

administer oaths by (i) the laws of the United States or (ii) the laws of the place where the deposition is taken.

(b) REPRESENTATION BY COUNSEL.—Representation of the parties with respect to a deposition shall be by counsel detailed in the same manner as trial counsel and defense counsel are detailed under section 827 of this title (article 27). In addition, the accused shall have the right to be represented by civilian or military counsel in the same manner as such counsel are provided for in section 838(b) of this title (article 38(b)).

(c) ADMISSIBILITY AND USE AS EVIDENCE.—A deposition order under subsection (a) does not control the admissibility of the deposition in a court-martial or other proceeding under this chapter. Except as provided by subsection (d), a party may use all or part of a deposition as provided by the rules of evidence.

(d) CAPITAL CASES.—Testimony by deposition may be presented in capital cases only by the defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 90-632, §2(20), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 98-209, §6(b), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 109-163, div. A, title X, §1057(a)(3), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 113-291, div. A, title V, §532, Dec. 19, 2014, 128 Stat. 3366; Pub. L. 114-328, div. E, title LVII, §5231, Dec. 23, 2016, 130 Stat. 2914.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
849(a)	50:624(a).	May 5, 1950, ch. 169, §1 (Art. 49), 64 Stat. 123.
849(b)	50:624(b).	
849(c)	50:624(c).	
849(d)	50:624(d).	
849(e)	50:624(e).	
849(f)	50:624(f).	

In subsection (a), the word “commissioned” is inserted for clarity.

In subsection (d), the word “Commonwealth” is inserted to reflect the present status of Puerto Rico. The words “of Columbia” are inserted after the word “District” for clarity. The words “the distance of” are omitted as surplusage.

In subsections (e) and (f), the words “the requirements of” and the words “of this article” are omitted as surplusage. The word “presented” is substituted for the word “adduced” in subsection (e).

In subsection (f), the word “directs” is substituted for the words “shall have directed”. The words “by law” are omitted as surplusage.

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (f) relating to ordering depositions, notice, military and civil officers authorized to take depositions, use of depositions as evidence, testimony by deposition by the defense in capital cases, and use of deposition as evidence in cases in which the death penalty is authorized, respectively.

2014—Subsec. (a). Pub. L. 113-291 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “At any time after charges have been signed as provided in section 830 of this title (article 30), any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for

trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.”

2006—Subsec. (d)(1). Pub. L. 109-163 struck out “Territory,” after “State.”.

1983—Subsecs. (d), (f). Pub. L. 98-209 inserted “or, in the case of audiotape, videotape, or similar material, may be played in evidence” after “read in evidence”.

1968—Subsec. (a). Pub. L. 90-632 inserted reference to the taking of depositions being forbidden by the military judge or the court-martial without a military judge if the case is being heard.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

§ 850. Art. 50. Admissibility of sworn testimony from records of courts of inquiry

(a) USE AS EVIDENCE BY ANY PARTY.—In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence. This section does not apply to a military commission established under chapter 47A of this title.

(b) USE AS EVIDENCE BY DEFENSE.—Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) USE IN COURTS OF INQUIRY AND MILITARY BOARDS.—Such testimony may also be read in evidence before a court of inquiry or a military board.

(d) AUDIOTAPE OR VIDEOTAPE.—Sworn testimony that—

- (1) is recorded by audiotape, videotape, or similar method; and
- (2) is contained in the duly authenticated record of proceedings of a court of inquiry;

is admissible before a court-martial, military commission, court of inquiry, or military board, to the same extent as sworn testimony may be read in evidence before any such body under subsection (a), (b), or (c).

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631; Pub. L. 114-328, div. E, title LVII, §5232, Dec. 23, 2016, 130 Stat. 2915.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
850(a)	50:625(a).	May 5, 1950, ch. 169, §1
850(b)	50:625(b).	(Art. 50), 64 Stat. 124.
850(c)	50:625(c).	

In subsections (a) and (b), the word “commissioned” is inserted for clarity.

AMENDMENTS

2016—Pub. L. 114-328, §5232(b), amended section catchline generally, substituting “Admissibility of sworn testimony from records of courts of inquiry” for “Admissibility of records of courts of inquiry”.

Subsec. (a). Pub. L. 114-328, §5232(c)(1), inserted heading.

Subsec. (b). Pub. L. 114-328, §5232(c)(2), inserted heading.

Subsec. (c). Pub. L. 114-328, §5232(c)(3), inserted heading.

Subsec. (d). Pub. L. 114-328, §5232(a), added subsec. (d).
2006—Subsec. (a). Pub. L. 109-366 inserted last sentence.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 850a. Art. 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused—

- (1) guilty;
- (2) not guilty; or
- (3) not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall find the accused—

- (1) guilty;
- (2) not guilty; or
- (3) not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of section 852 of this title (article 52), the accused shall be

found not guilty only by reason of lack of mental responsibility if—

(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

(Added Pub. L. 99-661, div. A, title VIII, §802(a)(1), Nov. 14, 1986, 100 Stat. 3905; Pub. L. 114-328, div. E, title LVII, §5233, Dec. 23, 2016, 130 Stat. 2915.)

AMENDMENTS

2016—Subsec. (c). Pub. L. 114-328, in introductory provisions, struck out “, or the president of a court-martial without a military judge,” after “the military judge”.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE

Pub. L. 99-661, div. A, title VIII, §802(b), Nov. 14, 1986, 100 Stat. 3906, provided that: “Section 850a of title 10, United States Code, as added by subsection (a)(1), shall apply only to offenses committed on or after the date of the enactment of this Act [Nov. 14, 1986].”

§ 851. Art. 51. Voting and rulings

(a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused is final and constitutes the ruling of the court, except that the military judge may change a ruling at any time during trial.

(c) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them—

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

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

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

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