

1 [Signed by the President on October 17, 2006]
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3

4 **S.3930**

5 **Military Commissions Act of 2006 (Enrolled as Agreed to or Passed by**
6 **Both House and Senate)**
7

8 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

9 (a) Short Title- This Act may be cited as the 'Military Commissions Act
10 of 2006'.

11 (b) Table of Contents- The table of contents for this Act is as follows:

12 Sec. 1. Short title; table of contents.

13 Sec. 2. Construction of Presidential authority to establish
14 military commissions.

15 Sec. 3. Military commissions.

16 Sec. 4. Amendments to Uniform Code of Military Justice.

17 Sec. 5. Treaty obligations not establishing grounds for certain
18 claims.

19 Sec. 6. Implementation of treaty obligations.

20 Sec. 7. Habeas corpus matters.

21 Sec. 8. Revisions to Detainee Treatment Act of 2005 relating to
22 protection of certain United States Government personnel.

23 Sec. 9. Review of judgments of military commissions.

24 Sec. 10. Detention covered by review of decisions of Combatant
25 Status Review Tribunals of propriety of detention.

26 **SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO**
27 **ESTABLISH MILITARY COMMISSIONS.**

28 The authority to establish military commissions under chapter 47A of
29 title 10, United States Code, as added by section 3(a), may not be
30 construed to alter or limit the authority of the President under the
31 Constitution of the United States and laws of the United States to
32 establish military commissions for areas declared to be under martial
33 law or in occupied territories should circumstances so require.

34 **SEC. 3. MILITARY COMMISSIONS.**

35 (a) Military Commissions-

36 (1) IN GENERAL- Subtitle A of title 10, United States Code, is
37 amended by inserting after chapter 47 the following new
38 chapter:

39 **CHAPTER 47A--MILITARY COMMISSIONS**

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1 SUBCHAPTER I--GENERAL PROVISIONS

- 2 Sec.
- 3 948a. Definitions.
- 4 948b. Military commissions generally.
- 5 948c. Persons subject to military commissions.
- 6 948d. Jurisdiction of military commissions.
- 7 948e. Annual report to congressional committees.

8 **Sec. 948a. Definitions**

9 In this chapter:

- 10 (1) UNLAWFUL ENEMY COMBATANT- (A) The term `unlawful
- 11 enemy combatant' means--
- 12 (i) a person who has engaged in hostilities or who has
- 13 purposefully and materially supported hostilities against
- 14 the United States or its co-belligerents who is not a lawful
- 15 enemy combatant (including a person who is part of the
- 16 Taliban, al Qaeda, or associated forces); or
- 17 (ii) a person who, before, on, or after the date of the
- 18 enactment of the Military Commissions Act of 2006, has
- 19 been determined to be an unlawful enemy combatant by
- 20 a Combatant Status Review Tribunal or another
- 21 competent tribunal established under the authority of the
- 22 President or the Secretary of Defense.
- 23 (B) CO-BELLIGERENT- In this paragraph, the term `co-
- 24 belligerent', with respect to the United States, means any State
- 25 or armed force joining and directly engaged with the United
- 26 States in hostilities or directly supporting hostilities against a
- 27 common enemy.
- 28 (2) LAWFUL ENEMY COMBATANT- The term `lawful enemy
- 29 combatant' means a person who is--
- 30 (A) a member of the regular forces of a State party
- 31 engaged in hostilities against the United States;
- 32 (B) a member of a militia, volunteer corps, or organized
- 33 resistance movement belonging to a State party engaged
- 34 in such hostilities, which are under responsible command,
- 35 wear a fixed distinctive sign recognizable at a distance,
- 36 carry their arms openly, and abide by the law of war; or
- 37 (C) a member of a regular armed force who professes
- 38 allegiance to a government engaged in such hostilities,
- 39 but not recognized by the United States.
- 40 (3) ALIEN- The term `alien' means a person who is not a citizen
- 41 of the United States.
- 42 (4) CLASSIFIED INFORMATION- The term `classified
- 43 information' means the following:
- 44 (A) Any information or material that has been determined
- 45 by the United States Government pursuant to statute,

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1 Executive order, or regulation to require protection
2 against unauthorized disclosure for reasons of national
3 security.
4 (B) Any restricted data, as that term is defined in section
5 11 y. of the Atomic Energy Act of 1954 (42 U.S.C.
6 2014(y)).
7 (5) GENEVA CONVENTIONS- The term `Geneva Conventions'
8 means the international conventions signed at Geneva on
9 August 12, 1949.

10 **Sec. 948b. Military commissions generally**

11 (a) Purpose- This chapter establishes procedures governing the use of
12 military commissions to try alien unlawful enemy combatants engaged
13 in hostilities against the United States for violations of the law of war
14 and other offenses triable by military commission.
15 (b) Authority for Military Commissions Under This Chapter- The
16 President is authorized to establish military commissions under this
17 chapter for offenses triable by military commission as provided in this
18 chapter.
19 (c) Construction of Provisions- The procedures for military
20 commissions set forth in this chapter are based upon the procedures
21 for trial by general courts-martial under chapter 47 of this title (the
22 Uniform Code of Military Justice). Chapter 47 of this title does not, by
23 its terms, apply to trial by military commission except as specifically
24 provided in this chapter. The judicial construction and application of
25 that chapter are not binding on military commissions established under
26 this chapter.
27 (d) Inapplicability of Certain Provisions- (1) The following provisions of
28 this title shall not apply to trial by military commission under this
29 chapter:
30 (A) Section 810 (article 10 of the Uniform Code of Military
31 Justice), relating to speedy trial, including any rule of courts-
32 martial relating to speedy trial.
33 (B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of
34 the Uniform Code of Military Justice), relating to compulsory
35 self-incrimination.
36 (C) Section 832 (article 32 of the Uniform Code of Military
37 Justice), relating to pretrial investigation.
38 (2) Other provisions of chapter 47 of this title shall apply to trial by
39 military commission under this chapter only to the extent provided by
40 this chapter.
41 (e) Treatment of Rulings and Precedents- The findings, holdings,
42 interpretations, and other precedents of military commissions under
43 this chapter may not be introduced or considered in any hearing, trial,
44 or other proceeding of a court-martial convened under chapter 47 of
45 this title. The findings, holdings, interpretations, and other precedents
46 of military commissions under this chapter may not form the basis of

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1 any holding, decision, or other determination of a court-martial
2 convened under that chapter.

3 (f) Status of Commissions Under Common Article 3- A military
4 commission established under this chapter is a regularly constituted
5 court, affording all the necessary `judicial guarantees which are
6 recognized as indispensable by civilized peoples' for purposes of
7 common Article 3 of the Geneva Conventions.

8 (g) Geneva Conventions Not Establishing Source of Rights- No alien
9 unlawful enemy combatant subject to trial by military commission
10 under this chapter may invoke the Geneva Conventions as a source of
11 rights.

12 **Sec. 948c. Persons subject to military commissions**

13 Any alien unlawful enemy combatant is subject to trial by military
14 commission under this chapter.

15 **Sec. 948d. Jurisdiction of military commissions**

16 (a) Jurisdiction- A military commission under this chapter shall have
17 jurisdiction to try any offense made punishable by this chapter or the
18 law of war when committed by an alien unlawful enemy combatant
19 before, on, or after September 11, 2001.

20 (b) Lawful Enemy Combatants- Military commissions under this
21 chapter shall not have jurisdiction over lawful enemy combatants.
22 Lawful enemy combatants who violate the law of war are subject to
23 chapter 47 of this title. Courts-martial established under that chapter
24 shall have jurisdiction to try a lawful enemy combatant for any offense
25 made punishable under this chapter.

26 (c) Determination of Unlawful Enemy Combatant Status Dispositive- A
27 finding, whether before, on, or after the date of the enactment of the
28 Military Commissions Act of 2006, by a Combatant Status Review
29 Tribunal or another competent tribunal established under the authority
30 of the President or the Secretary of Defense that a person is an
31 unlawful enemy combatant is dispositive for purposes of jurisdiction
32 for trial by military commission under this chapter.

33 (d) Punishments- A military commission under this chapter may, under
34 such limitations as the Secretary of Defense may prescribe, adjudge
35 any punishment not forbidden by this chapter, including the penalty of
36 death when authorized under this chapter or the law of war.

37 **Sec. 948e. Annual report to congressional committees**

38 (a) Annual Report Required- Not later than December 31 each year,
39 the Secretary of Defense shall submit to the Committees on Armed
40 Services of the Senate and the House of Representatives a report on
41 any trials conducted by military commissions under this chapter during
42 such year.

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1 (b) Form- Each report under this section shall be submitted in
2 unclassified form, but may include a classified annex.

3 **SUBCHAPTER II--COMPOSITION OF MILITARY COMMISSIONS**

4 Sec.
5 948h. Who may convene military commissions.
6 948i. Who may serve on military commissions.
7 948j. Military judge of a military commission.
8 948k. Detail of trial counsel and defense counsel.
9 948l. Detail or employment of reporters and interpreters.
10 948m. Number of members; excuse of members; absent and
11 additional members.

12 **Sec. 948h. Who may convene military commissions**

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

16 **Sec. 948i. Who may serve on military commissions**

17 (a) In General- Any commissioned officer of the armed forces on active
18 duty is eligible to serve on a military commission under this chapter.
19 (b) Detail of Members- When convening a military commission under
20 this chapter, the convening authority shall detail as members of the
21 commission such members of the armed forces eligible under
22 subsection (a), as in the opinion of the convening authority, are best
23 qualified for the duty by reason of age, education, training,
24 experience, length of service, and judicial temperament. No member
25 of an armed force is eligible to serve as a member of a military
26 commission when such member is the accuser or a witness for the
27 prosecution or has acted as an investigator or counsel in the same
28 case.
29 (c) Excuse of Members- Before a military commission under this
30 chapter is assembled for the trial of a case, the convening authority
31 may excuse a member from participating in the case.

32 **Sec. 948j. Military judge of a military commission**

33 (a) Detail of Military Judge- A military judge shall be detailed to each
34 military commission under this chapter. The Secretary of Defense shall
35 prescribe regulations providing for the manner in which military judges
36 are so detailed to military commissions. The military judge shall
37 preside over each military commission to which he has been detailed.
38 (b) Qualifications- A military judge shall be a commissioned officer of
39 the armed forces who is a member of the bar of a Federal court, or a
40 member of the bar of the highest court of a State, and who is certified

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1 to be qualified for duty under section 826 of this title (article 26 of the
2 Uniform Code of Military Justice) as a military judge in general courts-
3 martial by the Judge Advocate General of the armed force of which
4 such military judge is a member.

5 (c) Ineligibility of Certain Individuals- No person is eligible to act as
6 military judge in a case of a military commission under this chapter if
7 he is the accuser or a witness or has acted as investigator or a counsel
8 in the same case.

9 (d) Consultation With Members; Ineligibility To Vote- A military judge
10 detailed to a military commission under this chapter may not consult
11 with the members of the commission except in the presence of the
12 accused (except as otherwise provided in section 949d of this title),
13 trial counsel, and defense counsel, nor may he vote with the members
14 of the commission.

15 (e) Other Duties- A commissioned officer who is certified to be
16 qualified for duty as a military judge of a military commission under
17 this chapter may perform such other duties as are assigned to him by
18 or with the approval of the Judge Advocate General of the armed force
19 of which such officer is a member or the designee of such Judge
20 Advocate General.

21 (f) Prohibition on Evaluation of Fitness by Convening Authority- The
22 convening authority of a military commission under this chapter shall
23 not prepare or review any report concerning the effectiveness, fitness,
24 or efficiency of a military judge detailed to the military commission
25 which relates to his performance of duty as a military judge on the
26 military commission.

27 **Sec. 948k. Detail of trial counsel and defense counsel**

28 (a) Detail of Counsel Generally- (1) Trial counsel and military defense
29 counsel shall be detailed for each military commission under this
30 chapter.

31 (2) Assistant trial counsel and assistant and associate defense counsel
32 may be detailed for a military commission under this chapter.

33 (3) Military defense counsel for a military commission under this
34 chapter shall be detailed as soon as practicable after the swearing of
35 charges against the accused.

36 (4) The Secretary of Defense shall prescribe regulations providing for
37 the manner in which trial counsel and military defense counsel are
38 detailed for military commissions under this chapter and for the
39 persons who are authorized to detail such counsel for such
40 commissions.

41 (b) Trial Counsel- Subject to subsection (e), trial counsel detailed for a
42 military commission under this chapter must be--

43 (1) a judge advocate (as that term is defined in section 801 of
44 this title (article 1 of the Uniform Code of Military Justice) who--

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1 (A) is a graduate of an accredited law school or is a
2 member of the bar of a Federal court or of the highest
3 court of a State; and

4 (B) is certified as competent to perform duties as trial
5 counsel before general courts-martial by the Judge
6 Advocate General of the armed force of which he is a
7 member; or

8 (2) a civilian who--

9 (A) is a member of the bar of a Federal court or of the
10 highest court of a State; and

11 (B) is otherwise qualified to practice before the military
12 commission pursuant to regulations prescribed by the
13 Secretary of Defense.

14 (c) Military Defense Counsel- Subject to subsection (e), military
15 defense counsel detailed for a military commission under this chapter
16 must be a judge advocate (as so defined) who is--

17 (1) a graduate of an accredited law school or is a member of the
18 bar of a Federal court or of the highest court of a State; and

19 (2) certified as competent to perform duties as defense counsel
20 before general courts-martial by the Judge Advocate General of
21 the armed force of which he is a member.

22 (d) Chief Prosecutor; Chief Defense Counsel- (1) The Chief Prosecutor
23 in a military commission under this chapter shall meet the
24 requirements set forth in subsection (b)(1).

25 (2) The Chief Defense Counsel in a military commission under this
26 chapter shall meet the requirements set forth in subsection (c)(1).

27 (e) Ineligibility of Certain Individuals- No person who has acted as an
28 investigator, military judge, or member of a military commission under
29 this chapter in any case may act later as trial counsel or military
30 defense counsel in the same case. No person who has acted for the
31 prosecution before a military commission under this chapter may act
32 later in the same case for the defense, nor may any person who has
33 acted for the defense before a military commission under this chapter
34 act later in the same case for the prosecution.

35 **Sec. 948I. Detail or employment of reporters and interpreters**

36 (a) Court Reporters- Under such regulations as the Secretary of
37 Defense may prescribe, the convening authority of a military
38 commission under this chapter shall detail to or employ for the
39 commission qualified court reporters, who shall make a verbatim
40 recording of the proceedings of and testimony taken before the
41 commission.

42 (b) Interpreters- Under such regulations as the Secretary of Defense
43 may prescribe, the convening authority of a military commission under
44 this chapter may detail to or employ for the military commission
45 interpreters who shall interpret for the commission and, as necessary,
46 for trial counsel and defense counsel and for the accused.

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1 (c) Transcript; Record- The transcript of a military commission under
2 this chapter shall be under the control of the convening authority of
3 the commission, who shall also be responsible for preparing the record
4 of the proceedings.

5 **Sec. 948m. Number of members; excuse of members; absent and** 6 **additional members**

7 (a) Number of Members- (1) A military commission under this chapter
8 shall, except as provided in paragraph (2), have at least five members.
9 (2) In a case in which the accused before a military commission under
10 this chapter may be sentenced to a penalty of death, the military
11 commission shall have the number of members prescribed by section
12 949m(c) of this title.

13 (b) Excuse of Members- No member of a military commission under
14 this chapter may be absent or excused after the military commission
15 has been assembled for the trial of a case unless excused--

16 (1) as a result of challenge;

17 (2) by the military judge for physical disability or other good
18 cause; or

19 (3) by order of the convening authority for good cause.

20 (c) Absent and Additional Members- Whenever a military commission
21 under this chapter is reduced below the number of members required
22 by subsection (a), the trial may not proceed unless the convening
23 authority details new members sufficient to provide not less than such
24 number. The trial may proceed with the new members present after
25 the recorded evidence previously introduced before the members has
26 been read to the military commission in the presence of the military
27 judge, the accused (except as provided in section 949d of this title),
28 and counsel for both sides.

29 **SUBCHAPTER III--PRE-TRIAL PROCEDURE**

30 Sec.

31 948q. Charges and specifications.

32 948r. Compulsory self-incrimination prohibited; treatment of
33 statements obtained by torture and other statements.

34 948s. Service of charges.

35 **Sec. 948q. Charges and specifications**

36 (a) Charges and Specifications- Charges and specifications against an
37 accused in a military commission under this chapter shall be signed by
38 a person subject to chapter 47 of this title under oath before a
39 commissioned officer of the armed forces authorized to administer
40 oaths and shall state--

41 (1) that the signer has personal knowledge of, or reason to
42 believe, the matters set forth therein; and

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1 (2) that they are true in fact to the best of the signer's
2 knowledge and belief.

3 (b) Notice to Accused- Upon the swearing of the charges and
4 specifications in accordance with subsection (a), the accused shall be
5 informed of the charges against him as soon as practicable.

6 **Sec. 948r. Compulsory self-incrimination prohibited; treatment of** 7 **statements obtained by torture and other statements**

8 (a) In General- No person shall be required to testify against himself
9 at a proceeding of a military commission under this chapter.

10 (b) Exclusion of Statements Obtained by Torture- A statement
11 obtained by use of torture shall not be admissible in a military
12 commission under this chapter, except against a person accused of
13 torture as evidence that the statement was made.

14 (c) Statements Obtained Before Enactment of Detainee Treatment Act
15 of 2005- A statement obtained before December 30, 2005 (the date of
16 the enactment of the Defense Treatment Act of 2005) in which the
17 degree of coercion is disputed may be admitted only if the military
18 judge finds that--

19 (1) the totality of the circumstances renders the statement
20 reliable and possessing sufficient probative value; and

21 (2) the interests of justice would best be served by admission of
22 the statement into evidence.

23 (d) Statements Obtained After Enactment of Detainee Treatment Act
24 of 2005- A statement obtained on or after December 30, 2005 (the
25 date of the enactment of the Defense Treatment Act of 2005) in which
26 the degree of coercion is disputed may be admitted only if the military
27 judge finds that--

28 (1) the totality of the circumstances renders the statement
29 reliable and possessing sufficient probative value;

30 (2) the interests of justice would best be served by admission of
31 the statement into evidence; and

32 (3) the interrogation methods used to obtain the statement do
33 not amount to cruel, inhuman, or degrading treatment
34 prohibited by section 1003 of the Detainee Treatment Act of
35 2005.

36 **Sec. 948s. Service of charges**

37 The trial counsel assigned to a case before a military commission
38 under this chapter shall cause to be served upon the accused and
39 military defense counsel a copy of the charges upon which trial is to be
40 had. Such charges shall be served in English and, if appropriate, in
41 another language that the accused understands. Such service shall be
42 made sufficiently in advance of trial to prepare a defense.

43 **SUBCHAPTER IV--TRIAL PROCEDURE**

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- 1 Sec.
- 2 949a. Rules.
- 3 949b. Unlawfully influencing action of military commission.
- 4 949c. Duties of trial counsel and defense counsel.
- 5 949d. Sessions.
- 6 949e. Continuances.
- 7 949f. Challenges.
- 8 949g. Oaths.
- 9 949h. Former jeopardy.
- 10 949i. Pleas of the accused.
- 11 949j. Opportunity to obtain witnesses and other evidence.
- 12 949k. Defense of lack of mental responsibility.
- 13 949l. Voting and rulings.
- 14 949m. Number of votes required.
- 15 949n. Military commission to announce action.
- 16 949o. Record of trial.

17 **Sec. 949a. Rules**

18 (a) Procedures and Rules of Evidence- Pretrial, trial, and post-trial
19 procedures, including elements and modes of proof, for cases triable
20 by military commission under this chapter may be prescribed by the
21 Secretary of Defense, in consultation with the Attorney General. Such
22 procedures shall, so far as the Secretary considers practicable or
23 consistent with military or intelligence activities, apply the principles of
24 law and the rules of evidence in trial by general courts-martial. Such
25 procedures and rules of evidence may not be contrary to or
26 inconsistent with this chapter.

27 (b) Rules for Military Commission- (1) Notwithstanding any departures
28 from the law and the rules of evidence in trial by general courts-
29 martial authorized by subsection (a), the procedures and rules of
30 evidence in trials by military commission under this chapter shall
31 include the following:

32 (A) The accused shall be permitted to present evidence in his
33 defense, to cross-examine the witnesses who testify against
34 him, and to examine and respond to evidence admitted against
35 him on the issue of guilt or innocence and for sentencing, as
36 provided for by this chapter.

37 (B) The accused shall be present at all sessions of the military
38 commission (other than those for deliberations or voting),
39 except when excluded under section 949d of this title.

40 (C) The accused shall receive the assistance of counsel as
41 provided for by section 948k.

42 (D) The accused shall be permitted to represent himself, as
43 provided for by paragraph (3).

44 (2) In establishing procedures and rules of evidence for military
45 commission proceedings, the Secretary of Defense may prescribe the
46 following provisions:

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1 (A) Evidence shall be admissible if the military judge determines
2 that the evidence would have probative value to a reasonable
3 person.

4 (B) Evidence shall not be excluded from trial by military
5 commission on the grounds that the evidence was not seized
6 pursuant to a search warrant or other authorization.

7 (C) A statement of the accused that is otherwise admissible
8 shall not be excluded from trial by military commission on
9 grounds of alleged coercion or compulsory self-incrimination so
10 long as the evidence complies with the provisions of section
11 948r of this title.

12 (D) Evidence shall be admitted as authentic so long as--

13 (i) the military judge of the military commission
14 determines that there is sufficient basis to find that the
15 evidence is what it is claimed to be; and

16 (ii) the military judge instructs the members that they
17 may consider any issue as to authentication or
18 identification of evidence in determining the weight, if
19 any, to be given to the evidence.

20 (E)(i) Except as provided in clause (ii), hearsay evidence not
21 otherwise admissible under the rules of evidence applicable in
22 trial by general courts-martial may be admitted in a trial by
23 military commission if the proponent of the evidence makes
24 known to the adverse party, sufficiently in advance to provide
25 the adverse party with a fair opportunity to meet the evidence,
26 the intention of the proponent to offer the evidence, and the
27 particulars of the evidence (including information on the general
28 circumstances under which the evidence was obtained). The
29 disclosure of evidence under the preceding sentence is subject
30 to the requirements and limitations applicable to the disclosure
31 of classified information in section 949j(c) of this title.

32 (ii) Hearsay evidence not otherwise admissible under the rules
33 of evidence applicable in trial by general courts-martial shall not
34 be admitted in a trial by military commission if the party
35 opposing the admission of the evidence demonstrates that the
36 evidence is unreliable or lacking in probative value.

37 (F) The military judge shall exclude any evidence the probative
38 value of which is substantially outweighed--

39 (i) by the danger of unfair prejudice, confusion of the
40 issues, or misleading the commission; or

41 (ii) by considerations of undue delay, waste of time, or
42 needless presentation of cumulative evidence.

43 (3)(A) The accused in a military commission under this chapter who
44 exercises the right to self-representation under paragraph (1)(D) shall
45 conform his deportment and the conduct of the defense to the rules of
46 evidence, procedure, and decorum applicable to trials by military
47 commission.

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1 (B) Failure of the accused to conform to the rules described in
2 subparagraph (A) may result in a partial or total revocation by the
3 military judge of the right of self-representation under paragraph
4 (1)(D). In such case, the detailed defense counsel of the accused or an
5 appropriately authorized civilian counsel shall perform the functions
6 necessary for the defense.

7 (c) Delegation of Authority To Prescribe Regulations- The Secretary of
8 Defense may delegate the authority of the Secretary to prescribe
9 regulations under this chapter.

10 (d) Notification to Congressional Committees of Changes to
11 Procedures- Not later than 60 days before the date on which any
12 proposed modification of the procedures in effect for military
13 commissions under this chapter goes into effect, the Secretary of
14 Defense shall submit to the Committee on Armed Services of the
15 Senate and the Committee on Armed Services of the House of
16 Representatives a report describing the modification.

17 **Sec. 949b. Unlawfully influencing action of military commission**

18 (a) In General- (1) No authority convening a military commission
19 under this chapter may censure, reprimand, or admonish the military
20 commission, or any member, military judge, or counsel thereof, with
21 respect to the findings or sentence adjudged by the military
22 commission, or with respect to any other exercises of its or his
23 functions in the conduct of the proceedings.

24 (2) No person may attempt to coerce or, by any unauthorized means,
25 influence--

26 (A) the action of a military commission under this chapter, or
27 any member thereof, in reaching the findings or sentence in any
28 case;

29 (B) the action of any convening, approving, or reviewing
30 authority with respect to his judicial acts; or

31 (C) the exercise of professional judgment by trial counsel or
32 defense counsel.

33 (3) Paragraphs (1) and (2) do not apply with respect to--

34 (A) general instructional or informational courses in military
35 justice if such courses are designed solely for the purpose of
36 instructing members of a command in the substantive and
37 procedural aspects of military commissions; or

38 (B) statements and instructions given in open proceedings by a
39 military judge or counsel.

40 (b) Prohibition on Consideration of Actions on Commission in
41 Evaluation of Fitness- In the preparation of an effectiveness, fitness, or
42 efficiency report or any other report or document used in whole or in
43 part for the purpose of determining whether a commissioned officer of
44 the armed forces is qualified to be advanced in grade, or in
45 determining the assignment or transfer of any such officer or whether
46 any such officer should be retained on active duty, no person may--

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- 1 (1) consider or evaluate the performance of duty of any member
2 of a military commission under this chapter; or
3 (2) give a less favorable rating or evaluation to any
4 commissioned officer because of the zeal with which such
5 officer, in acting as counsel, represented any accused before a
6 military commission under this chapter.

7 **Sec. 949c. Duties of trial counsel and defense counsel**

- 8 (a) Trial Counsel- The trial counsel of a military commission under this
9 chapter shall prosecute in the name of the United States.
10 (b) Defense Counsel- (1) The accused shall be represented in his
11 defense before a military commission under this chapter as provided in
12 this subsection.
13 (2) The accused shall be represented by military counsel detailed
14 under section 948k of this title.
15 (3) The accused may be represented by civilian counsel if retained by
16 the accused, but only if such civilian counsel--
17 (A) is a United States citizen;
18 (B) is admitted to the practice of law in a State, district, or
19 possession of the United States or before a Federal court;
20 (C) has not been the subject of any sanction of disciplinary
21 action by any court, bar, or other competent governmental
22 authority for relevant misconduct;
23 (D) has been determined to be eligible for access to classified
24 information that is classified at the level Secret or higher; and
25 (E) has signed a written agreement to comply with all applicable
26 regulations or instructions for counsel, including any rules of
27 court for conduct during the proceedings.
28 (4) Civilian defense counsel shall protect any classified information
29 received during the course of representation of the accused in
30 accordance with all applicable law governing the protection of
31 classified information and may not divulge such information to any
32 person not authorized to receive it.
33 (5) If the accused is represented by civilian counsel, detailed military
34 counsel shall act as associate counsel.
35 (6) The accused is not entitled to be represented by more than one
36 military counsel. However, the person authorized under regulations
37 prescribed under section 948k of this title to detail counsel, in that
38 person's sole discretion, may detail additional military counsel to
39 represent the accused.
40 (7) Defense counsel may cross-examine each witness for the
41 prosecution who testifies before a military commission under this
42 chapter.

43 **Sec. 949d. Sessions**

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1 (a) Sessions Without Presence of Members- (1) At any time after the
2 service of charges which have been referred for trial by military
3 commission under this chapter, the military judge may call the military
4 commission into session without the presence of the members for the
5 purpose of--

6 (A) hearing and determining motions raising defenses or
7 objections which are capable of determination without trial of
8 the issues raised by a plea of not guilty;

9 (B) hearing and ruling upon any matter which may be ruled
10 upon by the military judge under this chapter, whether or not
11 the matter is appropriate for later consideration or decision by
12 the members;

13 (C) if permitted by regulations prescribed by the Secretary of
14 Defense, receiving the pleas of the accused; and

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

19 (2) Except as provided in subsections (c) and (e), any proceedings
20 under paragraph (1) shall--

21 (A) be conducted in the presence of the accused, defense
22 counsel, and trial counsel; and

23 (B) be made part of the record.

24 (b) Proceedings in Presence of Accused- Except as provided in
25 subsections (c) and (e), all proceedings of a military commission under
26 this chapter, including any consultation of the members with the
27 military judge or counsel, shall--

28 (1) be in the presence of the accused, defense counsel, and trial
29 counsel; and

30 (2) be made a part of the record.

31 (c) Deliberation or Vote of Members- When the members of a military
32 commission under this chapter deliberate or vote, only the members
33 may be present.

34 (d) Closure of Proceedings- (1) The military judge may close to the
35 public all or part of the proceedings of a military commission under
36 this chapter, but only in accordance with this subsection.

37 (2) The military judge may close to the public all or a portion of the
38 proceedings under paragraph (1) only upon making a specific finding
39 that such closure is necessary to--

40 (A) protect information the disclosure of which could reasonably
41 be expected to cause damage to the national security, including
42 intelligence or law enforcement sources, methods, or activities;
43 or

44 (B) ensure the physical safety of individuals.

45 (3) A finding under paragraph (2) may be based upon a presentation,
46 including a presentation ex parte or in camera, by either trial counsel
47 or defense counsel.

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1 (e) Exclusion of Accused From Certain Proceedings- The military judge
2 may exclude the accused from any portion of a proceeding upon a
3 determination that, after being warned by the military judge, the
4 accused persists in conduct that justifies exclusion from the
5 courtroom--

6 (1) to ensure the physical safety of individuals; or

7 (2) to prevent disruption of the proceedings by the accused.

8 (f) Protection of Classified Information-

9 (1) NATIONAL SECURITY PRIVILEGE- (A) Classified information
10 shall be protected and is privileged from disclosure if disclosure
11 would be detrimental to the national security. The rule in the
12 preceding sentence applies to all stages of the proceedings of
13 military commissions under this chapter.

14 (B) The privilege referred to in subparagraph (A) may be
15 claimed by the head of the executive or military department or
16 government agency concerned based on a finding by the head
17 of that department or agency that--

18 (i) the information is properly classified; and

19 (ii) disclosure of the information would be detrimental to
20 the national security.

21 (C) A person who may claim the privilege referred to in
22 subparagraph (A) may authorize a representative, witness, or
23 trial counsel to claim the privilege and make the finding
24 described in subparagraph (B) on behalf of such person. The
25 authority of the representative, witness, or trial counsel to do so
26 is presumed in the absence of evidence to the contrary.

27 (2) INTRODUCTION OF CLASSIFIED INFORMATION-

28 (A) ALTERNATIVES TO DISCLOSURE- To protect classified
29 information from disclosure, the military judge, upon
30 motion of trial counsel, shall authorize, to the extent
31 practicable--

32 (i) the deletion of specified items of classified
33 information from documents to be introduced as
34 evidence before the military commission;

35 (ii) the substitution of a portion or summary of the
36 information for such classified documents; or

37 (iii) the substitution of a statement of relevant
38 facts that the classified information would tend to
39 prove.

40 (B) PROTECTION OF SOURCES, METHODS, OR
41 ACTIVITIES- The military judge, upon motion of trial
42 counsel, shall permit trial counsel to introduce otherwise
43 admissible evidence before the military commission, while
44 protecting from disclosure the sources, methods, or
45 activities by which the United States acquired the
46 evidence if the military judge finds that (i) the sources,
47 methods, or activities by which the United States acquired
48 the evidence are classified, and (ii) the evidence is

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1 reliable. The military judge may require trial counsel to
2 present to the military commission and the defense, to
3 the extent practicable and consistent with national
4 security, an unclassified summary of the sources,
5 methods, or activities by which the United States acquired
6 the evidence.

7 (C) ASSERTION OF NATIONAL SECURITY PRIVILEGE AT
8 TRIAL- During the examination of any witness, trial
9 counsel may object to any question, line of inquiry, or
10 motion to admit evidence that would require the
11 disclosure of classified information. Following such an
12 objection, the military judge shall take suitable action to
13 safeguard such classified information. Such action may
14 include the review of trial counsel's claim of privilege by
15 the military judge in camera and on an ex parte basis,
16 and the delay of proceedings to permit trial counsel to
17 consult with the department or agency concerned as to
18 whether the national security privilege should be
19 asserted.

20 (3) CONSIDERATION OF PRIVILEGE AND RELATED MATERIALS-
21 A claim of privilege under this subsection, and any materials
22 submitted in support thereof, shall, upon request of the
23 Government, be considered by the military judge in camera and
24 shall not be disclosed to the accused.

25 (4) ADDITIONAL REGULATIONS- The Secretary of Defense may
26 prescribe additional regulations, consistent with this subsection,
27 for the use and protection of classified information during
28 proceedings of military commissions under this chapter. A report
29 on any regulations so prescribed, or modified, shall be
30 submitted to the Committees on Armed Services of the Senate
31 and the House of Representatives not later than 60 days before
32 the date on which such regulations or modifications, as the case
33 may be, go into effect.

34 **Sec. 949e. Continuances**

35 The military judge in a military commission under this chapter may,
36 for reasonable cause, grant a continuance to any party for such time,
37 and as often, as may appear to be just.

38 **Sec. 949f. Challenges**

39 (a) Challenges Authorized- The military judge and members of a
40 military commission under this chapter may be challenged by the
41 accused or trial counsel for cause stated to the commission. The
42 military judge shall determine the relevance and validity of challenges
43 for cause. The military judge may not receive a challenge to more than

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1 one person at a time. Challenges by trial counsel shall ordinarily be
2 presented and decided before those by the accused are offered.

3 (b) Peremptory Challenges- Each accused and the trial counsel are
4 entitled to one peremptory challenge. The military judge may not be
5 challenged except for cause.

6 (c) Challenges Against Additional Members- Whenever additional
7 members are detailed to a military commission under this chapter, and
8 after any challenges for cause against such additional members are
9 presented and decided, each accused and the trial counsel are entitled
10 to one peremptory challenge against members not previously subject
11 to peremptory challenge.

12 **Sec. 949g. Oaths**

13 (a) In General- (1) Before performing their respective duties in a
14 military commission under this chapter, military judges, members, trial
15 counsel, defense counsel, reporters, and interpreters shall take an
16 oath to perform their duties faithfully.

17 (2) The form of the oath required by paragraph (1), the time and place
18 of the taking thereof, the manner of recording the same, and whether
19 the oath shall be taken for all cases in which duties are to be
20 performed or for a particular case, shall be as prescribed in regulations
21 of the Secretary of Defense. Those regulations may provide that--

22 (A) an oath to perform faithfully duties as a military judge, trial
23 counsel, or defense counsel may be taken at any time by any
24 judge advocate or other person certified to be qualified or
25 competent for the duty; and

26 (B) if such an oath is taken, such oath need not again be taken
27 at the time the judge advocate or other person is detailed to
28 that duty.

29 (b) Witnesses- Each witness before a military commission under this
30 chapter shall be examined on oath.

31 **Sec. 949h. Former jeopardy**

32 (a) In General- No person may, without his consent, be tried by a
33 military commission under this chapter a second time for the same
34 offense.

35 (b) Scope of Trial- No proceeding in which the accused has been found
36 guilty by military commission under this chapter upon any charge or
37 specification is a trial in the sense of this section until the finding of
38 guilty has become final after review of the case has been fully
39 completed.

40 **Sec. 949i. Pleas of the accused**

41 (a) Entry of Plea of Not Guilty- If an accused in a military commission
42 under this chapter after a plea of guilty sets up matter inconsistent

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1 with the plea, or if it appears that the accused has entered the plea of
2 guilty through lack of understanding of its meaning and effect, or if the
3 accused fails or refuses to plead, a plea of not guilty shall be entered
4 in the record, and the military commission shall proceed as though the
5 accused had pleaded not guilty.

6 (b) Finding of Guilt After Guilty Plea- With respect to any charge or
7 specification to which a plea of guilty has been made by the accused in
8 a military commission under this chapter and accepted by the military
9 judge, a finding of guilty of the charge or specification may be entered
10 immediately without a vote. The finding shall constitute the finding of
11 the commission unless the plea of guilty is withdrawn prior to
12 announcement of the sentence, in which event the proceedings shall
13 continue as though the accused had pleaded not guilty.

14 **Sec. 949j. Opportunity to obtain witnesses and other evidence**

15 (a) Right of Defense Counsel- Defense counsel in a military
16 commission under this chapter shall have a reasonable opportunity to
17 obtain witnesses and other evidence as provided in regulations
18 prescribed by the Secretary of Defense.

19 (b) Process for Compulsion- Process issued in a military commission
20 under this chapter to compel witnesses to appear and testify and to
21 compel the production of other evidence--

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

24 (2) shall run to any place where the United States shall have
25 jurisdiction thereof.

26 (c) Protection of Classified Information- (1) With respect to the
27 discovery obligations of trial counsel under this section, the military
28 judge, upon motion of trial counsel, shall authorize, to the extent
29 practicable--

30 (A) the deletion of specified items of classified information from
31 documents to be made available to the accused;

32 (B) the substitution of a portion or summary of the information
33 for such classified documents; or

34 (C) the substitution of a statement admitting relevant facts that
35 the classified information would tend to prove.

36 (2) The military judge, upon motion of trial counsel, shall authorize
37 trial counsel, in the course of complying with discovery obligations
38 under this section, to protect from disclosure the sources, methods, or
39 activities by which the United States acquired evidence if the military
40 judge finds that the sources, methods, or activities by which the
41 United States acquired such evidence are classified. The military judge
42 may require trial counsel to provide, to the extent practicable, an
43 unclassified summary of the sources, methods, or activities by which
44 the United States acquired such evidence.

45 (d) Exculpatory Evidence- (1) As soon as practicable, trial counsel shall
46 disclose to the defense the existence of any evidence known to trial

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1 counsel that reasonably tends to exculpate the accused. Where
2 exculpatory evidence is classified, the accused shall be provided with
3 an adequate substitute in accordance with the procedures under
4 subsection (c).

5 (2) In this subsection, the term `evidence known to trial counsel', in
6 the case of exculpatory evidence, means exculpatory evidence that the
7 prosecution would be required to disclose in a trial by general court-
8 martial under chapter 47 of this title.

9 **Sec. 949k. Defense of lack of mental responsibility**

10 (a) Affirmative Defense- It is an affirmative defense in a trial by
11 military commission under this chapter that, at the time of the
12 commission of the acts constituting the offense, the accused, as a
13 result of a severe mental disease or defect, was unable to appreciate
14 the nature and quality or the wrongfulness of the acts. Mental disease
15 or defect does not otherwise constitute a defense.

16 (b) Burden of Proof- The accused in a military commission under this
17 chapter has the burden of proving the defense of lack of mental
18 responsibility by clear and convincing evidence.

19 (c) Findings Following Assertion of Defense- Whenever lack of mental
20 responsibility of the accused with respect to an offense is properly at
21 issue in a military commission under this chapter, the military judge
22 shall instruct the members of the commission as to the defense of lack
23 of mental responsibility under this section and shall charge them to
24 find the accused--

25 (1) guilty;

26 (2) not guilty; or

27 (3) subject to subsection (d), not guilty by reason of lack of
28 mental responsibility.

29 (d) Majority Vote Required for Finding- The accused shall be found not
30 guilty by reason of lack of mental responsibility under subsection
31 (c)(3) only if a majority of the members present at the time the vote is
32 taken determines that the defense of lack of mental responsibility has
33 been established.

34 **Sec. 949l. Voting and rulings**

35 (a) Vote by Secret Written Ballot- Voting by members of a military
36 commission under this chapter on the findings and on the sentence
37 shall be by secret written ballot.

38 (b) Rulings- (1) The military judge in a military commission under this
39 chapter shall rule upon all questions of law, including the admissibility
40 of evidence and all interlocutory questions arising during the
41 proceedings.

42 (2) Any ruling made by the military judge upon a question of law or an
43 interlocutory question (other than the factual issue of mental
44 responsibility of the accused) is conclusive and constitutes the ruling of

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1 the military commission. However, a military judge may change his
2 ruling at any time during the trial.

3 (c) Instructions Prior to Vote- Before a vote is taken of the findings of
4 a military commission under this chapter, the military judge shall, in
5 the presence of the accused and counsel, instruct the members as to
6 the elements of the offense and charge the members--

7 (1) that the accused must be presumed to be innocent until his
8 guilt is established by legal and competent evidence beyond a
9 reasonable doubt;

10 (2) that in the case being considered, if there is a reasonable
11 doubt as to the guilt of the accused, the doubt must be resolved
12 in favor of the accused and he must be acquitted;

13 (3) that, if there is reasonable doubt as to the degree of guilt,
14 the finding must be in a lower degree as to which there is no
15 reasonable doubt; and

16 (4) that the burden of proof to establish the guilt of the accused
17 beyond a reasonable doubt is upon the United States.

18 **Sec. 949m. Number of votes required**

19 (a) Conviction- No person may be convicted by a military commission
20 under this chapter of any offense, except as provided in section
21 949i(b) of this title or by concurrence of two-thirds of the members
22 present at the time the vote is taken.

23 (b) Sentences- (1) No person may be sentenced by a military
24 commission to suffer death, except insofar as--

25 (A) the penalty of death is expressly authorized under this
26 chapter or the law of war for an offense of which the accused
27 has been found guilty;

28 (B) trial counsel expressly sought the penalty of death by filing
29 an appropriate notice in advance of trial;

30 (C) the accused is convicted of the offense by the concurrence
31 of all the members present at the time the vote is taken; and

32 (D) all the members present at the time the vote is taken
33 concur in the sentence of death.

34 (2) No person may be sentenced to life imprisonment, or to
35 confinement for more than 10 years, by a military commission under
36 this chapter except by the concurrence of three-fourths of the
37 members present at the time the vote is taken.

38 (3) All other sentences shall be determined by a military commission
39 by the concurrence of two-thirds of the members present at the time
40 the vote is taken.

41 (c) Number of Members Required for Penalty of Death- (1) Except as
42 provided in paragraph (2), in a case in which the penalty of death is
43 sought, the number of members of the military commission under this
44 chapter shall be not less than 12.

45 (2) In any case described in paragraph (1) in which 12 members are
46 not reasonably available because of physical conditions or military

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1 exigencies, the convening authority shall specify a lesser number of
2 members for the military commission (but not fewer than 9 members),
3 and the military commission may be assembled, and the trial held,
4 with not fewer than the number of members so specified. In such a
5 case, the convening authority shall make a detailed written statement,
6 to be appended to the record, stating why a greater number of
7 members were not reasonably available.

8 **Sec. 949n. Military commission to announce action**

9 A military commission under this chapter shall announce its findings
10 and sentence to the parties as soon as determined.

11 **Sec. 949o. Record of trial**

12 (a) Record; Authentication- Each military commission under this
13 chapter shall keep a separate, verbatim, record of the proceedings in
14 each case brought before it, and the record shall be authenticated by
15 the signature of the military judge. If the record cannot be
16 authenticated by the military judge by reason of his death, disability,
17 or absence, it shall be authenticated by the signature of the trial
18 counsel or by a member of the commission if the trial counsel is
19 unable to authenticate it by reason of his death, disability, or absence.
20 Where appropriate, and as provided in regulations prescribed by the
21 Secretary of Defense, the record of a military commission under this
22 chapter may contain a classified annex.

23 (b) Complete Record Required- A complete record of the proceedings
24 and testimony shall be prepared in every military commission under
25 this chapter.

26 (c) Provision of Copy to Accused- A copy of the record of the
27 proceedings of the military commission under this chapter shall be
28 given the accused as soon as it is authenticated. If the record contains
29 classified information, or a classified annex, the accused shall be given
30 a redacted version of the record consistent with the requirements of
31 section 949d of this title. Defense counsel shall have access to the
32 unredacted record, as provided in regulations prescribed by the
33 Secretary of Defense.

34 **SUBCHAPTER V--SENTENCES**

35 Sec.
36 949s. Cruel or unusual punishments prohibited.
37 949t. Maximum limits.
38 949u. Execution of confinement.

39 **Sec. 949s. Cruel or unusual punishments prohibited**

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

7 **Sec. 949t. Maximum limits**

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

11 **Sec. 949u. Execution of confinement**

12 (a) In General- Under such regulations as the Secretary of Defense
13 may prescribe, a sentence of confinement adjudged by a military
14 commission under this chapter may be carried into execution by
15 confinement--

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

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

21 (b) Treatment During Confinement by Other Than the Armed Forces-
22 Persons confined under subsection (a)(2) in a penal or correctional
23 institution not under the control of an armed force are subject to the
24 same discipline and treatment as persons confined or committed by
25 the courts of the United States or of the State, District of Columbia, or
26 place in which the institution is situated.

27 **SUBCHAPTER VI--POST-TRIAL PROCEDURE AND REVIEW OF** 28 **MILITARY COMMISSIONS**

29 Sec.

30 950a. Error of law; lesser included offense.

31 950b. Review by the convening authority.

32 950c. Appellate referral; waiver or withdrawal of appeal.

33 950d. Appeal by the United States.

34 950e. Rehearings.

35 950f. Review by Court of Military Commission Review.

36 950g. Review by the United States Court of Appeals for the
37 District of Columbia Circuit and the Supreme Court.

38 950h. Appellate counsel.

39 950i. Execution of sentence; procedures for execution of
40 sentence of death.

41 950j. Finality or proceedings, findings, and sentences.

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1 **Sec. 950a. Error of law; lesser included offense**

2 (a) Error of Law- A finding or sentence of a military commission under
3 this chapter may not be held incorrect on the ground of an error of law
4 unless the error materially prejudices the substantial rights of the
5 accused.

6 (b) Lesser Included Offense- Any reviewing authority with the power to
7 approve or affirm a finding of guilty by a military commission under
8 this chapter may approve or affirm, instead, so much of the finding as
9 includes a lesser included offense.

10 **Sec. 950b. Review by the convening authority**

11 (a) Notice to Convening Authority of Findings and Sentence- The
12 findings and sentence of a military commission under this chapter shall
13 be reported in writing promptly to the convening authority after the
14 announcement of the sentence.

15 (b) Submittal of Matters by Accused to Convening Authority- (1) The
16 accused may submit to the convening authority matters for
17 consideration by the convening authority with respect to the findings
18 and the sentence of the military commission under this chapter.

19 (2)(A) Except as provided in subparagraph (B), a submittal under
20 paragraph (1) shall be made in writing within 20 days after the
21 accused has been given an authenticated record of trial under section
22 949o(c) of this title.

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

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

33 (c) Action by Convening Authority- (1) The authority under this
34 subsection to modify the findings and sentence of a military
35 commission under this chapter is a matter of the sole discretion and
36 prerogative of the convening authority.

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

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

44 (C) In taking action under this paragraph, the convening authority
45 may, in his sole discretion, approve, disapprove, commute, or suspend

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1 the sentence in whole or in part. The convening authority may not
2 increase a sentence beyond that which is found by the military
3 commission.

4 (3) The convening authority is not required to take action on the
5 findings of a military commission under this chapter. If the convening
6 authority takes action on the findings, the convening authority may, in
7 his sole discretion, may--

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

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

13 (4) The convening authority shall serve on the accused or on defense
14 counsel notice of any action taken by the convening authority under
15 this subsection.

16 (d) Order of Revision or Rehearing- (1) Subject to paragraphs (2) and
17 (3), the convening authority of a military commission under this
18 chapter may, in his sole discretion, order a proceeding in revision or a
19 rehearing.

20 (2)(A) Except as provided in subparagraph (B), a proceeding in
21 revision may be ordered by the convening authority if--

22 (i) there is an apparent error or omission in the record; or

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

27 (B) In no case may a proceeding in revision--

28 (i) reconsider a finding of not guilty of a specification or a ruling
29 which amounts to a finding of not guilty;

30 (ii) reconsider a finding of not guilty of any charge, unless there
31 has been a finding of guilty under a specification laid under that
32 charge, which sufficiently alleges a violation; or

33 (iii) increase the severity of the sentence unless the sentence
34 prescribed for the offense is mandatory.

35 (3) A rehearing may be ordered by the convening authority if the
36 convening authority disapproves the findings and sentence and states
37 the reasons for disapproval of the findings. If the convening authority
38 disapproves the finding and sentence and does not order a rehearing,
39 the convening authority shall dismiss the charges. A rehearing as to
40 the findings may not be ordered by the convening authority when
41 there is a lack of sufficient evidence in the record to support the
42 findings. A rehearing as to the sentence may be ordered by the
43 convening authority if the convening authority disapproves the
44 sentence.

45 **Sec. 950c. Appellate referral; waiver or withdrawal of appeal**

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1 (a) Automatic Referral for Appellate Review- Except as provided under
2 subsection (b), in each case in which the final decision of a military
3 commission (as approved by the convening authority) includes a
4 finding of guilty, the convening authority shall refer the case to the
5 Court of Military Commission Review. Any such referral shall be made
6 in accordance with procedures prescribed under regulations of the
7 Secretary.

8 (b) Waiver of Right of Review- (1) In each case subject to appellate
9 review under section 950f of this title, except a case in which the
10 sentence as approved under section 950b of this title extends to
11 death, the accused may file with the convening authority a statement
12 expressly waiving the right of the accused to such review.

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

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

20 (c) Withdrawal of Appeal- Except in a case in which the sentence as
21 approved under section 950b of this title extends to death, the
22 accused may withdraw an appeal at any time.

23 (d) Effect of Waiver or Withdrawal- A waiver of the right to appellate
24 review or the withdrawal of an appeal under this section bars review
25 under section 950f of this title.

26 **Sec. 950d. Appeal by the United States**

27 (a) Interlocutory Appeal- (1) Except as provided in paragraph (2), in a
28 trial by military commission under this chapter, the United States may
29 take an interlocutory appeal to the Court of Military Commission
30 Review of any order or ruling of the military judge that--

31 (A) terminates proceedings of the military commission with
32 respect to a charge or specification;

33 (B) excludes evidence that is substantial proof of a fact material
34 in the proceeding; or

35 (C) relates to a matter under subsection (d), (e), or (f) of
36 section 949d of this title or section 949j(c) of this title.

37 (2) The United States may not appeal under paragraph (1) an order or
38 ruling that is, or amounts to, a finding of not guilty by the military
39 commission with respect to a charge or specification.

40 (b) Notice of Appeal- The United States shall take an appeal of an
41 order or ruling under subsection (a) by filing a notice of appeal with
42 the military judge within five days after the date of such order or
43 ruling.

44 (c) Appeal- An appeal under this section shall be forwarded, by means
45 specified in regulations prescribed the Secretary of Defense, directly to

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1 the Court of Military Commission Review. In ruling on an appeal under
2 this section, the Court may act only with respect to matters of law.
3 (d) Appeal From Adverse Ruling- The United States may appeal an
4 adverse ruling on an appeal under subsection (c) to the United States
5 Court of Appeals for the District of Columbia Circuit by filing a petition
6 for review in the Court of Appeals within 10 days after the date of such
7 ruling. Review under this subsection shall be at the discretion of the
8 Court of Appeals.

9 Sec. 950e. Rehearings

10 (a) Composition of Military Commission for Rehearing- Each rehearing
11 under this chapter shall take place before a military commission under
12 this chapter composed of members who were not members of the
13 military commission which first heard the case.
14 (b) Scope of Rehearing- (1) Upon a rehearing--
15 (A) the accused may not be tried for any offense of which he
16 was found not guilty by the first military commission; and
17 (B) no sentence in excess of or more than the original sentence
18 may be imposed unless--
19 (i) the sentence is based upon a finding of guilty of an
20 offense not considered upon the merits in the original
21 proceedings; or
22 (ii) the sentence prescribed for the offense is mandatory.
23 (2) Upon a rehearing, if the sentence approved after the first military
24 commission was in accordance with a pretrial agreement and the
25 accused at the rehearing changes his plea with respect to the charges
26 or specifications upon which the pretrial agreement was based, or
27 otherwise does not comply with pretrial agreement, the sentence as to
28 those charges or specifications may include any punishment not in
29 excess of that lawfully adjudged at the first military commission.

30 Sec. 950f. Review by Court of Military Commission Review

31 (a) Establishment- The Secretary of Defense shall establish a Court of
32 Military Commission Review which shall be composed of one or more
33 panels, and each such panel shall be composed of not less than three
34 appellate military judges. For the purpose of reviewing military
35 commission decisions under this chapter, the court may sit in panels or
36 as a whole in accordance with rules prescribed by the Secretary.
37 (b) Appellate Military Judges- The Secretary shall assign appellate
38 military judges to a Court of Military Commission Review. Each
39 appellate military judge shall meet the qualifications for military judges
40 prescribed by section 948j(b) of this title or shall be a civilian with
41 comparable qualifications. No person may be serve as an appellate
42 military judge in any case in which that person acted as a military
43 judge, counsel, or reviewing official.

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1 (c) Cases To Be Reviewed- The Court of Military Commission Review,
2 in accordance with procedures prescribed under regulations of the
3 Secretary, shall review the record in each case that is referred to the
4 Court by the convening authority under section 950c of this title with
5 respect to any matter of law raised by the accused.

6 (d) Scope of Review- In a case reviewed by the Court of Military
7 Commission Review under this section, the Court may act only with
8 respect to matters of law.

9 **Sec. 950g. Review by the United States Court of Appeals for the** 10 **District of Columbia Circuit and the Supreme Court**

11 (a) Exclusive Appellate Jurisdiction- (1)(A) Except as provided in
12 subparagraph (B), the United States Court of Appeals for the District
13 of Columbia Circuit shall have exclusive jurisdiction to determine the
14 validity of a final judgment rendered by a military commission (as
15 approved by the convening authority) under this chapter.

16 (B) The Court of Appeals may not review the final judgment until all
17 other appeals under this chapter have been waived or exhausted.

18 (2) A petition for review must be filed by the accused in the Court of
19 Appeals not later than 20 days after the date on which--

20 (A) written notice of the final decision of the Court of Military
21 Commission Review is served on the accused or on defense
22 counsel; or

23 (B) the accused submits, in the form prescribed by section 950c
24 of this title, a written notice waiving the right of the accused to
25 review by the Court of Military Commission Review under
26 section 950f of this title.

27 (b) Standard for Review- In a case reviewed by it under this section,
28 the Court of Appeals may act only with respect to matters of law.

29 (c) Scope of Review- The jurisdiction of the Court of Appeals on an
30 appeal under subsection (a) shall be limited to the consideration of--

31 (1) whether the final decision was consistent with the standards
32 and procedures specified in this chapter; and

33 (2) to the extent applicable, the Constitution and the laws of the
34 United States.

35 (d) Supreme Court- The Supreme Court may review by writ of
36 certiorari the final judgment of the Court of Appeals pursuant to
37 section 1257 of title 28.

38 **Sec. 950h. Appellate counsel**

39 (a) Appointment- The Secretary of Defense shall, by regulation,
40 establish procedures for the appointment of appellate counsel for the
41 United States and for the accused in military commissions under this
42 chapter. Appellate counsel shall meet the qualifications for counsel
43 appearing before military commissions under this chapter.

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1 (b) Representation of United States- Appellate counsel appointed
2 under subsection (a)--

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

6 (2) may, when requested to do so by the Attorney General in a
7 case arising under this chapter, represent the United States
8 before the United States Court of Appeals for the District of
9 Columbia Circuit or the Supreme Court.

10 (c) Representation of Accused- The accused shall be represented by
11 appellate counsel appointed under subsection (a) before the Court of
12 Military Commission Review, the United States Court of Appeals for the
13 District of Columbia Circuit, and the Supreme Court, and by civilian
14 counsel if retained by the accused. Any such civilian counsel shall meet
15 the qualifications under paragraph (3) of section 949c(b) of this title
16 for civilian counsel appearing before military commissions under this
17 chapter and shall be subject to the requirements of paragraph (4) of
18 that section.

19 **Sec. 950i. Execution of sentence; procedures for execution of** 20 **sentence of death**

21 (a) In General- The Secretary of Defense is authorized to carry out a
22 sentence imposed by a military commission under this chapter in
23 accordance with such procedures as the Secretary may prescribe.

24 (b) Execution of Sentence of Death Only Upon Approval by the
25 President- If the sentence of a military commission under this chapter
26 extends to death, that part of the sentence providing for death may
27 not be executed until approved by the President. In such a case, the
28 President may commute, remit, or suspend the sentence, or any part
29 thereof, as he sees fit.

30 (c) Execution of Sentence of Death Only Upon Final Judgment of
31 Legality of Proceedings- (1) If the sentence of a military commission
32 under this chapter extends to death, the sentence may not be
33 executed until there is a final judgment as to the legality of the
34 proceedings (and with respect to death, approval under subsection
35 (b)).

36 (2) A judgment as to legality of proceedings is final for purposes of
37 paragraph (1) when--

38 (A) the time for the accused to file a petition for review by the
39 Court of Appeals for the District of Columbia Circuit has expired
40 and the accused has not filed a timely petition for such review
41 and the case is not otherwise under review by that Court; or
42 (B) review is completed in accordance with the judgment of the
43 United States Court of Appeals for the District of Columbia
44 Circuit and--

45 (i) a petition for a writ of certiorari is not timely filed;

46 (ii) such a petition is denied by the Supreme Court; or

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1 (iii) review is otherwise completed in accordance with the
2 judgment of the Supreme Court.

3 (d) Suspension of Sentence- The Secretary of the Defense, or the
4 convening authority acting on the case (if other than the Secretary),
5 may suspend the execution of any sentence or part thereof in the
6 case, except a sentence of death.

7 **Sec. 950j. Finality or proceedings, findings, and sentences**

8 (a) Finality- The appellate review of records of trial provided by this
9 chapter, and the proceedings, findings, and sentences of military
10 commissions as approved, reviewed, or affirmed as required by this
11 chapter, are final and conclusive. Orders publishing the proceedings of
12 military commissions under this chapter are binding upon all
13 departments, courts, agencies, and officers of the United States,
14 except as otherwise provided by the President.

15 (b) Provisions of Chapter Sole Basis for Review of Military Commission
16 Procedures and Actions- Except as otherwise provided in this chapter
17 and notwithstanding any other provision of law (including section 2241
18 of title 28 or any other habeas corpus provision), no court, justice, or
19 judge shall have jurisdiction to hear or consider any claim or cause of
20 action whatsoever, including any action pending on or filed after the
21 date of the enactment of the Military Commissions Act of 2006,
22 relating to the prosecution, trial, or judgment of a military commission
23 under this chapter, including challenges to the lawfulness of
24 procedures of military commissions under this chapter.