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

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