

- (d) a person authorized by statute to be present; or
- (e) a victim of an offense from the trial of an accused for that offense, when the sole basis for exclusion would be that the victim may testify or present information during the presentencing phase of the trial.

**Rule 701. Opinion Testimony by Lay Witnesses**

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Mil. R. Evid. 702.

**Rule 702. Testimony by Expert Witnesses**

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

**Rule 703. Bases of an Expert's Opinion Testimony**

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. If the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the members of a court-martial only if the military judge finds that their probative value in helping the members evaluate the opinion substantially outweighs their prejudicial effect.

**Rule 704. Opinion on an Ultimate Issue**

An opinion is not objectionable just because it embraces an ultimate issue.

**Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion**

Unless the military judge orders otherwise, an expert may state an opinion – and give the reasons for it – without first testifying to the underlying facts or data. The expert may be required to disclose those facts or data on cross-examination.

**Rule 706. Court-Appointed Expert Witnesses**

- (a) *Appointment Process.* The trial counsel, the defense counsel, and the court-martial have equal opportunity to obtain expert witnesses under Article 46 and R.C.M. 703.
- (b) *Compensation.* The compensation of expert witnesses is governed by R.C.M. 703.
- (c) *Accused's Choice of Experts.* This rule does not limit an accused in calling any expert at the accused's own expense.

**Rule 707. Polygraph Examinations**

- (a) *Prohibitions.* Notwithstanding any other provision of law, the result of a polygraph examination, the polygraph examiner's opinion, or any reference to an offer to take, failure to take, or taking of a polygraph examination is not admissible.
- (b) *Statements Made During a Polygraph Examination.* This rule does not prohibit admission of an otherwise admissible statement made during a polygraph examination.

**Rule 801. Definitions that Apply to this Section; Exclusions from Hearsay**

- (a) *Statement.* "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

- (b) *Declarant*. “Declarant” means the person who made the statement.
- (c) *Hearsay*. “Hearsay” means a statement that:
- (1) the declarant does not make while testifying at the current trial or hearing; and
  - (2) a party offers in evidence to prove the truth of the matter asserted in the statement.
- (d) *Statements that Are Not Hearsay*. A statement that meets the following conditions is not hearsay:
- (1) *A Declarant-Witness's Prior Statement*. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
    - (A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
    - (B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
    - (C) identifies a person as someone the declarant perceived earlier.
  - (2) *An Opposing Party's Statement*. The statement is offered against an opposing party and:
    - (A) was made by the party in an individual or representative capacity;
    - (B) is one the party manifested that it adopted or believed to be true;
    - (C) was made by a person whom the party authorized to make a statement on the subject;
    - (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
    - (E) was made by the party's co-conspirator during and in furtherance of the conspiracy.
- The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

#### **Rule 802. The Rule against Hearsay**

Hearsay is not admissible unless any of the following provides otherwise:

- (a) a federal statute applicable in trial by courts-martial; or
- (b) these rules.

#### **Rule 803. Exceptions to the Rule against Hearsay – Regardless of Whether the Declarant Is Available as a Witness**

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

- (1) *Present Sense Impression*. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
- (2) *Excited Utterance*. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
- (3) *Then-Existing Mental, Emotional, or Physical Condition*. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.
- (4) *Statement Made for Medical Diagnosis or Treatment*. A statement that –
  - (A) is made for – and is reasonably pertinent to – medical diagnosis or treatment; and
  - (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.
- (5) *Recorded Recollection*. A record that:
  - (A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
  - (B) was made or adopted by the witness when the matter was fresh in the witness's memory; and
  - (C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

- (6) *Records of a Regularly Conducted Activity*. A record of an act, event, condition, opinion, or diagnosis if:
  - (A) the record was made at or near the time by – or from information transmitted by – someone with knowledge;