

**TITLE 10 - ARMED FORCES**

**Subtitle A - General Military Law**

**PART II - PERSONNEL**

**CHAPTER 47 - UNIFORM CODE OF MILITARY JUSTICE**

**SUBCHAPTER X - PUNITIVE ARTICLES**

**§ 906a. Art. 106a. Espionage**

- (a) (1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns
- (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack,
  - (B) war plans,
  - (C) communications intelligence or cryptographic information, or
  - (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.
- (2) An entity referred to in paragraph (1) is—
- (A) a foreign government;
  - (B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or
  - (C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.
- (3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.
- (b) (1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—
- (A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and
  - (B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).
- (2) Findings under this subsection may be based on—
- (A) evidence introduced on the issue of guilt or innocence;
  - (B) evidence introduced during the sentencing proceeding; or
  - (C) all such evidence.
- (3) The accused shall be given broad latitude to present matters in extenuation and mitigation.
- (c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:
- (1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.
  - (2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpint.html>).*

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**(3)** In the commission of the offense, the accused knowingly created a grave risk of death to another person.

**(4)** Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

(Added Pub. L. 99–145, title V, § 534(a), Nov. 8, 1985, 99 Stat. 634.)