), 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.

§ 949p-2. Pretrial conference

(a) MOTION.—At any time after service of charges, any party may move for a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution.

(b) CONFERENCE.—Following a motion under subsection (a), or sua sponte, the military judge shall promptly hold a pretrial conference. Upon request by either party, the court shall hold such conference ex parte 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.).

(c) MATTERS TO BE ESTABLISHED AT PRETRIAL CONFERENCE.—

(1) TIMING OF SUBSEQUENT ACTIONS.—At the pretrial conference, the military judge shall establish the timing of—

- (A) requests for discovery;
- (B) the provision of notice required by section 949p-5 of this title; and
- (C) the initiation of the procedure established by section 949p-6 of this title.

(2) OTHER MATTERS.—At the pretrial conference, the military judge may also consider any matter—

- (A) which relates to classified information; or
- (B) which may promote a fair and expeditious trial.

(d) EFFECT OF ADMISSIONS BY ACCUSED AT PRETRIAL CONFERENCE.—No admission made by the accused or by any counsel for the accused at a pretrial conference under this section may be used against the accused unless the admission is in writing and is signed by the accused and by the counsel for the accused.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2591.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (b), 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.

§ 949p-3. Protective orders

Upon motion of the trial counsel, the military judge shall issue an order to protect against the

disclosure of any classified information that has been disclosed by the United States to any accused in any military commission under this chapter or that has otherwise been provided to, or obtained by, any such accused in any such military commission.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2591.)

§ 949p-4. Discovery of, and access to, classified information by the accused

(a) LIMITATIONS ON DISCOVERY OR ACCESS BY THE ACCUSED.—

(1) DECLARATIONS BY THE UNITED STATES OF DAMAGE TO NATIONAL SECURITY.—In any case before a military commission in which the United States seeks to delete, withhold, or otherwise obtain other relief with respect to the discovery of or access to any classified information, the trial counsel shall submit a declaration invoking the United States' classified information privilege and setting forth the damage to the national security that the discovery of or access to such information reasonably could be expected to cause. The declaration shall be signed by a knowledgeable United States official possessing authority to classify information.

(2) STANDARD FOR AUTHORIZATION OF DISCOVERY OR ACCESS.—Upon the submission of a declaration under paragraph (1), the military judge may not authorize the discovery of or access to such classified information unless the military judge determines that such classified information would be noncumulative, relevant, and helpful to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing, in accordance with standards generally applicable to discovery of or access to classified information in Federal criminal cases. If the discovery of or access to such classified information is authorized, it shall be addressed in accordance with the requirements of subsection (b).

(b) DISCOVERY OF CLASSIFIED INFORMATION.—

(1) SUBSTITUTIONS AND OTHER RELIEF.—The military judge, in assessing the accused's discovery of or access to classified information under this section, may authorize the United States—

- (A) to delete or withhold specified items of classified information;
- (B) to substitute a summary for classified information; or
- (C) to substitute a statement admitting relevant facts that the classified information or material would tend to prove.

(2) EX PARTE PRESENTATIONS.—The military judge shall permit the trial counsel to make a request for an authorization under paragraph (1) in the form of an ex parte presentation to the extent necessary to protect classified information, in accordance with the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.). If the military judge enters an order granting relief following such an ex parte showing, the entire presentation (including the text of any written submission, verbatim transcript of the ex