

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.

#### Statutory Notes and Related Subsidiaries

##### 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

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### 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.)

#### Editorial Notes

##### 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”.

#### Statutory Notes and Related Subsidiaries

##### 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.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Pub. L. 90-632, § 2(21), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 114-328, div. E, title LVII, § 5234, Dec. 23, 2016, 130 Stat. 2915.)

#### HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
851(a) .....	50:626(a).	May 5, 1950, ch. 169, § 1 (Art. 51), 64 Stat. 124.
851(b) .....	50:626(b).	
851(c) .....	50:626(c).	

In subsection (a), the words “in each case” are omitted as surplusage.

In subsection (b), the word “is” is substituted for the words “shall be” in the second sentence. The word “constitutes” is substituted for the words “shall constitute”. The word “However,” is substituted for the word “but”. The word “his” is substituted for the words “any such”. The words “the ruling is” are substituted for the words “such ruling be”. The words “voice vote” are substituted for the words “vote \* \* \* viva voce”.

In subsection (c), the word “must” is substituted for the word “shall” in clause (2), since a condition is prescribed, not a command. The words “United States” are substituted for the word “Government”.

#### Editorial Notes

##### AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, § 5234(1), struck out “, and by members of a court-martial without a military judge upon questions of challenge,” after “on the sentence”.

Subsec. (b). Pub. L. 114-328, § 5234(2), struck out “and, except for questions of challenge, the president of a court-martial without a military judge” after “The military judge” and substituted “is final and constitutes the ruling of the court, except that the military judge may change a ruling at any time during trial.” for “, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.”