

National Defense
Authorization Act
FY 2010

Conference Committee Version
October 6, 2009

Title XVIII – Military Commissions

1 **TITLE XVIII—MILITARY**
2 **COMMISSIONS**

- Sec. 1801. Short title.
- Sec. 1802. Military commissions.
- Sec. 1803. Conforming amendments.
- Sec. 1804. Proceedings under prior statute.
- Sec. 1805. Submittal to Congress of revised rules for military commissions.
- Sec. 1806. Annual reports to Congress on trials by military commission.
- Sec. 1807. Sense of Congress on military commission system.

3 **SEC. 1801. SHORT TITLE.**

4 This title may be cited as the “Military Commissions
5 Act of 2009”.

6 **SEC. 1802. MILITARY COMMISSIONS.**

7 Chapter 47A of title 10, United States Code, is
8 amended to read as follows:

9 **“CHAPTER 47A—MILITARY COMMISSIONS**

“SUBCHAPTER	Sec.
“I. General Provisions	948a.
“II. Composition of Military Commissions	948h.
“III. Pre-Trial Procedure	948q.
“IV. Trial Procedure	949a.
“V. Classified Information Procedures	949p–1.
“VI. Sentences	949s.
“VII. Post-Trial Procedures and Review of Military Commissions	950a.
“VIII. Punitive Matters	950p.

10 **“SUBCHAPTER I—GENERAL PROVISIONS**

- “Sec.
- “948a. Definitions.
- “948b. Military commissions generally.
- “948c. Persons subject to military commissions.
- “948d. Jurisdiction of military commissions.

11 **“§ 948a. Definitions**

12 “In this chapter:

13 “(1) ALIEN.—The term ‘alien’ means an indi-
14 vidual who is not a citizen of the United States.

1 “(2) CLASSIFIED INFORMATION.—The term
2 ‘classified information’ means the following:

3 “(A) Any information or material that has
4 been determined by the United States Govern-
5 ment pursuant to statute, Executive order, or
6 regulation to require protection against unau-
7 thorized disclosure for reasons of national secu-
8 rity.

9 “(B) Any restricted data, as that term is
10 defined in section 11 y. of the Atomic Energy
11 Act of 1954 (42 U.S.C. 2014(y)).

12 “(3) COALITION PARTNER.—The term ‘coalition
13 partner’, with respect to hostilities engaged in by the
14 United States, means any State or armed force di-
15 rectly engaged along with the United States in such
16 hostilities or providing direct operational support to
17 the United States in connection with such hostilities.

18 “(4) GENEVA CONVENTION RELATIVE TO THE
19 TREATMENT OF PRISONERS OF WAR.—The term
20 ‘Geneva Convention Relative to the Treatment of
21 Prisoners of War’ means the Convention Relative to
22 the Treatment of Prisoners of War, done at Geneva
23 August 12, 1949 (6 UST 3316).

1 “(5) GENEVA CONVENTIONS.—The term ‘Gene-
2 va Conventions’ means the international conventions
3 signed at Geneva on August 12, 1949.

4 “(6) PRIVILEGED BELLIGERENT.—The term
5 ‘privileged belligerent’ means an individual belonging
6 to one of the eight categories enumerated in Article
7 4 of the Geneva Convention Relative to the Treat-
8 ment of Prisoners of War.

9 “(7) UNPRIVILEGED ENEMY BELLIGERENT.—
10 The term ‘unprivileged enemy belligerent’ means an
11 individual (other than a privileged belligerent) who—

12 “(A) has engaged in hostilities against the
13 United States or its coalition partners;

14 “(B) has purposefully and materially sup-
15 ported hostilities against the United States or
16 its coalition partners; or

17 “(C) was a part of al Qaeda at the time
18 of the alleged offense under this chapter.

19 “(8) NATIONAL SECURITY.—The term ‘national
20 security’ means the national defense and foreign re-
21 lations of the United States.

22 “(9) HOSTILITIES.—The term ‘hostilities’
23 means any conflict subject to the laws of war.

1 **“§ 948b. Military commissions generally**

2 “(a) PURPOSE.—This chapter establishes procedures
3 governing the use of military commissions to try alien
4 unprivileged enemy belligerents for violations of the law
5 of war and other offenses triable by military commission.

6 “(b) AUTHORITY FOR MILITARY COMMISSIONS
7 UNDER THIS CHAPTER.—The President is authorized to
8 establish military commissions under this chapter for of-
9 fenses triable by military commission as provided in this
10 chapter.

11 “(c) CONSTRUCTION OF PROVISIONS.—The proce-
12 dures for military commissions set forth in this chapter
13 are based upon the procedures for trial by general courts-
14 martial under chapter 47 of this title (the Uniform Code
15 of Military Justice). Chapter 47 of this title does not, by
16 its terms, apply to trial by military commission except as
17 specifically provided therein or in this chapter, and many
18 of the provisions of chapter 47 of this title are by their
19 terms inapplicable to military commissions. The judicial
20 construction and application of chapter 47 of this title,
21 while instructive, is therefore not of its own force binding
22 on military commissions established under this chapter.

23 “(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—
24 (1) The following provisions of this title shall not apply
25 to trial by military commission under this chapter:

1 “(A) Section 810 (article 10 of the Uniform
2 Code of Military Justice), relating to speedy trial,
3 including any rule of courts-martial relating to
4 speedy trial.

5 “(B) Sections 831(a), (b), and (d) (articles
6 31(a), (b), and (d) of the Uniform Code of Military
7 Justice), relating to compulsory self-incrimination.

8 “(C) Section 832 (article 32 of the Uniform
9 Code of Military Justice), relating to pretrial inves-
10 tigation.

11 “(2) Other provisions of chapter 47 of this title shall
12 apply to trial by military commission under this chapter
13 only to the extent provided by the terms of such provisions
14 or by this chapter.

15 “(e) GENEVA CONVENTIONS NOT ESTABLISHING
16 PRIVATE RIGHT OF ACTION.—No alien unprivileged
17 enemy belligerent subject to trial by military commission
18 under this chapter may invoke the Geneva Conventions as
19 a basis for a private right of action.

20 **“§ 948c. Persons subject to military commissions**

21 “Any alien unprivileged enemy belligerent is subject
22 to trial by military commission as set forth in this chapter.

23 **“§ 948d. Jurisdiction of military commissions**

24 “A military commission under this chapter shall have
25 jurisdiction to try persons subject to this chapter for any

1 offense made punishable by this chapter, sections 904 and
2 906 of this title (articles 104 and 106 of the Uniform Code
3 of Military Justice), or the law of war, whether such of-
4 fense was committed before, on, or after September 11,
5 2001, and may, under such limitations as the President
6 may prescribe, adjudge any punishment not forbidden by
7 this chapter, including the penalty of death when specifi-
8 cally authorized under this chapter. A military commission
9 is a competent tribunal to make a finding sufficient for
10 jurisdiction.

11 “SUBCHAPTER II—COMPOSITION OF MILITARY
12 COMMISSIONS

“Sec.

“948h. Who may convene military commissions.

“948i. Who may serve on military commissions.

“948j. Military judge of a military commission.

“948k. Detail of trial counsel and defense counsel.

“948l. Detail or employment of reporters and interpreters.

“948m. Number of members; excuse of members; absent and additional mem-
bers.

13 “§ 948h. Who may convene military commissions

14 “Military commissions under this chapter may be
15 convened by the Secretary of Defense or by any officer
16 or official of the United States designated by the Secretary
17 for that purpose.

18 “§ 948i. Who may serve on military commissions

19 “(a) IN GENERAL.—Any commissioned officer of the
20 armed forces on active duty is eligible to serve on a mili-
21 tary commission under this chapter, including commis-

1 sioned officers of the reserve components of the armed
2 forces on active duty, commissioned officers of the Na-
3 tional Guard on active duty in Federal service, or retired
4 commissioned officers recalled to active duty.

5 “(b) **DETAIL OF MEMBERS.**—When convening a mili-
6 tary commission under this chapter, the convening author-
7 ity shall detail as members thereof such members of the
8 armed forces eligible under subsection (a) who, in the
9 opinion of the convening authority, are best qualified for
10 the duty by reason of age, education, training, experience,
11 length of service, and judicial temperament. No member
12 of an armed force is eligible to serve as a member of a
13 military commission when such member is the accuser or
14 a witness for the prosecution or has acted as an investi-
15 gator or counsel in the same case.

16 “(c) **EXCUSE OF MEMBERS.**—Before a military com-
17 mission under this chapter is assembled for the trial of
18 a case, the convening authority may excuse a member
19 from participating in the case.

20 **“§ 948j. Military judge of a military commission**

21 “(a) **DETAIL OF MILITARY JUDGE.**—A military judge
22 shall be detailed to each military commission under this
23 chapter. The Secretary of Defense shall prescribe regula-
24 tions providing for the manner in which military judges
25 are so detailed to military commissions. The military judge

1 shall preside over each military commission to which such
2 military judge has been detailed.

3 “(b) ELIGIBILITY.—A military judge shall be a com-
4 missioned officer of the armed forces who is a member
5 of the bar of a Federal court, or a member of the bar
6 of the highest court of a State, and who is certified to
7 be qualified for duty under section 826 of this title (article
8 26 of the Uniform Code of Military Justice) as a military
9 judge of general courts-martial by the Judge Advocate
10 General of the armed force of which such military judge
11 is a member.

12 “(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No
13 person is eligible to act as military judge in a case of a
14 military commission under this chapter if such person is
15 the accuser or a witness or has acted as investigator or
16 a counsel in the same case.

17 “(d) CONSULTATION WITH MEMBERS; INELIGI-
18 BILITY TO VOTE.—A military judge detailed to a military
19 commission under this chapter may not consult with the
20 members except in the presence of the accused (except as
21 otherwise provided in section 949d of this title), trial coun-
22 sel, and defense counsel, nor may such military judge vote
23 with the members.

24 “(e) OTHER DUTIES.—A commissioned officer who
25 is certified to be qualified for duty as a military judge of

1 a military commission under this chapter may perform
2 such other duties as are assigned to such officer by or
3 with the approval of the Judge Advocate General of the
4 armed force of which such officer is a member or the des-
5 ignee of such Judge Advocate General.

6 “(f) PROHIBITION ON EVALUATION OF FITNESS BY
7 CONVENING AUTHORITY.—The convening authority of a
8 military commission under this chapter may not prepare
9 or review any report concerning the effectiveness, fitness,
10 or efficiency of a military judge detailed to the military
11 commission which relates to such judge’s performance of
12 duty as a military judge on the military commission.

13 **“§ 948k. Detail of trial counsel and defense counsel**

14 “(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial
15 counsel and military defense counsel shall be detailed for
16 each military commission under this chapter.

17 “(2) Assistant trial counsel and assistant and asso-
18 ciate defense counsel may be detailed for a military com-
19 mission under this chapter.

20 “(3) Military defense counsel for a military commis-
21 sion under this chapter shall be detailed as soon as prac-
22 ticable.

23 “(4) The Secretary of Defense shall prescribe regula-
24 tions providing for the manner in which trial counsel and
25 military defense counsel are detailed for military commis-

1 sions under this chapter and for the persons who are au-
2 thorized to detail such counsel for such military commis-
3 sions.

4 “(b) TRIAL COUNSEL.—Subject to subsection (e), a
5 trial counsel detailed for a military commission under this
6 chapter shall be—

7 “(1) a judge advocate (as that term is defined
8 in section 801 of this title (article 1 of the Uniform
9 Code of Military Justice)) who is—

10 “(A) a graduate of an accredited law
11 school or a member of the bar of a Federal
12 court or of the highest court of a State; and

13 “(B) certified as competent to perform du-
14 ties as trial counsel before general courts-mar-
15 tial by the Judge Advocate General of the
16 armed force of which such judge advocate is a
17 member; or

18 “(2) a civilian who is—

19 “(A) a member of the bar of a Federal
20 court or of the highest court of a State; and

21 “(B) otherwise qualified to practice before
22 the military commission pursuant to regulations
23 prescribed by the Secretary of Defense.

24 “(c) DEFENSE COUNSEL.—(1) Subject to subsection
25 (e), a military defense counsel detailed for a military com-

1 mission under this chapter shall be a judge advocate (as
2 so defined) who is—

3 “(A) a graduate of an accredited law school or
4 a member of the bar of a Federal court or of the
5 highest court of a State; and

6 “(B) certified as competent to perform duties
7 as defense counsel before general courts-martial by
8 the Judge Advocate General of the armed force of
9 which such judge advocate is a member.

10 “(2) The Secretary of Defense shall prescribe regula-
11 tions for the appointment and performance of defense
12 counsel in capital cases under this chapter.

13 “(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUN-
14 SEL.—(1) The Chief Prosecutor in a military commission
15 under this chapter shall meet the requirements set forth
16 in subsection (b)(1).

17 “(2) The Chief Defense Counsel in a military com-
18 mission under this chapter shall meet the requirements set
19 forth in subsection (c)(1).

20 “(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No
21 person who has acted as an investigator, military judge,
22 or member of a military commission under this chapter
23 in any case may act later as trial counsel or military de-
24 fense counsel in the same case. No person who has acted
25 for the prosecution before a military commission under

1 this chapter may act later in the same case for the de-
2 fense, nor may any person who has acted for the defense
3 before a military commission under this chapter act later
4 in the same case for the prosecution.

5 **“§ 9481. Detail or employment of reporters and inter-**
6 **preters**

7 “(a) COURT REPORTERS.—Under such regulations
8 as the Secretary of Defense may prescribe, the convening
9 authority of a military commission under this chapter
10 shall detail to or employ for the military commission quali-
11 fied court reporters, who shall prepare a verbatim record
12 of the proceedings of and testimony taken before the mili-
13 tary commission.

14 “(b) INTERPRETERS.—Under such regulations as the
15 Secretary of Defense may prescribe, the convening author-
16 ity of a military commission under this chapter may detail
17 to or employ for the military commission interpreters who
18 shall interpret for the military commission, and, as nec-
19 essary, for trial counsel and defense counsel for the mili-
20 tary commission, and for the accused.

21 “(c) TRANSCRIPT; RECORD.—The transcript of a
22 military commission under this chapter shall be under the
23 control of the convening authority of the military commis-
24 sion, who shall also be responsible for preparing the record
25 of the proceedings of the military commission.

1 **“§ 948m. Number of members; excuse of members; ab-**
2 **sent and additional members**

3 “(a) NUMBER OF MEMBERS.—(1) Except as pro-
4 vided in paragraph (2), a military commission under this
5 chapter shall have at least five members.

6 “(2) In a case in which the accused before a military
7 commission under this chapter may be sentenced to a pen-
8 alty of death, the military commission shall have the num-
9 ber of members prescribed by section 949m(e) of this title.

10 “(b) EXCUSE OF MEMBERS.—No member of a mili-
11 tary commission under this chapter may be absent or ex-
12 cused after the military commission has been assembled
13 for the trial of a case unless excused—

14 “(1) as a result of challenge;

15 “(2) by the military judge for physical disability
16 or other good cause; or

17 “(3) by order of the convening authority for
18 good cause.

19 “(c) ABSENT AND ADDITIONAL MEMBERS.—When-
20 ever a military commission under this chapter is reduced
21 below the number of members required by subsection (a),
22 the trial may not proceed unless the convening authority
23 details new members sufficient to provide not less than
24 such number. The trial may proceed with the new mem-
25 bers present after the recorded evidence previously intro-
26 duced before the members has been read to the military

1 commission in the presence of the military judge, the ac-
2 cused (except as provided in section 949d of this title),
3 and counsel for both sides.

4 “SUBCHAPTER III—PRE-TRIAL PROCEDURE

“Sec.

“948q. Charges and specifications.

“948r. Exclusion of statements obtained by torture or cruel, inhuman, or de-
grading treatment; prohibition of self-incrimination; admission
of other statements of the accused.

“948s. Service of charges.

5 “§ 948q. Charges and specifications

6 “(a) CHARGES AND SPECIFICATIONS.—Charges and
7 specifications against an accused in a military commission
8 under this chapter shall be signed by a person subject to
9 chapter 47 of this title under oath before a commissioned
10 officer of the armed forces authorized to administer oaths
11 and shall state—

12 “(1) that the signer has personal knowledge of,
13 or reason to believe, the matters set forth therein;
14 and

15 “(2) that such matters are true in fact to the
16 best of the signer’s knowledge and belief.

17 “(b) NOTICE TO ACCUSED.—Upon the swearing of
18 the charges and specifications in accordance with sub-
19 section (a), the accused shall be informed of the charges
20 and specifications against the accused as soon as prac-
21 ticable.

1 **“§ 948r. Exclusion of statements obtained by torture**
2 **or cruel, inhuman, or degrading treat-**
3 **ment; prohibition of self-incrimination;**
4 **admission of other statements of the ac-**
5 **cused**

6 “(a) EXCLUSION OF STATEMENTS OBTAIN BY TOR-
7 TURE OR CRUEL, INHUMAN, OR DEGRADING TREAT-
8 MENT.—No statement obtained by the use of torture or
9 by cruel, inhuman, or degrading treatment (as defined by
10 section 1003 of the Detainee Treatment Act of 2005 (42
11 U.S.C. 2000dd)), whether or not under color of law, shall
12 be admissible in a military commission under this chapter,
13 except against a person accused of torture or such treat-
14 ment as evidence that the statement was made.

15 “(b) SELF-INCRIMINATION PROHIBITED.—No person
16 shall be required to testify against himself or herself at
17 a proceeding of a military commission under this chapter.

18 “(c) OTHER STATEMENTS OF THE ACCUSED.—A
19 statement of the accused may be admitted in evidence in
20 a military commission under this chapter only if the mili-
21 tary judge finds—

22 “(1) that the totality of the circumstances ren-
23 ders the statement reliable and possessing sufficient
24 probative value; and

25 “(2) that—

1 “(A) the statement was made incident to
2 lawful conduct during military operations at the
3 point of capture or during closely related active
4 combat engagement, and the interests of justice
5 would best be served by admission of the state-
6 ment into evidence; or

7 “(B) the statement was voluntarily given.

8 “(d) DETERMINATION OF VOLUNTARINESS.—In de-
9 termining for purposes of subsection (c)(2)(B) whether a
10 statement was voluntarily given, the military judge shall
11 consider the totality of the circumstances, including, as
12 appropriate, the following:

13 “(1) The details of the taking of the statement,
14 accounting for the circumstances of the conduct of
15 military and intelligence operations during hos-
16 tilities.

17 “(2) The characteristics of the accused, such as
18 military training, age, and education level.

19 “(3) The lapse of time, change of place, or
20 change in identity of the questioners between the
21 statement sought to be admitted and any prior ques-
22 tioning of the accused.

23 **“§ 948s. Service of charges**

24 “The trial counsel assigned to a case before a military
25 commission under this chapter shall cause to be served

1 upon the accused and military defense counsel a copy of
2 the charges upon which trial is to be had in English and,
3 if appropriate, in another language that the accused un-
4 derstands, sufficiently in advance of trial to prepare a de-
5 fense.

6 “SUBCHAPTER IV—TRIAL PROCEDURE

“Sec.

“949a. Rules.

“949b. Unlawfully influencing action of military commission and United States
Court of Military Commission Review.

“949c. Duties of trial counsel and defense counsel.

“949d. Sessions.

“949e. Continuances.

“949f. Challenges.

“949g. Oaths.

“949h. Former jeopardy.

“949i. Pleas of the accused.

“949j. Opportunity to obtain witnesses and other evidence.

“949k. Defense of lack of mental responsibility.

“949l. Voting and rulings.

“949m. Number of votes required.

“949n. Military commission to announce action.

“949o. Record of trial.

7 “§ 949a. Rules

8 “(a) PROCEDURES AND RULES OF EVIDENCE.—Pre-
9 trial, trial, and post-trial procedures, including elements
10 and modes of proof, for cases triable by military commis-
11 sion under this chapter may be prescribed by the Secretary
12 of Defense. Such procedures may not be contrary to or
13 inconsistent with this chapter. Except as otherwise pro-
14 vided in this chapter or chapter 47 of this title, the proce-
15 dures and rules of evidence applicable in trials by general
16 courts-martial of the United States shall apply in trials
17 by military commission under this chapter.

1 “(b) EXCEPTIONS.—(1) In trials by military commis-
2 sion under this chapter, the Secretary of Defense, in con-
3 sultation with the Attorney General, may make such ex-
4 ceptions in the applicability of the procedures and rules
5 of evidence otherwise applicable in general courts-martial
6 as may be required by the unique circumstances of the
7 conduct of military and intelligence operations during hos-
8 tilities or by other practical need consistent with this chap-
9 ter.

10 “(2) Notwithstanding any exceptions authorized by
11 paragraph (1), the procedures and rules of evidence in
12 trials by military commission under this chapter shall in-
13 clude, at a minimum, the following rights of the accused:

14 “(A) To present evidence in the accused’s de-
15 fense, to cross-examine the witnesses who testify
16 against the accused, and to examine and respond to
17 all evidence admitted against the accused on the
18 issue of guilt or innocence and for sentencing, as
19 provided for by this chapter.

20 “(B) To be present at all sessions of the mili-
21 tary commission (other than those for deliberations
22 or voting), except when excluded under section 949d
23 of this title.

24 “(C)(i) When none of the charges preferred
25 against the accused are capital, to be represented

1 before a military commission by civilian counsel if
2 provided at no expense to the Government, and by
3 either the defense counsel detailed or the military
4 counsel of the accused's own selection, if reasonably
5 available.

6 “(ii) When any of the charges preferred against
7 the accused are capital, to be represented before a
8 military commission in accordance with clause (i)
9 and, to the greatest extent practicable, by at least
10 one additional counsel who is learned in applicable
11 law relating to capital cases and who, if necessary,
12 may be a civilian and compensated in accordance
13 with regulations prescribed by the Secretary of De-
14 fense.

15 “(D) To self-representation, if the accused
16 knowingly and competently waives the assistance of
17 counsel, subject to the provisions of paragraph (4).

18 “(E) To the suppression of evidence that is not
19 reliable or probative.

20 “(F) To the suppression of evidence the pro-
21 bative value of which is substantially outweighed
22 by—

23 “(i) the danger of unfair prejudice, confu-
24 sion of the issues, or misleading the members;
25 or

1 “(ii) considerations of undue delay, waste
2 of time, or needless presentation of cumulative
3 evidence.

4 “(3) In making exceptions in the applicability in
5 trials by military commission under this chapter from the
6 procedures and rules otherwise applicable in general
7 courts-martial, the Secretary of Defense may provide the
8 following:

9 “(A) Evidence seized outside the United States
10 shall not be excluded from trial by military commis-
11 sion on the grounds that the evidence was not seized
12 pursuant to a search warrant or authorization.

13 “(B) A statement of the accused that is other-
14 wise admissible shall not be excluded from trial by
15 military commission on grounds of alleged coercion
16 or compulsory self-incrimination so long as the evi-
17 dence complies with the provisions of section 948r of
18 this title.

19 “(C) Evidence shall be admitted as authentic so
20 long as—

21 “(i) the military judge of the military com-
22 mission determines that there is sufficient evi-
23 dence that the evidence is what it is claimed to
24 be; and

1 “(ii) the military judge instructs the mem-
2 bers that they may consider any issue as to au-
3 thentication or identification of evidence in de-
4 termining the weight, if any, to be given to the
5 evidence.

6 “(D) Hearsay evidence not otherwise admissible
7 under the rules of evidence applicable in trial by
8 general courts-martial may be admitted in a trial by
9 military commission only if—

10 “(i) the proponent of the evidence makes
11 known to the adverse party, sufficiently in ad-
12 vance to provide the adverse party with a fair
13 opportunity to meet the evidence, the pro-
14 ponent’s intention to offer the evidence, and the
15 particulars of the evidence (including informa-
16 tion on the circumstances under which the evi-
17 dence was obtained); and

18 “(ii) the military judge, after taking into
19 account all of the circumstances surrounding
20 the taking of the statement, including the de-
21 gree to which the statement is corroborated, the
22 indicia of reliability within the statement itself,
23 and whether the will of the declarant was
24 overborne, determines that—

1 “(I) the statement is offered as evi-
2 dence of a material fact;

3 “(II) the statement is probative on
4 the point for which it is offered;

5 “(III) direct testimony from the wit-
6 ness is not available as a practical matter,
7 taking into consideration the physical loca-
8 tion of the witness, the unique cir-
9 cumstances of military and intelligence op-
10 erations during hostilities, and the adverse
11 impacts on military or intelligence oper-
12 ations that would likely result from the
13 production of the witness; and

14 “(IV) the general purposes of the
15 rules of evidence and the interests of jus-
16 tice will best be served by admission of the
17 statement into evidence.

18 “(4)(A) The accused in a military commission under
19 this chapter who exercises the right to self-representation
20 under paragraph (2)(D) shall conform the accused’s de-
21 portment and the conduct of the defense to the rules of
22 evidence, procedure, and decorum applicable to trials by
23 military commission.

24 “(B) Failure of the accused to conform to the rules
25 described in subparagraph (A) may result in a partial or

1 total revocation by the military judge of the right of self-
2 representation under paragraph (2)(D). In such case, the
3 military counsel of the accused or an appropriately author-
4 ized civilian counsel shall perform the functions necessary
5 for the defense.

6 “(c) DELEGATION OF AUTHORITY TO PRESCRIBE
7 REGULATIONS.—The Secretary of Defense may delegate
8 the authority of the Secretary to prescribe regulations
9 under this chapter.

10 “(d) NOTICE TO CONGRESS OF MODIFICATION OF
11 RULES.—Not later than 60 days before the date on which
12 any proposed modification of the rules in effect for mili-
13 tary commissions under this chapter goes into effect, the
14 Secretary of Defense shall submit to the Committee on
15 Armed Services of the Senate and the Committee on
16 Armed Services of the House of Representatives a report
17 describing the proposed modification.

18 **“§ 949b. Unlawfully influencing action of military**
19 **commission and United States Court of**
20 **Military Commission Review**

21 “(a) MILITARY COMMISSIONS.—(1) No authority
22 convening a military commission under this chapter may
23 censure, reprimand, or admonish the military commission,
24 or any member, military judge, or counsel thereof, with
25 respect to the findings or sentence adjudged by the mili-

1 tary commission, or with respect to any other exercises
2 of its or their functions in the conduct of the proceedings.

3 “(2) No person may attempt to coerce or, by any un-
4 authorized means, influence—

5 “(A) the action of a military commission under
6 this chapter, or any member thereof, in reaching the
7 findings or sentence in any case;

8 “(B) the action of any convening, approving, or
9 reviewing authority with respect to their judicial
10 acts; or

11 “(C) the exercise of professional judgment by
12 trial counsel or defense counsel.

13 “(3) The provisions of this subsection shall not apply
14 with respect to—

15 “(A) general instructional or informational
16 courses in military justice if such courses are de-
17 signed solely for the purpose of instructing members
18 of a command in the substantive and procedural as-
19 pects of military commissions; or

20 “(B) statements and instructions given in open
21 proceedings by a military judge or counsel.

22 “(b) UNITED STATES COURT OF MILITARY COMMIS-
23 SION REVIEW.—(1) No person may attempt to coerce or,
24 by any unauthorized means, influence—

1 “(A) the action of a military appellate judge or
2 other duly appointed judge under this chapter on the
3 United States Court of Military Commissions Review
4 in reaching a decision on the findings or sentence on
5 appeal in any case; or

6 “(B) the exercise of professional judgment by
7 trial counsel or defense counsel appearing before the
8 United States Court of Military Commission Review.

9 “(2) No person may censure, reprimand, or admonish
10 a military appellate judge on the United States Court of
11 Military Commission Review, or counsel thereof, with re-
12 spect to any exercise of their functions in the conduct of
13 proceedings under this chapter.

14 “(3) The provisions of this subsection shall not apply
15 with respect to—

16 “(A) general instructional or informational
17 courses in military justice if such courses are de-
18 signed solely for the purpose of instructing members
19 of a command in the substantive and procedural as-
20 pects of military commissions; or

21 “(B) statements and instructions given in open
22 proceedings by an appellate military judge or a duly
23 appointed appellate judge on the United States
24 Court of Military Commission Review, or counsel.

1 “(4) No appellate military judge on the United States
2 Court of Military Commission Review may be reassigned
3 to other duties, except under circumstances as follows:

4 “(A) The appellate military judge voluntarily
5 requests to be reassigned to other duties and the
6 Secretary of Defense, or the designee of the Sec-
7 retary, in consultation with the Judge Advocate
8 General of the armed force of which the appellate
9 military judge is a member, approves such reassign-
10 ment.

11 “(B) The appellate military judge retires or
12 otherwise separates from the armed forces.

13 “(C) The appellate military judge is reassigned
14 to other duties by the Secretary of Defense, or the
15 designee of the Secretary, in consultation with the
16 Judge Advocate General of the armed force of which
17 the appellate military judge is a member, based on
18 military necessity and such reassignment is con-
19 sistent with service rotation regulations (to the ex-
20 tent such regulations are applicable).

21 “(D) The appellate military judge is withdrawn
22 by the Secretary of Defense, or the designee of the
23 Secretary, in consultation with the Judge Advocate
24 General of the armed force of which the appellate
25 military judge is a member, for good cause con-

1 sistent with applicable procedures under chapter 47
2 of this title (the Uniform Code of Military Justice).

3 “(c) PROHIBITION ON CONSIDERATION OF ACTIONS
4 ON COMMISSION IN EVALUATION OF FITNESS.—In the
5 preparation of an effectiveness, fitness, or efficiency report
6 or any other report or document used in whole or in part
7 for the purpose of determining whether a commissioned
8 officer of the armed forces is qualified to be advanced in
9 grade, or in determining the assignment or transfer of any
10 such officer or whether any such officer should be retained
11 on active duty, no person may—

12 “(1) consider or evaluate the performance of
13 duty of any member of a military commission under
14 this chapter; or

15 “(2) give a less favorable rating or evaluation
16 to any commissioned officer because of the zeal with
17 which such officer, in acting as counsel, represented
18 any accused before a military commission under this
19 chapter.

20 **“§ 949c. Duties of trial counsel and defense counsel**

21 “(a) TRIAL COUNSEL.—The trial counsel of a mili-
22 tary commission under this chapter shall prosecute in the
23 name of the United States.

1 “(b) DEFENSE COUNSEL.—(1) The accused shall be
2 represented in the accused’s defense before a military com-
3 mission under this chapter as provided in this subsection.

4 “(2) The accused may be represented by military
5 counsel detailed under section 948k of this title or by mili-
6 tary counsel of the accused’s own selection, if reasonably
7 available.

8 “(3) The accused may be represented by civilian
9 counsel if retained by the accused, provided that such civil-
10 ian counsel—

11 “(A) is a United States citizen;

12 “(B) is admitted to the practice of law in a
13 State, district, or possession of the United States, or
14 before a Federal court;

15 “(C) has not been the subject of any sanction
16 of disciplinary action by any court, bar, or other
17 competent governmental authority for relevant mis-
18 conduct;

19 “(D) has been determined to be eligible for ac-
20 cess to information classified at the level Secret or
21 higher; and

22 “(E) has signed a written agreement to comply
23 with all applicable regulations or instructions for
24 counsel, including any rules of court for conduct
25 during the proceedings.

1 “(4) If the accused is represented by civilian counsel,
2 military counsel shall act as associate counsel.

3 “(5) The accused is not entitled to be represented by
4 more than one military counsel. However, the person au-
5 thorized under regulations prescribed under section 948k
6 of this title to detail counsel, in such person’s sole discre-
7 tion, may detail additional military counsel to represent
8 the accused.

9 “(6) Defense counsel may cross-examine each witness
10 for the prosecution who testifies before a military commis-
11 sion under this chapter.

12 “(7) Civilian defense counsel shall protect any classi-
13 fied information received during the course of representa-
14 tion of the accused in accordance with all applicable law
15 governing the protection of classified information, and
16 may not divulge such information to any person not au-
17 thorized to receive it.

18 **“§ 949d. Sessions**

19 “(a) SESSIONS WITHOUT PRESENCE OF MEM-
20 BERS.—(1) At any time after the service of charges which
21 have been referred for trial by military commission under
22 this chapter, the military judge may call the military com-
23 mission into session without the presence of the members
24 for the purpose of—

1 “(A) hearing and determining motions raising
2 defenses or objections which are capable of deter-
3 mination without trial of the issues raised by a plea
4 of not guilty;

5 “(B) hearing and ruling upon any matter which
6 may be ruled upon by the military judge under this
7 chapter, whether or not the matter is appropriate for
8 later consideration or decision by the members;

9 “(C) if permitted by regulations prescribed by
10 the Secretary of Defense, receiving the pleas of the
11 accused; and

12 “(D) performing any other procedural function
13 which may be performed by the military judge under
14 this chapter or under rules prescribed pursuant to
15 section 949a of this title and which does not require
16 the presence of the members.

17 “(2) Except as provided in subsections (b), (c), and
18 (d), any proceedings under paragraph (1) shall be con-
19 ducted in the presence of the accused, defense counsel, and
20 trial counsel, and shall be made part of the record.

21 “(b) DELIBERATION OR VOTE OF MEMBERS.—When
22 the members of a military commission under this chapter
23 deliberate or vote, only the members may be present.

1 “(c) CLOSURE OF PROCEEDINGS.—(1) The military
2 judge may close to the public all or part of the proceedings
3 of a military commission under this chapter.

4 “(2) The military judge may close to the public all
5 or a portion of the proceedings under paragraph (1) only
6 upon making a specific finding that such closure is nec-
7 essary to—

8 “(A) protect information the disclosure of which
9 could reasonably be expected to cause damage to the
10 national security, including intelligence or law en-
11 forcement sources, methods, or activities; or

12 “(B) ensure the physical safety of individuals.

13 “(3) A finding under paragraph (2) may be based
14 upon a presentation, including a presentation ex parte or
15 in camera, by either trial counsel or defense counsel.

16 “(d) EXCLUSION OF ACCUSED FROM CERTAIN PRO-
17 CEEDINGS.—The military judge may exclude the accused
18 from any portion of a proceeding upon a determination
19 that, after being warned by the military judge, the accused
20 persists in conduct that justifies exclusion from the court-
21 room—

22 “(1) to ensure the physical safety of individuals;
23 or

24 “(2) to prevent disruption of the proceedings by
25 the accused.

1 **“§ 949e. Continuances**

2 “The military judge in a military commission under
3 this chapter may, for reasonable cause, grant a continu-
4 ance to any party for such time, and as often, as may
5 appear to be just.

6 **“§ 949f. Challenges**

7 “(a) CHALLENGES AUTHORIZED.—The military
8 judge and members of a military commission under this
9 chapter may be challenged by the accused or trial counsel
10 for cause stated to the military commission. The military
11 judge shall determine the relevance and validity of chal-
12 lenges for cause, and may not receive a challenge to more
13 than one person at a time. Challenges by trial counsel
14 shall ordinarily be presented and decided before those by
15 the accused are offered.

16 “(b) PEREMPTORY CHALLENGES.—The accused and
17 trial counsel are each entitled to one peremptory challenge,
18 but the military judge may not be challenged except for
19 cause.

20 “(c) CHALLENGES AGAINST ADDITIONAL MEM-
21 BERS.—Whenever additional members are detailed to a
22 military commission under this chapter, and after any
23 challenges for cause against such additional members are
24 presented and decided, the accused and trial counsel are
25 each entitled to one peremptory challenge against mem-
26 bers not previously subject to peremptory challenge.

1 **“§ 949g. Oaths**

2 “(a) IN GENERAL.—(1) Before performing their re-
3 spective duties in a military commission under this chap-
4 ter, military judges, members, trial counsel, defense coun-
5 sel, reporters, and interpreters shall take an oath to per-
6 form their duties faithfully.

7 “(2) The form of the oath required by paragraph (1),
8 the time and place of the taking thereof, the manner of
9 recording thereof, and whether the oath shall be taken for
10 all cases in which duties are to be performed or for a par-
11 ticular case, shall be as provided in regulations prescribed
12 by the Secretary of Defense. The regulations may provide
13 that—

14 “(A) an oath to perform faithfully duties as a
15 military judge, trial counsel, or defense counsel may
16 be taken at any time by any judge advocate or other
17 person certified to be qualified or competent for the
18 duty; and

19 “(B) if such an oath is taken, such oath need
20 not again be taken at the time the judge advocate
21 or other person is detailed to that duty.

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

24 “(c) OATH DEFINED.—In this section, the term
25 ‘oath’ includes an affirmation.

1 **“§ 949h. Former jeopardy**

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

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

11 **“§ 949i. Pleas of the accused**

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

20 “(b) FINDING OF GUILT AFTER GUILTY PLEA.—
21 With respect to any charge or specification to which a plea
22 of guilty has been made by the accused in a military com-
23 mission under this chapter and accepted by the military
24 judge, a finding of guilty of the charge or specification
25 may be entered immediately without a vote. The finding
26 shall constitute the finding of the military commission un-

1 less the plea of guilty is withdrawn prior to announcement
2 of the sentence, in which event the proceedings shall con-
3 tinue as though the accused had pleaded not guilty.

4 **“§ 949j. Opportunity to obtain witnesses and other**
5 **evidence**

6 “(a) IN GENERAL.—(1) Defense counsel in a military
7 commission under this chapter shall have a reasonable op-
8 portunity to obtain witnesses and other evidence as pro-
9 vided in regulations prescribed by the Secretary of De-
10 fense. The opportunity to obtain witnesses and evidence
11 shall be comparable to the opportunity available to a
12 criminal defendant in a court of the United States under
13 article III of the Constitution.

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

17 “(A) shall be similar to that which courts of the
18 United States having criminal jurisdiction may law-
19 fully issue; and

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

22 “(b) DISCLOSURE OF EXCULPATORY EVIDENCE.—

23 (1) As soon as practicable, trial counsel in a military com-
24 mission under this chapter shall disclose to the defense
25 the existence of any evidence that reasonably tends to—

1 “(A) negate the guilt of the accused of an of-
2 fense charged; or

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

5 “(2) The trial counsel shall, as soon as practicable,
6 disclose to the defense the existence of evidence that rea-
7 sonably tends to impeach the credibility of a witness whom
8 the government intends to call at trial.

9 “(3) The trial counsel shall, as soon as practicable
10 upon a finding of guilt, disclose to the defense the exist-
11 ence of evidence that is not subject to paragraph (1) or
12 paragraph (2) but that reasonably may be viewed as miti-
13 gation evidence at sentencing.

14 “(4) The disclosure obligations under this subsection
15 encompass evidence that is known or reasonably should
16 be known to any government officials who participated in
17 the investigation and prosecution of the case against the
18 defendant.

19 **“§ 949k. Defense of lack of mental responsibility**

20 “(a) AFFIRMATIVE DEFENSE.—It is an affirmative
21 defense in a trial by military commission under this chap-
22 ter that, at the time of the commission of the acts consti-
23 tuting the offense, the accused, as a result of a severe
24 mental disease or defect, was unable to appreciate the na-

1 ture and quality or the wrongfulness of the acts. Mental
2 disease or defect does not otherwise constitute a defense.

3 “(b) BURDEN OF PROOF.—The accused in a military
4 commission under this chapter has the burden of proving
5 the defense of lack of mental responsibility by clear and
6 convincing evidence.

7 “(c) FINDINGS FOLLOWING ASSERTION OF DE-
8 FENSE.—Whenever lack of mental responsibility of the ac-
9 cused with respect to an offense is properly at issue in
10 a military commission under this chapter, the military
11 judge shall instruct the members as to the defense of lack
12 of mental responsibility under this section and shall
13 charge the members to find the accused—

14 “(1) guilty;

15 “(2) not guilty; or

16 “(3) subject to subsection (d), not guilty by rea-
17 son of lack of mental responsibility.

18 “(d) MAJORITY VOTE REQUIRED FOR FINDING.—
19 The accused shall be found not guilty by reason of lack
20 of mental responsibility under subsection (c)(3) only if a
21 majority of the members present at the time the vote is
22 taken determines that the defense of lack of mental re-
23 sponsibility has been established.

1 **“§ 9491. Voting and rulings**

2 “(a) VOTE BY SECRET WRITTEN BALLOT.—Voting
3 by members of a military commission under this chapter
4 on the findings and on the sentence shall be by secret writ-
5 ten ballot.

6 “(b) RULINGS.—(1) The military judge in a military
7 commission under this chapter shall rule upon all ques-
8 tions of law, including the admissibility of evidence and
9 all interlocutory questions arising during the proceedings.

10 “(2) Any ruling made by the military judge upon a
11 question of law or an interlocutory question (other than
12 the factual issue of mental responsibility of the accused)
13 is conclusive and constitutes the ruling of the military
14 commission. However, a military judge may change such
15 a ruling at any time during the trial.

16 “(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote
17 is taken of the findings of a military commission under
18 this chapter, the military judge shall, in the presence of
19 the accused and counsel, instruct the members as to the
20 elements of the offense and charge the members—

21 “(1) that the accused must be presumed to be
22 innocent until the accused’s guilt is established by
23 legal and competent evidence beyond a reasonable
24 doubt;

25 “(2) that in the case being considered, if there
26 is a reasonable doubt as to the guilt of the accused,

1 the doubt must be resolved in favor of the accused
2 and the accused must be acquitted;

3 “(3) that, if there is reasonable doubt as to the
4 degree of guilt, the finding must be in a lower de-
5 gree as to which there is no reasonable doubt; and

6 “(4) that the burden of proof to establish the
7 guilt of the accused beyond a reasonable doubt is
8 upon the United States.

9 **“§ 949m. Number of votes required**

10 “(a) CONVICTION.—No person may be convicted by
11 a military commission under this chapter of any offense,
12 except as provided in section 949i(b) of this title or by
13 concurrence of two-thirds of the members present at the
14 time the vote is taken.

15 “(b) SENTENCES.—(1) Except as provided in para-
16 graphs (2) and (3), sentences shall be determined by a
17 military commission by the concurrence of two-thirds of
18 the members present at the time the vote is taken.

19 “(2) No person may be sentenced to death by a mili-
20 tary commission, except insofar as—

21 “(A) the penalty of death has been expressly
22 authorized under this chapter, chapter 47 of this
23 title, or the law of war for an offense of which the
24 accused has been found guilty;

1 “(B) trial counsel expressly sought the penalty
2 of death by filing an appropriate notice in advance
3 of trial;

4 “(C) the accused was convicted of the offense
5 by the concurrence of all the members present at the
6 time the vote is taken; and

7 “(D) all members present at the time the vote
8 was taken concurred in the sentence of death.

9 “(3) No person may be sentenced to life imprison-
10 ment, or to confinement for more than 10 years, by a mili-
11 tary commission under this chapter except by the concur-
12 rence of three-fourths of the members present at the time
13 the vote is taken.

14 “(c) NUMBER OF MEMBERS REQUIRED FOR PEN-
15 ALTY OF DEATH.—(1) Except as provided in paragraph
16 (2), in a case in which the penalty of death is sought, the
17 number of members of the military commission under this
18 chapter shall be not less than 12 members.

19 “(2) In any case described in paragraph (1) in which
20 12 members are not reasonably available for a military
21 commission because of physical conditions or military ex-
22 igencies, the convening authority shall specify a lesser
23 number of members for the military commission (but not
24 fewer than 9 members), and the military commission may
25 be assembled, and the trial held, with not less than the

1 number of members so specified. In any such case, the
2 convening authority shall make a detailed written state-
3 ment, to be appended to the record, stating why a greater
4 number of members were not reasonably available.

5 **“§ 949n. Military commission to announce action**

6 “A military commission under this chapter shall an-
7 nounce its findings and sentence to the parties as soon
8 as determined.

9 **“§ 949o. Record of trial**

10 “(a) RECORD; AUTHENTICATION.—Each military
11 commission under this chapter shall keep a separate, ver-
12 batim, record of the proceedings in each case brought be-
13 fore it, and the record shall be authenticated by the signa-
14 ture of the military judge. If the record cannot be authen-
15 ticated by the military judge by reason of death, disability,
16 or absence, it shall be authenticated by the signature of
17 the trial counsel or by a member of the commission if the
18 trial counsel is unable to authenticate it by reason of
19 death, disability, or absence. Where appropriate, and as
20 provided in regulations prescribed by the Secretary of De-
21 fense, the record of a military commission under this chap-
22 ter may contain a classified annex.

23 “(b) COMPLETE RECORD REQUIRED.—A complete
24 record of the proceedings and testimony shall be prepared
25 in every military commission under this chapter.

1 order by the military judge shall be provided to the ac-
2 cused.

3 “(c) DECLASSIFICATION.—Trial counsel shall work
4 with the original classification authorities for evidence that
5 may be used at trial to ensure that such evidence is declas-
6 sified to the maximum extent possible, consistent with the
7 requirements of national security. A decision not to declas-
8 sify evidence under this section shall not be subject to re-
9 view by a military commission or upon appeal.

10 “(d) CONSTRUCTION OF PROVISIONS.—The judicial
11 construction of the Classified Information Procedures Act
12 (18 U.S.C. App.) shall be authoritative in the interpreta-
13 tion of this subchapter, except to the extent that such con-
14 struction is inconsistent with the specific requirements of
15 this chapter.

16 **“§ 949p–2. Pretrial conference**

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

21 “(b) CONFERENCE.—Following a motion under sub-
22 section (a), or sua sponte, the military judge shall prompt-
23 ly hold a pretrial conference. Upon request by either party,
24 the court shall hold such conference ex parte to the extent
25 necessary to protect classified information from disclosure,

1 in accordance with the practice of the Federal courts
2 under the Classified Information Procedures Act (18
3 U.S.C. App.).

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

6 “(1) TIMING OF SUBSEQUENT ACTIONS.—At
7 the pretrial conference, the military judge shall es-
8 tablish the timing of—

9 “(A) requests for discovery;

10 “(B) the provision of notice required by
11 section 949p-5 of this title; and

12 “(C) the initiation of the procedure estab-
13 lished by section 949p-6 of this title.

14 “(2) OTHER MATTERS.—At the pretrial con-
15 ference, the military judge may also consider any
16 matter—

17 “(A) which relates to classified informa-
18 tion; or

19 “(B) which may promote a fair and expedi-
20 tious trial.

21 “(d) EFFECT OF ADMISSIONS BY ACCUSED AT PRE-
22 TRIAL CONFERENCE.—No admission made by the accused
23 or by any counsel for the accused at a pretrial conference
24 under this section may be used against the accused unless

1 the admission is in writing and is signed by the accused
2 and by the counsel for the accused.

3 **“§ 949p–3. Protective orders**

4 “Upon motion of the trial counsel, the military judge
5 shall issue an order to protect against the disclosure of
6 any classified information that has been disclosed by the
7 United States to any accused in any military commission
8 under this chapter or that has otherwise been provided
9 to, or obtained by, any such accused in any such military
10 commission.

11 **“§ 949p–4. Discovery of, and access to, classified in-**
12 **formation by the accused**

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

15 “(1) DECLARATIONS BY THE UNITED STATES
16 OF DAMAGE TO NATIONAL SECURITY.—In any case
17 before a military commission in which the United
18 States seeks to delete, withhold, or otherwise obtain
19 other relief with respect to the discovery of or access
20 to any classified information, the trial counsel shall
21 submit a declaration invoking the United States’
22 classified information privilege and setting forth the
23 damage to the national security that the discovery of
24 or access to such information reasonably could be
25 expected to cause. The declaration shall be signed by

1 a knowledgeable United States official possessing
2 authority to classify information.

3 “(2) STANDARD FOR AUTHORIZATION OF DIS-
4 COVERY OR ACCESS.—Upon the submission of a dec-
5 laration under paragraph (1), the military judge
6 may not authorize the discovery of or access to such
7 classified information unless the military judge de-
8 termines that such classified information would be
9 noncumulative, relevant, and helpful to a legally cog-
10 nizable defense, rebuttal of the prosecution’s case, or
11 to sentencing, in accordance with standards gen-
12 erally applicable to discovery of or access to classi-
13 fied information in Federal criminal cases. If the
14 discovery of or access to such classified information
15 is authorized, it shall be addressed in accordance
16 with the requirements of subsection (b).

17 “(b) DISCOVERY OF CLASSIFIED INFORMATION.—

18 “(1) SUBSTITUTIONS AND OTHER RELIEF.—
19 The military judge, in assessing the accused’s dis-
20 covery of or access to classified information under
21 this section, may authorize the United States—

22 “(A) to delete or withhold specified items
23 of classified information;

24 “(B) to substitute a summary for classified
25 information; or

1 “(C) to substitute a statement admitting
2 relevant facts that the classified information or
3 material would tend to prove.

4 “(2) EX PARTE PRESENTATIONS.—The military
5 judge shall permit the trial counsel to make a re-
6 quest for an authorization under paragraph (1) in
7 the form of an ex parte presentation to the extent
8 necessary to protect classified information, in ac-
9 cordance with the practice of the Federal courts
10 under the Classified Information Procedures Act (18
11 U.S.C. App.). If the military judge enters an order
12 granting relief following such an ex parte showing,
13 the entire presentation (including the text of any
14 written submission, verbatim transcript of the ex
15 parte oral conference or hearing, and any exhibits
16 received by the court as part of the ex parte presen-
17 tation) shall be sealed and preserved in the records
18 of the military commission to be made available to
19 the appellate court in the event of an appeal.

20 “(3) ACTION BY MILITARY JUDGE.—The mili-
21 tary judge shall grant the request of the trial coun-
22 sel to substitute a summary or to substitute a state-
23 ment admitting relevant facts, or to provide other
24 relief in accordance with paragraph (1), if the mili-
25 tary judge finds that the summary, statement, or

1 other relief would provide the accused with substan-
2 tially the same ability to make a defense as would
3 discovery of or access to the specific classified infor-
4 mation.

5 “(c) RECONSIDERATION.—An order of a military
6 judge authorizing a request of the trial counsel to sub-
7 stitute, summarize, withhold, or prevent access to classi-
8 fied information under this section is not subject to a mo-
9 tion for reconsideration by the accused, if such order was
10 entered pursuant to an ex parte showing under this sec-
11 tion.

12 **“§ 949p-5. Notice by accused of intention to disclose**
13 **classified information**

14 “(a) NOTICE BY ACCUSED.—

15 “(1) NOTIFICATION OF TRIAL COUNSEL AND
16 MILITARY JUDGE.—If an accused reasonably expects
17 to disclose, or to cause the disclosure of, classified
18 information in any manner in connection with any
19 trial or pretrial proceeding involving the prosecution
20 of such accused, the accused shall, within the time
21 specified by the military judge or, where no time is
22 specified, within 30 days before trial, notify the trial
23 counsel and the military judge in writing. Such no-
24 tice shall include a brief description of the classified
25 information. Whenever the accused learns of addi-

1 tional classified information the accused reasonably
2 expects to disclose, or to cause the disclosure of, at
3 any such proceeding, the accused shall notify trial
4 counsel and the military judge in writing as soon as
5 possible thereafter and shall include a brief descrip-
6 tion of the classified information.

7 “(2) LIMITATION ON DISCLOSURE BY AC-
8 CUSED.—No accused shall disclose, or cause the dis-
9 closure of, any information known or believed to be
10 classified in connection with a trial or pretrial pro-
11 ceeding until—

12 “(A) notice has been given under para-
13 graph (1); and

14 “(B) the United States has been afforded
15 a reasonable opportunity to seek a determina-
16 tion pursuant to the procedure set forth in sec-
17 tion 949p–6 of this title and the time for the
18 United States to appeal such determination
19 under section 950d of this title has expired or
20 any appeal under that section by the United
21 States is decided.

22 “(b) FAILURE TO COMPLY.—If the accused fails to
23 comply with the requirements of subsection (a), the mili-
24 tary judge—

1 “(1) may preclude disclosure of any classified
2 information not made the subject of notification; and

3 “(2) may prohibit the examination by the ac-
4 cused of any witness with respect to any such infor-
5 mation.

6 **“§ 949p-6. Procedure for cases involving classified in-**
7 **formation**

8 “(a) MOTION FOR HEARING.—

9 “(1) REQUEST FOR HEARING.—Within the time
10 specified by the military judge for the filing of a mo-
11 tion under this section, either party may request the
12 military judge to conduct a hearing to make all de-
13 terminations concerning the use, relevance, or ad-
14 missibility of classified information that would other-
15 wise be made during the trial or pretrial proceeding.

16 “(2) CONDUCT OF HEARING.—Upon a request
17 by either party under paragraph (1), the military
18 judge shall conduct such a hearing and shall rule
19 prior to conducting any further proceedings.

20 “(3) IN CAMERA HEARING UPON DECLARATION
21 TO COURT BY APPROPRIATE OFFICIAL OF RISK OF
22 DISCLOSURE OF CLASSIFIED INFORMATION.—Any
23 hearing held pursuant to this subsection (or any por-
24 tion of such hearing specified in the request of a
25 knowledgeable United States official) shall be held in

1 camera if a knowledgeable United States official pos-
2 sessing authority to classify information submits to
3 the military judge a declaration that a public pro-
4 ceeding may result in the disclosure of classified in-
5 formation. Classified information is not subject to
6 disclosure under this section unless the information
7 is relevant and necessary to an element of the of-
8 fense or a legally cognizable defense and is otherwise
9 admissible in evidence.

10 “(4) MILITARY JUDGE TO MAKE DETERMINA-
11 TIONS IN WRITING.—As to each item of classified in-
12 formation, the military judge shall set forth in writ-
13 ing the basis for the determination.

14 “(b) NOTICE AND USE OF CLASSIFIED INFORMATION
15 BY THE GOVERNMENT.—

16 “(1) NOTICE TO ACCUSED.—Before any hearing
17 is conducted pursuant to a request by the trial coun-
18 sel under subsection (a), trial counsel shall provide
19 the accused with notice of the classified information
20 that is at issue. Such notice shall identify the spe-
21 cific classified information at issue whenever that in-
22 formation previously has been made available to the
23 accused by the United States. When the United
24 States has not previously made the information
25 available to the accused in connection with the case

1 the information may be described by generic cat-
2 egory, in such forms as the military judge may ap-
3 prove, rather than by identification of the specific in-
4 formation of concern to the United States.

5 “(2) ORDER BY MILITARY JUDGE UPON RE-
6 QUEST OF ACCUSED.—Whenever the trial counsel re-
7 quests a hearing under subsection (a), the military
8 judge, upon request of the accused, may order the
9 trial counsel to provide the accused, prior to trial,
10 such details as to the portion of the charge or speci-
11 fication at issue in the hearing as are needed to give
12 the accused fair notice to prepare for the hearing.

13 “(c) SUBSTITUTIONS.—

14 “(1) IN CAMERA PRETRIAL HEARING.—Upon
15 request of the trial counsel pursuant to the Military
16 Commission Rules of Evidence, and in accordance
17 with the security procedures established by the mili-
18 tary judge, the military judge shall conduct a classi-
19 fied in camera pretrial hearing concerning the ad-
20 missibility of classified information.

21 “(2) PROTECTION OF SOURCES, METHODS, AND
22 ACTIVITIES BY WHICH EVIDENCE ACQUIRED.—When
23 trial counsel seeks to introduce evidence before a
24 military commission under this chapter and the Ex-
25 ecutive branch has classified the sources, methods,

1 or activities by which the United States acquired the
2 evidence, the military judge shall permit trial coun-
3 sel to introduce the evidence, including a substituted
4 evidentiary foundation pursuant to the procedures
5 described in subsection (d), while protecting from
6 disclosure information identifying those sources,
7 methods, or activities, if—

8 “(A) the evidence is otherwise admissible;
9 and

10 “(B) the military judge finds that—

11 “(i) the evidence is reliable; and

12 “(ii) the redaction is consistent with
13 affording the accused a fair trial.

14 “(d) ALTERNATIVE PROCEDURE FOR DISCLOSURE
15 OF CLASSIFIED INFORMATION.—

16 “(1) MOTION BY THE UNITED STATES.—Upon
17 any determination by the military judge authorizing
18 the disclosure of specific classified information under
19 the procedures established by this section, the trial
20 counsel may move that, in lieu of the disclosure of
21 such specific classified information, the military
22 judge order—

23 “(A) the substitution for such classified in-
24 formation of a statement admitting relevant

1 facts that the specific classified information
2 would tend to prove;

3 “(B) the substitution for such classified in-
4 formation of a summary of the specific classi-
5 fied information; or

6 “(C) any other procedure or redaction lim-
7 iting the disclosure of specific classified infor-
8 mation.

9 “(2) ACTION ON MOTION.—The military judge
10 shall grant such a motion of the trial counsel if the
11 military judge finds that the statement, summary, or
12 other procedure or redaction will provide the defend-
13 ant with substantially the same ability to make his
14 defense as would disclosure of the specific classified
15 information.

16 “(3) HEARING ON MOTION.—The military judge
17 shall hold a hearing on any motion under this sub-
18 section. Any such hearing shall be held in camera at
19 the request of a knowledgeable United States official
20 possessing authority to classify information.

21 “(4) SUBMISSION OF STATEMENT OF DAMAGE
22 TO NATIONAL SECURITY IF DISCLOSURE OR-
23 DERED.—The trial counsel may, in connection with
24 a motion under paragraph (1), submit to the mili-
25 tary judge a declaration signed by a knowledgeable

1 United States official possessing authority to classify
2 information certifying that disclosure of classified in-
3 formation would cause identifiable damage to the
4 national security of the United States and explaining
5 the basis for the classification of such information.
6 If so requested by the trial counsel, the military
7 judge shall examine such declaration during an ex
8 parte presentation.

9 “(e) SEALING OF RECORDS OF IN CAMERA HEAR-
10 INGS.—If at the close of an in camera hearing under this
11 section (or any portion of a hearing under this section that
12 is held in camera), the military judge determines that the
13 classified information at issue may not be disclosed or elic-
14 ited at the trial or pretrial proceeding, the record of such
15 in camera hearing shall be sealed and preserved for use
16 in the event of an appeal. The accused may seek reconsid-
17 eration of the military judge’s determination prior to or
18 during trial.

19 “(f) PROHIBITION ON DISCLOSURE OF CLASSIFIED
20 INFORMATION BY THE ACCUSED; RELIEF FOR ACCUSED
21 WHEN THE UNITED STATES OPPOSES DISCLOSURE.—

22 “(1) ORDER TO PREVENT DISCLOSURE BY AC-
23 CUSED.—Whenever the military judge denies a mo-
24 tion by the trial counsel that the judge issue an
25 order under subsection (a), (c), or (d) and the trial

1 counsel files with the military judge a declaration
2 signed by a knowledgeable United States official
3 possessing authority to classify information objecting
4 to disclosure of the classified information at issue,
5 the military judge shall order that the accused not
6 disclose or cause the disclosure of such information.

7 “(2) RESULT OF ORDER UNDER PARAGRAPH
8 (1).—Whenever an accused is prevented by an order
9 under paragraph (1) from disclosing or causing the
10 disclosure of classified information, the military
11 judge shall dismiss the case, except that, when the
12 military judge determines that the interests of jus-
13 tice would not be served by dismissal of the case, the
14 military judge shall order such other action, in lieu
15 of dismissing the charge or specification, as the mili-
16 tary judge determines is appropriate. Such action
17 may include, but need not be limited to, the fol-
18 lowing:

19 “(A) Dismissing specified charges or speci-
20 fications.

21 “(B) Finding against the United States on
22 any issue as to which the excluded classified in-
23 formation relates.

24 “(C) Striking or precluding all or part of
25 the testimony of a witness.

1 “(3) TIME FOR THE UNITED STATES TO SEEK
2 INTERLOCUTORY APPEAL.—An order under para-
3 graph (2) shall not take effect until the military
4 judge has afforded the United States—

5 “(A) an opportunity to appeal such order
6 under section 950d of this title; and

7 “(B) an opportunity thereafter to withdraw
8 its objection to the disclosure of the classified
9 information at issue.

10 “(g) RECIPROCITY.—

11 “(1) DISCLOSURE OF REBUTTAL INFORMA-
12 TION.—Whenever the military judge determines that
13 classified information may be disclosed in connection
14 with a trial or pretrial proceeding, the military judge
15 shall, unless the interests of fairness do not so re-
16 quire, order the United States to provide the ac-
17 cused with the information it expects to use to rebut
18 the classified information. The military judge may
19 place the United States under a continuing duty to
20 disclose such rebuttal information.

21 “(2) SANCTION FOR FAILURE TO COMPLY.—If
22 the United States fails to comply with its obligation
23 under this subsection, the military judge—

24 “(A) may exclude any evidence not made
25 the subject of a required disclosure; and

1 “(B) may prohibit the examination by the
2 United States of any witness with respect to
3 such information.

4 **“§ 949p-7. Introduction of classified information into**
5 **evidence**

6 “(a) PRESERVATION OF CLASSIFICATION STATUS.—
7 Writings, recordings, and photographs containing classi-
8 fied information may be admitted into evidence in pro-
9 ceedings of military commissions under this chapter with-
10 out change in their classification status.

11 “(b) PRECAUTIONS BY MILITARY JUDGES.—

12 “(1) PRECAUTIONS IN ADMITTING CLASSIFIED
13 INFORMATION INTO EVIDENCE.—The military judge
14 in a trial by military commission, in order to prevent
15 unnecessary disclosure of classified information, may
16 order admission into evidence of only part of a writ-
17 ing, recording, or photograph, or may order admis-
18 sion into evidence of the whole writing, recording, or
19 photograph with excision of some or all of the classi-
20 fied information contained therein, unless the whole
21 ought in fairness be considered.

22 “(2) CLASSIFIED INFORMATION KEPT UNDER
23 SEAL.—The military judge shall allow classified in-
24 formation offered or accepted into evidence to re-
25 main under seal during the trial, even if such evi-

1 dence is disclosed in the military commission, and
2 may, upon motion by the United States, seal exhibits
3 containing classified information for any period after
4 trial as necessary to prevent a disclosure of classified
5 information when a knowledgeable United States of-
6 ficial possessing authority to classify information
7 submits to the military judge a declaration setting
8 forth the damage to the national security that the
9 disclosure of such information reasonably could be
10 expected to cause.

11 “(c) TAKING OF TESTIMONY.—

12 “(1) OBJECTION BY TRIAL COUNSEL.—During
13 the examination of a witness, trial counsel may ob-
14 ject to any question or line of inquiry that may re-
15 quire the witness to disclose classified information
16 not previously found to be admissible.

17 “(2) ACTION BY MILITARY JUDGE.—Following
18 an objection under paragraph (1), the military judge
19 shall take such suitable action to determine whether
20 the response is admissible as will safeguard against
21 the compromise of any classified information. Such
22 action may include requiring trial counsel to provide
23 the military judge with a proffer of the witness’ re-
24 sponse to the question or line of inquiry and requir-
25 ing the accused to provide the military judge with a

1 proffer of the nature of the information sought to be
2 elicited by the accused. Upon request, the military
3 judge may accept an ex parte proffer by trial counsel
4 to the extent necessary to protect classified informa-
5 tion from disclosure, in accordance with the practice
6 of the Federal courts under the Classified Informa-
7 tion Procedures Act (18 U.S.C. App.).

8 “(d) DISCLOSURE AT TRIAL OF CERTAIN STATE-
9 MENTS PREVIOUSLY MADE BY A WITNESS.—

10 “(1) MOTION FOR PRODUCTION OF STATE-
11 MENTS IN POSSESSION OF THE UNITED STATES.—

12 After a witness called by the trial counsel has testi-
13 fied on direct examination, the military judge, on
14 motion of the accused, may order production of
15 statements of the witness in the possession of the
16 United States which relate to the subject matter as
17 to which the witness has testified. This paragraph
18 does not preclude discovery or assertion of a privi-
19 lege otherwise authorized.

20 “(2) INVOCATION OF PRIVILEGE BY THE
21 UNITED STATES.—If the United States invokes a
22 privilege, the trial counsel may provide the prior
23 statements of the witness to the military judge dur-
24 ing an ex parte presentation to the extent necessary
25 to protect classified information from disclosure, in

1 accordance with the practice of the Federal courts
2 under the Classified Information Procedures Act (18
3 U.S.C. App.).

4 “(3) ACTION BY MILITARY JUDGE ON MO-
5 TION.—If the military judge finds that disclosure of
6 any portion of the statement identified by the
7 United States as classified would be detrimental to
8 the national security in the degree to warrant classi-
9 fication under the applicable Executive Order, stat-
10 ute, or regulation, that such portion of the state-
11 ment is consistent with the testimony of the witness,
12 and that the disclosure of such portion is not nec-
13 essary to afford the accused a fair trial, the military
14 judge shall excise that portion from the statement.
15 If the military judge finds that such portion of the
16 statement is inconsistent with the testimony of the
17 witness or that its disclosure is necessary to afford
18 the accused a fair trial, the military judge, shall,
19 upon the request of the trial counsel, review alter-
20 natives to disclosure in accordance with section
21 949p–6(d) of this title.

22 “SUBCHAPTER VI—SENTENCES

“Sec.

“949s. Cruel or unusual punishments prohibited.

“949t. Maximum limits.

“949u. Execution of confinement.

1 **“§ 949s. Cruel or unusual punishments prohibited**

2 “Punishment by flogging, or by branding, marking,
3 or tattooing on the body, or any other cruel or unusual
4 punishment, may not be adjudged by a military commis-
5 sion under this chapter or inflicted under this chapter
6 upon any person subject to this chapter. The use of irons,
7 single or double, except for the purpose of safe custody,
8 is prohibited under this chapter.

9 **“§ 949t. Maximum limits**

10 “The punishment which a military commission under
11 this chapter may direct for an offense may not exceed such
12 limits as the President or Secretary of Defense may pre-
13 scribe for that offense.

14 **“§ 949u. Execution of confinement**

15 “(a) IN GENERAL.—Under such regulations as the
16 Secretary of Defense may prescribe, a sentence of confine-
17 ment adjudged by a military commission under this chap-
18 ter may be carried into execution by confinement—

19 “(1) in any place of confinement under the con-
20 trol of any of the armed forces; or

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

24 “(b) TREATMENT DURING CONFINEMENT BY OTHER
25 THAN THE ARMED FORCES.—Persons confined under
26 subsection (a)(2) in a penal or correctional institution not

1 under the control of an armed force are subject to the
2 same discipline and treatment as persons confined or com-
3 mitted by the courts of the United States or of the State,
4 District of Columbia, or place in which the institution is
5 situated.

6 “SUBCHAPTER VII—POST-TRIAL PROCEDURE
7 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.

“950h. Appellate counsel.

“950i. Execution of sentence; suspension of sentence.

“950j. Finality of proceedings, findings, and sentences.

8 **“§ 950a. Error of law; lesser included offense**

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

13 “(b) LESSER INCLUDED OFFENSE.—Any reviewing
14 authority with the power to approve or affirm a finding
15 of guilty by a military commission under this chapter may
16 approve or affirm, instead, so much of the finding as in-
17 cludes a lesser included offense.

1 **“§ 950b. Review by the convening authority**

2 “(a) NOTICE TO CONVENING AUTHORITY OF FIND-
3 INGS AND SENTENCE.—The findings and sentence of a
4 military commission under this chapter shall be reported
5 in writing promptly to the convening authority after the
6 announcement of the sentence.

7 “(b) SUBMITTAL OF MATTERS BY ACCUSED TO CON-
8 VENING AUTHORITY.—(1) The accused may submit to the
9 convening authority matters for consideration by the con-
10 vening authority with respect to the findings and the sen-
11 tence of the military commission under this chapter.

12 “(2)(A) Except as provided in subparagraph (B), a
13 submittal under paragraph (1) shall be made in writing
14 within 20 days after the accused has been give an authen-
15 ticated record of trial under section 949o(c) of this title.

16 “(B) If the accused shows that additional time is re-
17 quired for the accused to make a submittal under para-
18 graph (1), the convening authority may, for good cause,
19 extend the applicable period under subparagraph (A) for
20 not more than an additional 20 days.

21 “(3) The accused may waive the accused’s right to
22 make a submittal to the convening authority under para-
23 graph (1). Such a waiver shall be made in writing, and
24 may not be revoked. For the purposes of subsection (c)(2),
25 the time within which the accused may make a submittal
26 under this subsection shall be deemed to have expired

1 upon the submittal of a waiver under this paragraph to
2 the convening authority.

3 “(c) ACTION BY CONVENING AUTHORITY.—(1) The
4 authority under this subsection to modify the findings and
5 sentence of a military commission under this chapter is
6 a matter of the sole discretion and prerogative of the con-
7 vening authority.

8 “(2) The convening authority is not required to take
9 action on the findings of a military commission under this
10 chapter. If the convening authority takes action on the
11 findings, the convening authority may, in the sole discre-
12 tion of the convening authority, only—

13 “(A) dismiss any charge or specification by set-
14 ting aside a finding of guilty thereto; or

15 “(B) change a finding of guilty to a charge to
16 a finding of guilty to an offense that is a lesser in-
17 cluded offense of the offense stated in the charge.

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

20 “(B) Subject to regulations prescribed by the Sec-
21 retary of Defense, action under this paragraph may be
22 taken only after consideration of any matters submitted
23 by the accused under subsection (b) or after the time for
24 submitting such matters expires, whichever is earlier.

1 “(C) In taking action under this paragraph, the con-
2 vening authority may, in the sole discretion of the con-
3 vening authority, approve, disapprove, commute, or sus-
4 pend the sentence in whole or in part. The convening au-
5 thority may not increase a sentence beyond that which is
6 found by the military commission.

7 “(4) The convening authority shall serve on the ac-
8 cused or on defense counsel notice of any action taken by
9 the convening authority under this subsection.

10 “(d) ORDER OF REVISION OR REHEARING.—(1) Sub-
11 ject to paragraphs (2) and (3), the convening authority
12 of a military commission under this chapter may, in the
13 sole discretion of the convening authority, order a pro-
14 ceeding in revision or a rehearing.

15 “(2)(A) Except as provided in subparagraph (B), a
16 proceeding in revision may be ordered by the convening
17 authority if—

18 “(i) there is an apparent error or omission in
19 the record; or

20 “(ii) the record shows improper or inconsistent
21 action by the military commission with respect to
22 the findings or sentence that can be rectified without
23 material prejudice to the substantial rights of the
24 accused.

25 “(B) In no case may a proceeding in revision—

1 in which the final decision of a military commission under
2 this chapter (as approved by the convening authority) in-
3 cludes a finding of guilty, the convening authority shall
4 refer the case to the United States Court of Military Com-
5 mission Review. Any such referral shall be made in accord-
6 ance with procedures prescribed under regulations of the
7 Secretary.

8 “(b) WAIVER OF RIGHT OF REVIEW.—(1) Except in
9 a case in which the sentence as approved under section
10 950b of this title extends to death, an accused may file
11 with the convening authority a statement expressly
12 waiving the right of the accused to appellate review by
13 the United States Court of Military Commission Review
14 under section 950f of this title of the final decision of the
15 military commission under this chapter.

16 “(2) A waiver under paragraph (1) shall be signed
17 by both the accused and a defense counsel.

18 “(3) A waiver under paragraph (1) must be filed, if
19 at all, within 10 days after notice of the action is served
20 on the accused or on defense counsel under section
21 950b(c)(4) of this title. The convening authority, for good
22 cause, may extend the period for such filing by not more
23 than 30 days.

24 “(c) WITHDRAWAL OF APPEAL.—Except in a case in
25 which the sentence as approved under section 950b of this

1 title extends to death, the accused may withdraw an ap-
2 peal at any time.

3 “(d) EFFECT OF WAIVER OR WITHDRAWAL.—A
4 waiver of the right to appellate review or the withdrawal
5 of an appeal under this section bars review under section
6 950f of this title.

7 **“§ 950d. Interlocutory appeals by the United States**

8 “(a) INTERLOCUTORY APPEAL.—Except as provided
9 in subsection (b), in a trial by military commission under
10 this chapter, the United States may take an interlocutory
11 appeal to the United States Court of Military Commission
12 Review of any order or ruling of the military judge—

13 “(1) that terminates proceedings of the military
14 commission with respect to a charge or specification;

15 “(2) that excludes evidence that is substantial
16 proof of a fact material in the proceeding;

17 “(3) that relates to a matter under subsection
18 (c) or (d) of section 949d of this title; or

19 “(4) that, with respect to classified informa-
20 tion—

21 “(A) authorizes the disclosure of such in-
22 formation;

23 “(B) imposes sanctions for nondisclosure
24 of such information; or

1 “(C) refuses a protective order sought by
2 the United States to prevent the disclosure of
3 such information.

4 “(b) LIMITATION.—The United States may not ap-
5 peal under subsection (a) an order or ruling that is, or
6 amounts to, a finding of not guilty by the military commis-
7 sion with respect to a charge or specification.

8 “(c) SCOPE OF APPEAL RIGHT WITH RESPECT TO
9 CLASSIFIED INFORMATION.—The United States has the
10 right to appeal under paragraph (4) of subsection (a)
11 whenever the military judge enters an order or ruling that
12 would require the disclosure of classified information,
13 without regard to whether the order or ruling appealed
14 from was entered under this chapter, another provision of
15 law, a rule, or otherwise. Any such appeal may embrace
16 any preceding order, ruling, or reasoning constituting the
17 basis of the order or ruling that would authorize such dis-
18 closure.

19 “(d) TIMING AND ACTION ON INTERLOCUTORY AP-
20 PEALS RELATING TO CLASSIFIED INFORMATION.—

21 “(1) APPEAL TO BE EXPEDITED.—An appeal
22 taken pursuant to paragraph (4) of subsection (a)
23 shall be expedited by the United States Court of
24 Military Commission Review.

1 “(2) APPEALS BEFORE TRIAL.—If such an ap-
2 peal is taken before trial, the appeal shall be taken
3 within 10 days after the order or ruling from which
4 the appeal is made and the trial shall not commence
5 until the appeal is decided.

6 “(3) APPEALS DURING TRIAL.—If such an ap-
7 peal is taken during trial, the military judge shall
8 adjourn the trial until the appeal is decided, and the
9 court of appeals—

10 “(A) shall hear argument on such appeal
11 within 4 days of the adjournment of the trial
12 (excluding weekends and holidays);

13 “(B) may dispense with written briefs
14 other than the supporting materials previously
15 submitted to the military judge;

16 “(C) shall render its decision within four
17 days of argument on appeal (excluding week-
18 ends and holidays); and

19 “(D) may dispense with the issuance of a
20 written opinion in rendering its decision.

21 “(e) NOTICE AND TIMING OF OTHER APPEALS.—
22 The United States shall take an appeal of an order or rul-
23 ing under subsection (a), other than an appeal under para-
24 graph (4) of that subsection, by filing a notice of appeal

1 with the military judge within 5 days after the date of
2 the order or ruling.

3 “(f) METHOD OF APPEAL.—An appeal under this
4 section shall be forwarded, by means specified in regula-
5 tions prescribed by the Secretary of Defense, directly to
6 the United States Court of Military Commission Review.

7 “(g) APPEALS COURT TO ACT ONLY WITH RESPECT
8 TO MATTER OF LAW.—In ruling on an appeal under para-
9 graph (1), (2), or (3) of subsection (a), the appeals court
10 may act only with respect to matters of law.

11 “(h) SUBSEQUENT APPEAL RIGHTS OF ACCUSED
12 NOT AFFECTED.—An appeal under paragraph (4) of sub-
13 section (a), and a decision on such appeal, shall not affect
14 the right of the accused, in a subsequent appeal from a
15 judgment of conviction, to claim as error reversal by the
16 military judge on remand of a ruling appealed from during
17 trial.

18 **“§ 950e. Rehearings**

19 “(a) COMPOSITION OF MILITARY COMMISSION FOR
20 REHEARING.—Each rehearing under this chapter shall
21 take place before a military commission under this chapter
22 composed of members who were not members of the mili-
23 tary commission which first heard the case.

24 “(b) SCOPE OF REHEARING.—(1) Upon a rehear-
25 ing—

1 posed of not less than three appellate military judges. For
2 the purpose of reviewing decisions of military commissions
3 under this chapter, the Court may sit in panels or as a
4 whole, in accordance with rules prescribed by the Sec-
5 retary of Defense.

6 “(b) JUDGES.—(1) Judges on the Court shall be as-
7 signed or appointed in a manner consistent with the provi-
8 sions of this subsection.

9 “(2) The Secretary of Defense may assign persons
10 who are appellate military judges to be judges on the
11 Court. Any judge so assigned shall be a commissioned offi-
12 cer of the armed forces, and shall meet the qualifications
13 for military judges prescribed by section 948j(b) of this
14 title.

15 “(3) The President may appoint, by and with the ad-
16 vice and consent of the Senate, additional judges to the
17 United States Court of Military Commission Review.

18 “(4) No person may serve as a judge on the Court
19 in any case in which that person acted as a military judge,
20 counsel, or reviewing official.

21 “(c) CASES TO BE REVIEWED.—The Court shall, in
22 accordance with procedures prescribed under regulations
23 of the Secretary, review the record in each case that is
24 referred to the Court by the convening authority under

1 section 950c of this title with respect to any matter prop-
2 erly raised by the accused.

3 “(d) STANDARD AND SCOPE OF REVIEW.—In a case
4 reviewed by the Court under this section, the Court may
5 act only with respect to the findings and sentence as ap-
6 proved by the convening authority. The Court may affirm
7 only such findings of guilty, and the sentence or such part
8 or amount of the sentence, as the Court finds correct in
9 law and fact and determines, on the basis of the entire
10 record, should be approved. In considering the record, the
11 Court may weigh the evidence, judge the credibility of wit-
12 nesses, and determine controverted questions of fact, rec-
13 ognizing that the military commission saw and heard the
14 witnesses.

15 “(e) REHEARINGS.—If the Court sets aside the find-
16 ings or sentence, the Court may, except where the setting
17 aside is based on lack of sufficient evidence in the record
18 to support the findings, order a rehearing. If the Court
19 sets aside the findings or sentence and does not order a
20 rehearing, the Court shall order that the charges be dis-
21 missed.

1 **“§ 950g. Review by United States Court of Appeals for**
2 **the District of Columbia Circuit; writ of**
3 **certiorari to Supreme Court**

4 “(a) EXCLUSIVE APPELLATE JURISDICTION.—Ex-
5 cept as provided in subsection (b), the United States Court
6 of Appeals for the District of Columbia Circuit shall have
7 exclusive jurisdiction to determine the validity of a final
8 judgment rendered by a military commission (as approved
9 by the convening authority and, where applicable, the
10 United States Court of Military Commission Review)
11 under this chapter.

12 “(b) EXHAUSTION OF OTHER APPEALS.—The
13 United States Court of Appeals for the District of Colum-
14 bia Circuit may not review a final judgment described in
15 subsection (a) until all other appeals under this chapter
16 have been waived or exhausted.

17 “(c) TIME FOR SEEKING REVIEW.—A petition for re-
18 view by the United States Court of Appeals for the Dis-
19 trict of Columbia Circuit must be filed by the accused in
20 the Court of Appeals not later than 20 days after the date
21 on which—

22 “(1) written notice of the final decision of the
23 United States Court of Military Commission Review
24 is served on the accused or on defense counsel; or

25 “(2) the accused submits, in the form pre-
26 scribed by section 950c of this title, a written notice

1 waiving the right of the accused to review by the
2 United States Court of Military Commission Review.

3 “(d) SCOPE AND NATURE OF REVIEW.—The United
4 States Court of Appeals for the District of Columbia Cir-
5 cuit may act under this section only with respect to the
6 findings and sentence as approved by the convening au-
7 thority and as affirmed or set aside as incorrect in law
8 by the United States Court of Military Commission Re-
9 view, and shall take action only with respect to matters
10 of law, including the sufficiency of the evidence to support
11 the verdict.

12 “(e) REVIEW BY SUPREME COURT.—The Supreme
13 Court may review by writ of certiorari pursuant to section
14 1254 of title 28 the final judgment of the United States
15 Court of Appeals for the District of Columbia Circuit
16 under this section.

17 **“§ 950h. Appellate counsel**

18 “(a) APPOINTMENT.—The Secretary of Defense
19 shall, by regulation, establish procedures for the appoint-
20 ment of appellate counsel for the United States and for
21 the accused in military commissions under this chapter.
22 Appellate counsel shall meet the qualifications of counsel
23 for appearing before military commissions under this
24 chapter.

1 “(b) REPRESENTATION OF UNITED STATES.—Appel-
2 late counsel appointed under subsection (a)—

3 “(1) shall represent the United States in any
4 appeal or review proceeding under this chapter be-
5 fore the United States Court of Military Commission
6 Review; and

7 “(2) may, when requested to do so by the At-
8 torney General in a case arising under this chapter,
9 represent the United States before the United States
10 Court of Appeals for the District of Columbia Cir-
11 cuit or the Supreme Court.

12 “(c) REPRESENTATION OF ACCUSED.—The accused
13 shall be represented by appellate counsel appointed under
14 subsection (a) before the United States Court of Military
15 Commission Review, the United States Court of Appeals
16 for the District of Columbia Circuit, and the Supreme
17 Court, and by civilian counsel if retained by the accused.
18 Any such civilian counsel shall meet the qualifications
19 under paragraph (3) of section 949c(b) of this title for
20 civilian counsel appearing before military commissions
21 under this chapter and shall be subject to the require-
22 ments of paragraph (7) of that section.

23 **“§ 950i. Execution of sentence; suspension of sentence**

24 “(a) IN GENERAL.—The Secretary of Defense is au-
25 thorized to carry out a sentence imposed by a military

1 commission under this chapter in accordance with such
2 procedures as the Secretary may prescribe.

3 “(b) EXECUTION OF SENTENCE OF DEATH ONLY
4 UPON APPROVAL BY THE PRESIDENT.—If the sentence
5 of a military commission under this chapter extends to
6 death, that part of the sentence providing for death may
7 not be executed until approved by the President. In such
8 a case, the President may commute, remit, or suspend the
9 sentence, or any part thereof, as he sees fit.

10 “(c) EXECUTION OF SENTENCE OF DEATH ONLY
11 UPON FINAL JUDGMENT OF LEGALITY OF PRO-
12 CEEDINGS.—(1) If the sentence of a military commission
13 under this chapter extends to death, the sentence may not
14 be executed until there is a final judgment as to the legal-
15 ity of the proceedings (and with respect to death, approval
16 under subsection (b)).

17 “(2) A judgment as to legality of proceedings is final
18 for purposes of paragraph (1) when review is completed
19 in accordance with the judgment of the United States
20 Court of Military Commission Review and—

21 “(A) the time for the accused to file a petition
22 for review by the United States Court of Appeals for
23 the District of Columbia Circuit has expired, the ac-
24 cused has not filed a timely petition for such review,

1 and the case is not otherwise under review by the
2 Court of Appeals; or

3 “(B) review is completed in accordance with the
4 judgment of the United States Court of Appeals for
5 the District of Columbia Circuit and—

6 “(i) a petition for a writ of certiorari is not
7 timely filed;

8 “(ii) such a petition is denied by the Su-
9 preme Court; or

10 “(iii) review is otherwise completed in ac-
11 cordance with the judgment of the Supreme
12 Court.

13 “(d) SUSPENSION OF SENTENCE.—The Secretary of
14 the Defense, or the convening authority acting on the case
15 (if other than the Secretary), may suspend the execution
16 of any sentence or part thereof in the case, except a sen-
17 tence of death.

18 **“§ 950j. Finality of proceedings, findings, and sen-
19 tences**

20 “The appellate review of records of trial provided by
21 this chapter, and the proceedings, findings, and sentences
22 of military commissions as approved, reviewed, or affirmed
23 as required by this chapter, are final and conclusive. Or-
24 ders publishing the proceedings of military commissions
25 under this chapter are binding upon all departments,

1 courts, agencies, and officers of the United States, subject
2 only to action by the Secretary or the convening authority
3 as provided in section 950i(c) of this title and the author-
4 ity of the President.

5 “SUBCHAPTER VIII—PUNITIVE MATTERS

“Sec.

“950p. Definitions; construction of certain offenses; common circumstances.

“950q. Principals.

“950r. Accessory after the fact.

“950s. Conviction of lesser offenses.

“950t. Crimes triable by military commission.

6 “§ 950p. **Definitions; construction of certain offenses;**
7 **common circumstances**

8 “(a) DEFINITIONS.—In this subchapter:

9 “(1) The term ‘military objective’ means com-
10 batants and those objects during hostilities which, by
11 their nature, location, purpose, or use, effectively
12 contribute to the war-fighting or war-sustaining ca-
13 pability of an opposing force and whose total or par-
14 tial destruction, capture, or neutralization would
15 constitute a definite military advantage to the
16 attacker under the circumstances at the time of an
17 attack.

18 “(2) The term ‘protected person’ means any
19 person entitled to protection under one or more of
20 the Geneva Conventions, including civilians not tak-
21 ing an active part in hostilities, military personnel

1 placed out of combat by sickness, wounds, or deten-
2 tion, and military medical or religious personnel.

3 “(3) The term ‘protected property’ means any
4 property specifically protected by the law of war, in-
5 cluding buildings dedicated to religion, education,
6 art, science, or charitable purposes, historic monu-
7 ments, hospitals, and places where the sick and
8 wounded are collected, but only if and to the extent
9 such property is not being used for military purposes
10 or is not otherwise a military objective. The term in-
11 cludes objects properly identified by one of the dis-
12 tinctive emblems of the Geneva Conventions, but
13 does not include civilian property that is a military
14 objective.

15 “(b) CONSTRUCTION OF CERTAIN OFFENSES.—The
16 intent required for offenses under paragraphs (1), (2), (3),
17 (4), and (12) of section 950t of this title precludes the
18 applicability of such offenses with regard to collateral
19 damage or to death, damage, or injury incident to a lawful
20 attack.

21 “(c) COMMON CIRCUMSTANCES.—An offense speci-
22 fied in this subchapter is triable by military commission
23 under this chapter only if the offense is committed in the
24 context of and associated with hostilities.

1 “(d) EFFECT.—The provisions of this subchapter
2 codify offenses that have traditionally been triable by mili-
3 tary commission. This chapter does not establish new
4 crimes that did not exist before the date of the enactment
5 of this subchapter, as amended by the National Defense
6 Authorization Act for Fiscal Year 2010, but rather codi-
7 fies those crimes for trial by military commission. Because
8 the provisions of this subchapter codify offenses that have
9 traditionally been triable under the law of war or otherwise
10 triable by military commission, this subchapter does not
11 preclude trial for offenses that occurred before the date
12 of the enactment of this subchapter, as so amended.

13 **“§ 950q. Principals**

14 “Any person punishable under this chapter who—

15 “(1) commits an offense punishable by this
16 chapter, or aids, abets, counsels, commands, or pro-
17 cures its commission;

18 “(2) causes an act to be done which if directly
19 performed by him would be punishable by this chap-
20 ter; or

21 “(3) is a superior commander who, with regard
22 to acts punishable by this chapter, knew, had reason
23 to know, or should have known, that a subordinate
24 was about to commit such acts or had done so and
25 who failed to take the necessary and reasonable

1 measures to prevent such acts or to punish the per-
2 petrators thereof,
3 is a principal.

4 **“§ 950r. Accessory after the fact**

5 “Any person subject to this chapter who, knowing
6 that an offense punishable by this chapter has been com-
7 mitted, receives, comforts, or assists the offender in order
8 to hinder or prevent his apprehension, trial, or punishment
9 shall be punished as a military commission under this
10 chapter may direct.

11 **“§ 950s. Conviction of lesser offenses**

12 “An accused may be found guilty of an offense nec-
13 essarily included in the offense charged or of an attempt
14 to commit either the offense charged or an attempt to
15 commit either the offense charged or an offense nec-
16 essarily included therein.

17 **“§ 950t. Crimes triable by military commission**

18 “The following offenses shall be triable by military
19 commission under this chapter at any time without limita-
20 tion:

21 “(1) MURDER OF PROTECTED PERSONS.—Any
22 person subject to this chapter who intentionally kills
23 one or more protected persons shall be punished by
24 death or such other punishment as a military com-
25 mission under this chapter may direct.

1 “(2) ATTACKING CIVILIANS.—Any person sub-
2 ject to this chapter who intentionally engages in an
3 attack upon a civilian population as such, or indi-
4 vidual civilians not taking active part in hostilities,
5 shall be punished, if death results to one or more of
6 the victims, by death or such other punishment as
7 a military commission under this chapter may direct,
8 and, if death does not result to any of the victims,
9 by such punishment, other than death, as a military
10 commission under this chapter may direct.

11 “(3) ATTACKING CIVILIAN OBJECTS.—Any per-
12 son subject to this chapter who intentionally engages
13 in an attack upon a civilian object that is not a mili-
14 tary objective shall be punished as a military com-
15 mission under this chapter may direct.

16 “(4) ATTACKING PROTECTED PROPERTY.—Any
17 person subject to this chapter who intentionally en-
18 gages in an attack upon protected property shall be
19 punished as a military commission under this chap-
20 ter may direct.

21 “(5) PILLAGING.—Any person subject to this
22 chapter who intentionally and in the absence of mili-
23 tary necessity appropriates or seizes property for
24 private or personal use, without the consent of a
25 person with authority to permit such appropriation

1 or seizure, shall be punished as a military commis-
2 sion under this chapter may direct.

3 “(6) DENYING QUARTER.—Any person subject
4 to this chapter who, with effective command or con-
5 trol over subordinate groups, declares, orders, or
6 otherwise indicates to those groups that there shall
7 be no survivors or surrender accepted, with the in-
8 tent to threaten an adversary or to conduct hos-
9 tilities such that there would be no survivors or sur-
10 render accepted, shall be punished as a military
11 commission under this chapter may direct.

12 “(7) TAKING HOSTAGES.—Any person subject
13 to this chapter who, having knowingly seized or de-
14 tained one or more persons, threatens to kill, injure,
15 or continue to detain such person or persons with
16 the intent of compelling any nation, person other
17 than the hostage, or group of persons to act or re-
18 frain from acting as an explicit or implicit condition
19 for the safety or release of such person or persons,
20 shall be punished, if death results to one or more of
21 the victims, by death or such other punishment as
22 a military commission under this chapter may direct,
23 and, if death does not result to any of the victims,
24 by such punishment, other than death, as a military
25 commission under this chapter may direct.

1 “(8) EMPLOYING POISON OR SIMILAR WEAP-
2 ONS.—Any person subject to this chapter who inten-
3 tionally, as a method of warfare, employs a sub-
4 stance or weapon that releases a substance that
5 causes death or serious and lasting damage to health
6 in the ordinary course of events, through its asphyx-
7 iating, bacteriological, or toxic properties, shall be
8 punished, if death results to one or more of the vic-
9 tims, by death or such other punishment as a mili-
10 tary commission under this chapter may direct, and,
11 if death does not result to any of the victims, by
12 such punishment, other than death, as a military
13 commission under this chapter may direct.

14 “(9) USING PROTECTED PERSONS AS A
15 SHIELD.—Any person subject to this chapter who
16 positions, or otherwise takes advantage of, a pro-
17 tected person with the intent to shield a military ob-
18 jective from attack. or to shield, favor, or impede
19 military operations, shall be punished, if death re-
20 sults to one or more of the victims, by death or such
21 other punishment as a military commission under
22 this chapter may direct, and, if death does not result
23 to any of the victims, by such punishment, other
24 than death, as a military commission under this
25 chapter may direct.

1 “(10) USING PROTECTED PROPERTY AS A
2 SHIELD.—Any person subject to this chapter who
3 positions, or otherwise takes advantage of the loca-
4 tion of, protected property with the intent to shield
5 a military objective from attack, or to shield, favor,
6 or impede military operations, shall be punished as
7 a military commission under this chapter may direct.

8 “(11) TORTURE.—

9 “(A) OFFENSE.—Any person subject to
10 this chapter who commits an act specifically in-
11 tended to inflict severe physical or mental pain
12 or suffering (other than pain or suffering inci-
13 dental to lawful sanctions) upon another person
14 within his custody or physical control for the
15 purpose of obtaining information or a confes-
16 sion, punishment, intimidation, coercion, or any
17 reason based on discrimination of any kind,
18 shall be punished, if death results to one or
19 more of the victims, by death or such other
20 punishment as a military commission under this
21 chapter may direct, and, if death does not re-
22 sult to any of the victims, by such punishment,
23 other than death, as a military commission
24 under this chapter may direct.

1 “(B) SEVERE MENTAL PAIN OR SUF-
2 FERING DEFINED.—In this paragraph, the term
3 ‘severe mental pain or suffering’ has the mean-
4 ing given that term in section 2340(2) of title
5 18.

6 “(12) CRUEL OR INHUMAN TREATMENT.—Any
7 person subject to this chapter who subjects another
8 person in their custody or under their physical con-
9 trol, regardless of nationality or physical location, to
10 cruel or inhuman treatment that constitutes a grave
11 breach of common Article 3 of the Geneva Conven-
12 tions shall be punished, if death results to the vic-
13 tim, by death or such other punishment as a mili-
14 tary commission under this chapter may direct, and,
15 if death does not result to the victim, by such pun-
16 ishment, other than death, as a military commission
17 under this chapter may direct.

18 “(13) INTENTIONALLY CAUSING SERIOUS BOD-
19 ILY INJURY.—

20 “(A) OFFENSE.—Any person subject to
21 this chapter who intentionally causes serious
22 bodily injury to one or more persons, including
23 privileged belligerents, in violation of the law of
24 war shall be punished, if death results to one or
25 more of the victims, by death or such other

1 punishment as a military commission under this
2 chapter may direct, and, if death does not re-
3 sult to any of the victims, by such punishment,
4 other than death, as a military commission
5 under this chapter may direct.

6 “(B) SERIOUS BODILY INJURY DEFINED.—
7 In this paragraph, the term ‘serious bodily in-
8 jury’ means bodily injury which involves—

9 “(i) a substantial risk of death;

10 “(ii) extreme physical pain;

11 “(iii) protracted and obvious dis-
12 figurement; or

13 “(iv) protracted loss or impairment of
14 the function of a bodily member, organ, or
15 mental faculty.

16 “(14) MUTILATING OR MAIMING.—Any person
17 subject to this chapter who intentionally injures one
18 or more protected persons by disfiguring the person
19 or persons by any mutilation of the person or per-
20 sons, or by permanently disabling any member, limb,
21 or organ of the body of the person or persons, with-
22 out any legitimate medical or dental purpose, shall
23 be punished, if death results to one or more of the
24 victims, by death or such other punishment as a
25 military commission under this chapter may direct,

1 and, if death does not result to any of the victims,
2 by such punishment, other than death, as a military
3 commission under this chapter may direct.

4 “(15) MURDER IN VIOLATION OF THE LAW OF
5 WAR.—Any person subject to this chapter who inten-
6 tionally kills one or more persons, including privi-
7 leged belligerents, in violation of the law of war shall
8 be punished by death or such other punishment as
9 a military commission under this chapter may direct.

10 “(16) DESTRUCTION OF PROPERTY IN VIOLA-
11 TION OF THE LAW OF WAR.—Any person subject to
12 this chapter who intentionally destroys property be-
13 longing to another person in violation of the law of
14 war shall punished as a military commission under
15 this chapter may direct.

16 “(17) USING TREACHERY OR PERFIDY.—Any
17 person subject to this chapter who, after inviting the
18 confidence or belief of one or more persons that they
19 were entitled to, or obliged to accord, protection
20 under the law of war, intentionally makes use of
21 that confidence or belief in killing, injuring, or cap-
22 turing such person or persons shall be punished, if
23 death results to one or more of the victims, by death
24 or such other punishment as a military commission
25 under this chapter may direct, and, if death does not

1 result to any of the victims, by such punishment,
2 other than death, as a military commission under
3 this chapter may direct.

4 “(18) IMPROPERLY USING A FLAG OF TRUCE.—
5 Any person subject to this chapter who uses a flag
6 of truce to feign an intention to negotiate, sur-
7 render, or otherwise suspend hostilities when there is
8 no such intention shall be punished as a military
9 commission under this chapter may direct.

10 “(19) IMPROPERLY USING A DISTINCTIVE EM-
11 BLEM.—Any person subject to this chapter who in-
12 tentiously uses a distinctive emblem recognized by
13 the law of war for combatant purposes in a manner
14 prohibited by the law of war shall be punished as a
15 military commission under this chapter may direct.

16 “(20) INTENTIONALLY MISTREATING A DEAD
17 BODY.—Any person subject to this chapter who in-
18 tentiously mistreats the body of a dead person,
19 without justification by legitimate military necessary,
20 shall be punished as a military commission under
21 this chapter may direct.

22 “(21) RAPE.—Any person subject to this chap-
23 ter who forcibly or with coercion or threat of force
24 wrongfully invades the body of a person by pene-
25 trating, however slightly, the anal or genital opening

1 of the victim with any part of the body of the ac-
2 cused, or with any foreign object, shall be punished
3 as a military commission under this chapter may di-
4 rect.

5 “(22) SEXUAL ASSAULT OR ABUSE.—Any per-
6 son subject to this chapter who forcibly or with coer-
7 cion or threat of force engages in sexual contact
8 with one or more persons, or causes one or more
9 persons to engage in sexual contact, shall be pun-
10 ished as a military commission under this chapter
11 may direct

12 “(23) HIJACKING OR HAZARDING A VESSEL OR
13 AIRCRAFT.—Any person subject to this chapter who
14 intentionally seizes, exercises unauthorized control
15 over, or endangers the safe navigation of a vessel or
16 aircraft that is not a legitimate military objective
17 shall be punished, if death results to one or more of
18 the victims, by death or such other punishment as
19 a military commission under this chapter may direct,
20 and, if death does not result to any of the victims,
21 by such punishment, other than death, as a military
22 commission under this chapter may direct.

23 “(24) TERRORISM.—Any person subject to this
24 chapter who intentionally kills or inflicts great bodily
25 harm on one or more protected persons, or inten-

1 tionally engages in an act that evinces a wanton dis-
2 regard for human life, in a manner calculated to in-
3 fluence or affect the conduct of government or civil-
4 ian population by intimidation or coercion, or to re-
5 taliate against government conduct, shall be pun-
6 ished, if death results to one or more of the victims,
7 by death or such other punishment as a military
8 commission under this chapter may direct, and, if
9 death does not result to any of the victims, by such
10 punishment, other than death, as a military commis-
11 sion under this chapter may direct.

12 “(25) PROVIDING MATERIAL SUPPORT FOR
13 TERRORISM.—

14 “(A) OFFENSE.—Any person subject to
15 this chapter who provides material support or
16 resources, knowing or intending that they are to
17 be used in preparation for, or in carrying out,
18 an act of terrorism (as set forth in paragraph
19 (24) of this section), or who intentionally pro-
20 vides material support or resources to an inter-
21 national terrorist organization engaged in hos-
22 tilities against the United States, knowing that
23 such organization has engaged or engages in
24 terrorism (as so set forth), shall be punished as

1 a military commission under this chapter may
2 direct.

3 “(B) MATERIAL SUPPORT OR RESOURCES
4 DEFINED.—In this paragraph, the term ‘mate-
5 rial support or resources’ has the meaning
6 given that term in section 2339A(b) of title 18.

7 “(26) WRONGFULLY AIDING THE ENEMY.—Any
8 person subject to this chapter who, in breach of an
9 allegiance or duty to the United States, knowingly
10 and intentionally aids an enemy of the United
11 States, or one of the co-belligerents of the enemy,
12 shall be punished as a military commission under
13 this chapter may direct.

14 “(27) SPYING.—Any person subject to this
15 chapter who, in violation of the law of war and with
16 intent or reason to believe that it is to be used to
17 the injury of the United States or to the advantage
18 of a foreign power, collects or attempts to collect in-
19 formation by clandestine means or while acting
20 under false pretenses, for the purpose of conveying
21 such information to an enemy of the United States,
22 or one of the co-belligerents of the enemy, shall be
23 punished by death or such other punishment as a
24 military commission under this chapter may direct.

25 “(28) ATTEMPTS.—

1 “(A) IN GENERAL.—Any person subject to
2 this chapter who attempts to commit any of-
3 fense punishable by this chapter shall be pun-
4 ished as a military commission under this chap-
5 ter may direct.

6 “(B) SCOPE OF OFFENSE.—An act, done
7 with specific intent to commit an offense under
8 this chapter, amounting to more than mere
9 preparation and tending, even though failing, to
10 effect its commission, is an attempt to commit
11 that offense.

12 “(C) EFFECT OF CONSUMMATION.—Any
13 person subject to this chapter may be convicted
14 of an attempt to commit an offense although it
15 appears on the trial that the offense was con-
16 summated.

17 “(29) CONSPIRACY.—Any person subject to this
18 chapter who conspires to commit one or more sub-
19 stantive offenses triable by military commission
20 under this subchapter, and who knowingly does any
21 overt act to effect the object of the conspiracy, shall
22 be punished, if death results to one or more of the
23 victims, by death or such other punishment as a
24 military commission under this chapter may direct,
25 and, if death does not result to any of the victims,

1 by such punishment, other than death, as a military
2 commission under this chapter may direct.

3 “(30) SOLICITATION.—Any person subject to
4 this chapter who solicits or advises another or others
5 to commit one or more substantive offenses triable
6 by military commission under this chapter shall, if
7 the offense solicited or advised is attempted or com-
8 mitted, be punished with the punishment provided
9 for the commission of the offense, but, if the offense
10 solicited or advised is not committed or attempted,
11 shall be punished as a military commission under
12 this chapter may direct.

13 “(31) CONTEMPT.—A military commission
14 under this chapter may punish for contempt any
15 person who uses any menacing word, sign, or ges-
16 ture in its presence, or who disturbs its proceedings
17 by any riot or disorder.

18 “(32) PERJURY AND OBSTRUCTION OF JUS-
19 TICE.—A military commission under this chapter
20 may try offenses and impose such punishment as the
21 military commission may direct for perjury, false
22 testimony, or obstruction of justice related to the
23 military commission.”.

24 **SEC. 1803. CONFORMING AMENDMENTS.**

25 (a) UNIFORM CODE OF MILITARY JUSTICE.—

1 (1) PERSONS SUBJECT TO UCMJ.—Paragraph
2 (13) of section 802(a) of title 10, United States
3 Code (article 2(a) of the Uniform Code of Military
4 Justice), is amended to read as follows:

5 “(13) Individuals belonging to one of the eight
6 categories enumerated in Article 4 of the Convention
7 Relative to the Treatment of Prisoners of War, done
8 at Geneva August 12, 1949 (6 UST 3316), who vio-
9 late the law of war.”.

10 (2) CONSTRUCTION OF MILITARY COMMISSIONS
11 WITH COURTS-MARTIAL.—Section 839 of such title
12 (article 39 of the Uniform Code of Military Justice)
13 is amended by adding at the end the following new
14 subsection:

15 “(d) The findings, holdings, interpretations, and
16 other precedents of military commissions under chapter
17 47A of this title—

18 “(1) may not be introduced or considered in
19 any hearing, trial, or other proceeding of a court-
20 martial under this chapter; and

21 “(2) may not form the basis of any holding, de-
22 cision, or other determination of a court-martial.”.

23 (b) APPELLATE REVIEW UNDER DETAINEE TREAT-
24 MENT ACT OF 2005.—Section 1005(e) of the Detainee
25 Treatment Act of 2005 (title X of Public Law 109–359;

1 10 U.S.C. 801 note) is amended by striking paragraph
2 (3).

3 **SEC. 1804. PROCEEDINGS UNDER PRIOR STATUTE.**

4 (a) **PRIOR CONVICTIONS.**—The amendment made by
5 section 1802 shall have no effect on the validity of any
6 conviction pursuant to chapter 47A of title 10, United
7 States Code (as such chapter was in effect on the day be-
8 fore the date of the enactment of this Act).

9 (b) **COMPOSITION OF MILITARY COMMISSIONS.**—Not-
10 withstanding the amendment made by section 1802—

11 (1) any commission convened pursuant to chap-
12 ter 47A of title 10, United States Code (as such
13 chapter was in effect on the day before the date of
14 the enactment of this Act), shall be deemed to have
15 been convened pursuant to chapter 47A of title 10,
16 United States Code (as amended by section 1802);

17 (2) any member of the Armed Forces detailed
18 to serve on a commission pursuant to chapter 47A
19 of title 10, United States Code (as in effect on the
20 day before the date of the enactment of this Act),
21 shall be deemed to have been detailed pursuant to
22 chapter 47A of title 10, United States Code (as so
23 amended);

24 (3) any military judge detailed to a commission
25 pursuant to chapter 47A of title 10, United States

1 Code (as in effect on the day before the date of the
2 enactment of this Act), shall be deemed to have been
3 detailed pursuant to chapter 47A of title 10, United
4 States Code (as so amended);

5 (4) any trial counsel or defense counsel detailed
6 for a commission pursuant to chapter 47A of title
7 10, United States Code (as in effect on the day be-
8 fore the date of the enactment of this Act), shall be
9 deemed to have been detailed pursuant to chapter
10 47A of title 10, United States Code (as so amend-
11 ed);

12 (5) any court reporters detailed to or employed
13 by a commission pursuant to chapter 47A of title
14 10, United States Code (as in effect on the day be-
15 fore the date of the enactment of this Act), shall be
16 deemed to have been detailed or employed pursuant
17 to chapter 47A of title 10, United States Code (as
18 so amended); and

19 (6) any appellate military judge or other duly
20 appointed appellate judge on the Court of Military
21 Commission Review pursuant to chapter 47A of title
22 10, United States Code (as in effect on the day be-
23 fore the date of the enactment of this Act), shall be
24 deemed to have been detailed or appointed to the
25 United States Court of Military Commission Review

1 pursuant to chapter 47A of title 10, United States
2 Code (as so amended).

3 (c) CHARGES AND SPECIFICATIONS.—Notwith-
4 standing the amendment made by section 1802—

5 (1) any charges or specifications sworn or re-
6 ferred pursuant to chapter 47A of title 10, United
7 States Code (as such chapter was in effect on the
8 day before the date of the enactment of this Act),
9 shall be deemed to have been sworn or referred pur-
10 suant to chapter 47A of title 10, United States Code
11 (as amended by section 1802); and

12 (2) any charges or specifications described in
13 paragraph (1) may be amended, without prejudice,
14 as needed to properly allege jurisdiction under chap-
15 ter 47A of title 10, United States Code (as so
16 amended), and crimes triable under such chapter.

17 (d) PROCEDURES AND REQUIREMENTS.—

18 (1) IN GENERAL.—Except as provided in sub-
19 sections (a) through (c) and subject to paragraph
20 (2), any commission convened pursuant to chapter
21 47A of title 10, United States Code (as such chapter
22 was in effect on the day before the date of the enact-
23 ment of this Act), shall be conducted after the date
24 of the enactment of this Act in accordance with the
25 procedures and requirements of chapter 47A of title

1 10, United States Code (as amended by section
2 1802).

3 (2) TEMPORARY CONTINUATION OF PRIOR PRO-
4 CEDURES AND REQUIREMENTS.—Any military com-
5 mission described in paragraph (1) may be con-
6 ducted in accordance with any procedures and re-
7 quirements of chapter 47A of title 10, United States
8 Code (as in effect on the day before the date of the
9 enactment of this Act), that are not inconsistent
10 with the provisions of chapter 47A of title 10,
11 United States Code, (as so amended), until the ear-
12 lier of—

13 (A) the date of the submittal to Congress
14 under section 1805 of the revised rules for mili-
15 tary commissions under chapter 47A of title 10,
16 United States Code (as so amended); or

17 (B) the date that is 90 days after the date
18 of the enactment of this Act.

19 **SEC. 1805. SUBMITTAL TO CONGRESS OF REVISED RULES**
20 **FOR MILITARY COMMISSIONS.**

21 (a) DEADLINE FOR SUBMITTAL.—Not later than 90
22 days after the date of the enactment of this Act, the Sec-
23 retary of Defense shall submit to the Committees on
24 Armed Services of the Senate and the House of Represent-
25 atives the revised rules for military commissions pre-

1 scribed by the Secretary for purposes of chapter 47A of
2 title 10, United States Code (as amended by section
3 1802).

4 (b) TREATMENT OF REVISED RULES UNDER RE-
5 QUIREMENT FOR NOTICE AND WAIT REGARDING MODI-
6 FICATION OF RULES.—The revised rules submitted to
7 Congress under subsection (a) shall not be treated as a
8 modification of the rules in effect for military commissions
9 for purposes of section 949a(d) of title 10, United States
10 Code (as so amended).

11 **SEC. 1806. ANNUAL REPORTS TO CONGRESS ON TRIALS BY**
12 **MILITARY COMMISSION.**

13 (a) ANNUAL REPORTS REQUIRED.—Not later than
14 January 31 of each year, the Secretary of Defense shall
15 submit to the Committees on Armed Services of the Sen-
16 ate and the House of Representatives a report on any
17 trials conducted by military commissions under chapter
18 47A of title 10, United States Code (as amended by sec-
19 tion 1802), during the preceding year.

20 (b) FORM.—Each report under this section shall be
21 submitted in unclassified form, but may include a classi-
22 fied annex.

23 **SEC. 1807. SENSE OF CONGRESS ON MILITARY COMMISSION**
24 **SYSTEM.**

25 It is the sense of Congress that—

1 (1) the fairness and effectiveness of the military
2 commissions system under chapter 47A of title 10,
3 United States Code (as amended by section 1802),
4 will depend to a significant degree on the adequacy
5 of defense counsel and associated resources for indi-
6 viduals accused, particularly in the case of capital
7 cases, under such chapter 47A; and

8 (2) defense counsel in military commission
9 cases, particularly in capital cases, under such chap-
10 ter 47A of title 10, United States Code (as so
11 amended), should be fully resourced as provided in
12 such chapter 47A.

13 **TITLE XIX—FEDERAL EMPLOYEE** 14 **BENEFITS**

Subtitle A—General Provisions

- Sec. 1901. Credit for unused sick leave.
- Sec. 1902. Limited expansion of the class of individuals eligible to receive an actuarially reduced annuity under the Civil Service Retirement System.
- Sec. 1903. Computation of certain annuities based on part-time service.
- Sec. 1904. Authority to deposit refunds under FERS.
- Sec. 1905. Retirement credit for service of certain employees transferred from District of Columbia service to Federal service.

Subtitle B—Non-Foreign Area Retirement Equity Assurance

- Sec. 1911. Short title.
- Sec. 1912. Extension of locality pay.
- Sec. 1913. Adjustment of special rates.
- Sec. 1914. Transition schedule for locality-based comparability payments.
- Sec. 1915. Savings provision.
- Sec. 1916. Application to other eligible employees.
- Sec. 1917. Election of additional basic pay for annuity computation by employees.
- Sec. 1918. Regulations.
- Sec. 1919. Effective dates.