



DEPARTMENT OF THE ARMY
HEADQUARTERS, 25TH INFANTRY DIVISION ARTILLERY (DIVARTY)
BLDG 130 ROAD A
SCHOFIELD BARRACKS, HI 96857-6000

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20 Jul 2016

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: 25th DIVARTY Policy Memorandum #4, Prevention of Sexual Harassment and Sexual Assault

1. References.

- a. *Manual for Courts-Martial, United States* (2012 ed.)
- b. DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program, 23 January 2012, incorporating change 2, 20 January 2015.
- c. DoD Instruction 6495.02, Sexual Assault Prevention and Response program procedures, 28 March 2013, incorporating change 2, 7 July 2015.
- d. DoD Instruction 6495.03, Defense Sexual Assault Advocate Certification Program (D-SAACP), 10 September 2015.
- e. DoD Directive 7050.06, Military Whistleblower Protection, 23 July 2007.
- f. Memorandum from Secretary of Defense, 20 April 2012, subject: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases
- g. Army Regulation 600-20, Army Command Policy, 6 November 2014.
- h. Army Regulation 623-3, Evaluation Reporting System, 31 March 2014.
- i. Army Regulation 635-200, Active Duty Enlisted Administrative Separations, 6 June 2005, with Rapid Action Revision 6 September 2011.
- j. Army Regulation 600-8-24, Officer Transfers and Discharges, 12 April 2006, with Rapid Action Revision 13 September 2011.
- k. Army Regulation 690-600, Equal Employment Opportunity Discrimination Complaints, 9 February 2004.
- l. Army Regulation 350-1, Army Training and Leader Development, 19 August 2014.
- m. Army Regulation 27-10, Military Justice, 3 October 2011.

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n. Army Directive 2011-19, Expedited Transfer or Reassignment Procedures for Victims of Sexual Assault, 3 October 2011.

o. Army Directive 2013-21, Initiating Separation Proceedings and Prohibiting Overseas Assignment for Soldiers Convicted of Sex Offenses, 7 November 2013.

p. Army Directive 2014-20, Prohibition of Retaliation Against Soldiers for Reporting a Criminal Offense, 19 June 2014.

q. ALARACT 188-2014/HQDA EXORD 193-14, Screening of Sexual Harassment/Assault Response and Prevention Program Personnel and Others in Identified Positions of Significant Trust, 26 July 2014.

r. Memorandum from Commander, U.S. Army Pacific, Subject: Exception to Policy to ALARACT 188/2014, HQDA EXORD 193-14 for Retention of Company and Equivalent Level Sexual Harassment/Assault response and Prevention (SHARP) Victim Advocates (VA), 24 February 2015.

s. Memorandum from Commander, U.S. Army Pacific, Subject: Withholding Initial Disposition Authority under the Uniform Code of Military Justice in Certain Sexual Assault Cases, 3 October 2013.

t. U.S. Army Hawaii Policy Letter 7 – Prevention of Sexual Harassment/Sexual Assault and Treatment of Victims for Military and Civilian Personnel, 4 January 2016.

u. Department of Defense Directive-Type Memorandum 14-007, Sexual Assault Incident Response Oversight (SAIRO) Report, 30 September 2014, incorporating Change 1, 7 October 2014.

2. **Applicability.** This policy applies to all units and personnel subject to the Special Court-Martial Convening Authority of the Commander, 25th Infantry Division Artillery (DIVARTY), and to all civilian employees of such units.

3. **Purpose.** To establish policy on the prevention of sexual harassment and sexual assault, treatment of victims, and accountability of those who commit sexual harassment and sexual assault.

4. I am committed to the Army's zero-tolerance policy against sexual harassment and sexual assault. Unlawful discrimination, sexual harassment, and sexual assault will not be tolerated in this command. Sexual assault is punishable under the UCMJ and other

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Federal and local civilian laws and is incompatible with Army values. Victims and bystanders will be protected from reprisal and retaliation. Leaders at all levels will commit to creating and maintaining an environment conducive to maximum productivity and respect for human dignity. Leaders will report all incidents of sexual assault to the appropriate authorities. Leaders will examine all allegations of sexual harassment, ensuring these incidents are reported to the Sexual Assault Response Coordinator (SARC) and addressed in a swift and fair manner.

5. SEXUAL HARASSMENT:

a. Definition (reference g, para 7-4a): Sexual harassment is a form of gender discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature between the same or opposite genders when—

(1) Submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person's job, pay or career.

(2) Submission to, or rejection of, such conduct by a person is used as a basis for career or employment decisions affecting that person.

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

b. Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay or job of personnel is engaging in sexual harassment. Similarly anyone who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is engaging in sexual harassment.

c. Soldiers and eligible Civilians who experience sexual harassment have various resolution options (see reference g, para 7-7).

(1) Per paragraph C-1a of reference g, an informal complaint is a complaint that the complainant does not wish to file in writing. Informal resolution includes the direct approach, an indirect approach, third party intervention, or an informal complaint filed with the chain of command.

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(2) Though reporting to the chain of command is preferred, complaints may also be filed with any of the following, IAW their specific inherent/established procedures:

- (a) Any echelon of the chain of command.
- (b) Inspector General
- (c) Chaplain
- (d) Provost Marshal/law enforcement
- (e) Medical agency personnel
- (f) Staff judge advocate
- (g) Chief, Community Housing Referral and Relocation Services Office

(3) A complainant may file a formal complaint by making a sworn, written complaint on a DA Form 7279. Sexual harassment complaints will be expeditiously forwarded to the DIVARTY SARC.

(4) Per paragraph C-1b(5) of reference c, complainants have 60 calendar days from the date of the alleged incident in which to file a formal complaint. After the 60th day, commanders who receive formal complaints have the discretion whether to conduct an investigation into the allegations. In deciding whether to conduct an investigation, the commander will consider the reason for the delay, availability of witnesses, and whether a full and fair investigation may be conducted. If the commander accepts a formal complaint after 60 days, he or she will comply with all the procedural requirements and timelines for a formal complaint.

(5) As directed by paragraph 7-1b(6) of reference g, formal complaints should be filed at the lowest echelon of command at which the complainant may be assured of receiving a thorough, expeditious, and unbiased investigation of the allegations.

(6) Despite the requirement to forward all formal complaints to the DIVARTY SARC, there is NO REQUIREMENT to file all formal complaints with the DIVARTY commander.

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(7) All commanders who receive formal complaints will comply with the procedures and processing timelines of paragraphs C-4 through C-12 of reference g (AR 600-20), to include implementation of a reprisal prevention plan.

(8) Civilian employees may raise sexual harassment claims through the Equal Employment Opportunity complaint process set forth in reference k. EEO counselors will follow the procedures of paragraph 3-11 thereof if a civilian employee alleges sexual harassment.

6. SEXUAL ASSAULT

a. Definition (reference b; reference g, para. 8-4a): Sexual assault is a crime defined as intentional sexual contact, characterized by use of force, physical threat or abuse of authority or when the victim does not or cannot consent. Sexual assault includes the UCMJ offenses of rape (UCMJ Art. 120(a)), sexual assault (UCMJ Art. 120(b)), aggravated sexual contact (UCMJ Art. 120(c)), abusive sexual contact (UCMJ Art. 120(d)), sexual assault of a child (UCMJ Art. 120b), forcible sodomy (UCMJ Art. 125), and attempts to commit these acts, as well as equivalent civilian offenses. Sexual assault can occur without regard to gender or spousal relationship or age of the victim. "Consent" will not be deemed or construed to mean the failure by the victim to offer physical resistance. Consent is not given when a person uses force, threat of force, or coercion or when the victim is asleep, incapacitated, or unconscious.

b. Leaders will take an active role in eliminating sexual assault. Leaders will provide a safe, respectful environment for victims of sexual assault.

c. Immediately upon learning of a sexual assault, commanders will:

(1) Notify CID (reference g, para 8-5o(6))

(2) Notify the DIVARTY SARC (reference p, para 8)

(3) Notify the DIVARTY Trial Counsel

d. Reference c, enclosure 4 provides Soldiers and adult dependents who experience sexual assault the opportunity to make either a restricted or unrestricted report. All other victims, to include DA Civilians and contractor employees, may not make a restricted report and, if they choose to report, may only make an unrestricted report. Additional resources and information are available at the USARHAW SHARP Resource center, Building 692, Grant Hall, 3585 McCormack Road.

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(1) Restricted Reporting: A victim confidentially discloses the details of his or her assault to specified individuals and receive the opportunity for medical treatment, advocacy, and counseling services. Treatment does not trigger an investigation. A restricted report is made by contacting a SARC, a unit Victim Advocate, the TAMC emergency room, or a medical primary care provider. Additionally, chaplains and Special Victims Counsel can provide confidentiality and assist in making a restricted report. A Restricted Report can be changed to an Unrestricted Report at any time.

(a) The 24-hour SHARP Hotline is accessible at 808-655-9474.

(b) The on-call chaplain may be reached after hours by calling the Field Officer of the Day (FOD) at 808-655-8707 and asking for the on-call chaplain.

(c) If there is an ongoing independent investigation, a sexual assault victim will not have the option of restricted reporting if DoD law enforcement informs the SARC of the investigation before the victim elects restricted reporting. If the independent investigation begins after a victim formally elects restricted reporting, the investigation has no impact on the restricted report and the victim's communications and medical/forensic examination results remain confidential to the extent permitted by law.

(2) Unrestricted Reporting: An Unrestricted Report is made when a victim reports an assault to law enforcement or the chain of command. Additionally, victims can make an unrestricted report to their SHARP/SARC, Special Victim Counsel, or medical provider, and request that they notify law enforcement. An unrestricted report triggers an official investigation. Victims may also receive medical treatment, victim advocacy, counseling services, legal assistance, and administrative rights including an expedited transfer and protection orders.

(a) Commanders, attorneys, and paralegals under the supervisory authority of the DIVARTY Judge Advocate (this does not include Special Victims Counsel) are mandatory reporters. Victims may NOT make restricted reports to these individuals.

(b) If a commander becomes aware of a sexual assault, he or she will report the matter to CID regardless of whether the victim has made a Restricted Report or no report at all (reference g, para 8-5o(6)).

(c) All personnel involved will limit details regarding the incident to those who have a legitimate need to know (reference g, para 8-5o(2)).

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(d) Victims may directly contact the military police at 808- 655-5555 or CID at 808-655-8371.

(e) Reference t, paragraph 9b(5) requires commanders to report to the Family Advocacy Program (808-433-8579) all alleged sexual assaults against a spouse/intimate partner or against a person who shares a child with the offender.

(f) Reference t, paragraph 9b(6) requires commanders to report all sexual assaults against children under the age of 18 to the civilian Child Advocacy Center where the child resides, consistent with Hawaii state law.

e. A victim who files an unrestricted report has the right to request an expedited transfer IAW reference j and paragraph 9b(4) of reference t. Expedited transfer requests must be in writing.

(1) Commanders will ensure all victims who make an unrestricted report of sexual assault are made aware of their right to request an expedited transfer within 5 duty days of learning about the unrestricted report.

(2) A report is considered credible if a battalion or higher-level commander, after considering all available evidence and the advice of the DIVARTY Brigade Judge Advocate or Trial Counsel, concludes that there are reasonable grounds to believe that the Soldier requesting the transfer is the victim of a sexual assault offense.

(3) A credible report creates a presumption in favor of transferring or reassigning the victim.

(4) Prior to approving a request, the commander will ensure the victim is fully informed regarding reasonably foreseeable impacts on his/her career, the potential impact on the investigation and potential prosecution or other adverse action against the alleged offender, or other possible consequences of granting the request. If, after being fully informed, the victim elects not to proceed with his/her request, the victim shall withdraw the request in writing.

(5) If a commander cannot approve a request at his/her level of command, the victim's request will be forwarded through the chain of command to the appropriate approving authority. Each commander through whom the request is submitted will provide a written recommendation to the approving authority.

(6) Every commander will act on all expedited transfer requests within 72 hours.

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(7) Commanders who recommend disapproval will provide the reason(s) for the recommendation in writing. Only the first General Officer in the chain of command may disapprove a request for expedited transfer within the same installation. U.S. Army Human Resources Command is the approval and disapproval authority for expedited transfers to another installation.

(8) The SARC will hand-carry all expedited transfer paperwork to the appropriate personnel. Expedited transfer requests will not be processed through orderly rooms or unit S1/personnel offices (reference t, para. 9.b(4)(b)).

f. Reference o directs commanders to initiate administrative separation under reference i of any enlisted Soldier or elimination under reference j of any Officer convicted of any sex offense listed in chapter 24 of reference m (AR 27-10) or in 42 U.S.C. § 16911, whether in civilian court or at court-martial, regardless of the date of offense, unless the conviction resulted in a punitive discharge.

(1) For enlisted Soldiers, if the separation authority approves retention under chapter 14 of reference h, he or she will then immediately initiate an action for the exercise of secretarial plenary separation authority under paragraph 5-3 of reference h.

(2) If an enlisted Soldier who has been convicted of a sex offense has already been subject to an administrative separation action and retained as a result of that proceeding, the separation authority will initiate an action for the exercise of secretarial plenary separation under paragraph 5-3 of reference h (AR 635-200).

(3) If a commissioned or warrant officer has been convicted of a sex offense and has already been the subject of an elimination action for that conviction and was retained, no further action is required.

(4) Commanders will ensure that Soldiers convicted of a sex offense are not assigned or deployed TDY to any duty station or location outside the territories or possessions of the United States.

g. Victim's rights. Under UCMJ Art. 6b, sexual assault victims and all crime victims have the right:

(1) The right to be reasonably protected from the accused.

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(2) The right to reasonable, accurate, and timely notice of public hearings related to the offense concerning the continuation of pretrial confinement, preliminary hearings under UMCJ Art. 32, courts-martial, public proceedings of the service clemency and parole board, and release or escape of the accused, unless such notice may endanger the safety of any person.

(3) The right not to be excluded from any public hearing or proceeding listed in subparagraph (2), above unless the military judge or investigating officer, as applicable, after receiving clear and convincing evidence, determines that the victim's testimony would be materially altered if the victim heard other testimony.

(4) The right to be reasonably heard at a public hearing concerning the continuation of pretrial confinement of the accused, a sentencing hearing relating to the offense, or a public proceeding of the service clemency and parole board relating tot the offense.

(5) The reasonable right to confer with the counsel representing the Government at any proceeding listed in subparagraph (2), above.

(6) The right to receive restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and respect for the victim's dignity and privacy.

7. SEXUAL ASSAULT INCIDENT RESPONSE OVERSIGHT (SAIRO) REPORT.

a. IAW reference u, commanders will prepare a SAIRO report when the commander receives notification that a Soldier has made an unrestricted report to a SARC or notification of an independent investigation from CID.

b. Commanders will prepare and submit the SAIRO report IAW reference x with input from the SARC, CID, and legal advisor as appropriate. Commanders and SARCs will ensure that the DIVARTY Commander receives the SAIRO within **six days** of the victim's unrestricted report or the notification from CID, whichever is earlier.

c. Completion of a SAIRO does not satisfy the requirement to immediately notify CID of all sexual assault allegations (see paragraph 6c(1)).

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8. RETALIATION AND REPRISAL PREVENTION

a. Definitions:

(1) Reprisal (reference e, implementing the Military Whistleblower Protection Act): Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making, preparing to make, or being perceived as making or preparing to make a protected communication.

(2) Retaliation (reference p, para 4a):

(a) Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a victim or other member of the Armed forces because the individual reported a criminal offense or was believed to have reported a criminal offense;

(b) Ostracism, which is defined as excluding from social acceptance, privilege, or friendship a victim or other member of the Armed forces because: (a) the individual reported a criminal offense; (b) the individual was believed to have reported a criminal offense; or (c) the ostracism was motivated by the intent to discourage reporting of a criminal offense or otherwise to discourage the due administration of justice; or

(c) Acts of cruelty, oppression, or maltreatment (amounting to a violation of UCMJ Art. 93), committed against a victim, an alleged victim or another member of the Armed Forces by peers or other persons, because the individual reported an offense or was believed to have reported a criminal offense.

(3) Protected communication (Reference e; reference g, para 5-12b): Any lawful communication with a Member of Congress or Inspector General, or a communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including (among others) a law or regulation prohibiting sexual harassment or unlawful discrimination, when made to a Member of Congress, Inspector General, any person or organization in the chain of command, a member of a DOD audit, inspection, investigation, or law enforcement organization, or any other person designated to receive such communications.

b. Investigation and reporting:

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(1) Commanders and supervisors will report all allegations of reprisal, and retaliation as described in paragraph 7.a(2)(a) above to the Inspector General's office IAW paragraph 5 of reference p and enclosure 2 of reference e.

(2) Commanders will investigate or direct investigation into allegations of retaliation as described in paragraph 7.a.(2)(b) and (c) above.

(3) Per reference t, paragraph 13, sexual assault victims, witnesses, bystanders (who intervened), SARCS, Victim Advocates, first responders or other parties to a sexual assault incident who experience any retaliation or reprisal should report to their SARC, Victim Advocate, the SHARP Program manager, Special Victims Counsel, law enforcement, or chain of command.

(4) Any commander who receives a formal EO or Sexual Harassment complaint will establish a reprisal prevention plan to protect the complainant, any named witnesses, and the subject from acts of reprisal, as required by paragraph C-5c of reference g (AR 600-20).

9. MANDATORY EVALUATION COMMENTS:

a. Reference h, paragraphs 2-12k, 3-7(f-i), 3-9b(3)(b)1.f, 3-9b(3)(g), and 3-25b require raters and senior raters to comment on evaluation reports when an Army or DOD investigation or inquiry establishes that the rated Soldier

(1) Committed an act of sexual harassment or sexual assault;

(2) Failed to report an act of sexual harassment or sexual assault;

(3) Failed to respond to a complaint or report of sexual harassment or assault; or

(4) Retaliated against a person making a complaint or report of sexual harassment or sexual assault.

b. Commanders will ensure that all raters and senior raters of Soldiers whose evaluations require such comments described in paragraph 8b above are informed of any substantiated findings of any Army or DOD investigation or inquiry. Commanders will ensure that all Personally Identifying Information is redacted from the findings prior to distributing them to raters and senior raters.

10. DISPOSITION AUTHORITY AND COLLATERAL MISCONDUCT:

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a. Under reference f and reference s, I am the initial disposition authority (see reference a, RCM 306) for all alleged violations of UCMJ Article 120 (rape and sexual assault generally), Article 120a (stalking), Article 120b (rape and sexual assault of a child), and Article 120c (other sexual misconduct), forcible sodomy in violation of UCMJ Article 125, attempts to commit these offenses, and all other alleged offenses arising from or related to the alleged commission of those offenses.

(1) I am also the initial disposition authority for all collateral misconduct committed by victims of the crimes listed in paragraph 11a arising out of the same transaction or series of events. This includes, for example, underage drinking, orders violations, fraternization, failures to report, or adultery.

(2) The initial disposition authority includes the authority to determine no action will be taken.

(3) This does not preclude the enactment of preliminary measures designed to ensure victim safety and the integrity of the investigatory and adjudicative processes, to include imposition of no-contact orders, cooling off periods, flags, restriction or conditions on liberty.

b. Reference c, encl. 5 paragraph 8 directs commanders at all levels to:

(1) Exercise discretion to defer action on alleged collateral misconduct by sexual assault victims until final disposition of the sexual assault case; commanders will not be penalized for such a deferral decision.

(2) When taking action on alleged collateral misconduct by sexual assault victims, consider trauma to the victim and the appropriateness of the response to encourage reporting of sexual assault and continued victim cooperation.

(3) Speedy trial and statute of limitations concerns

c. Reference t, paragraph 12 requires commanders to consult with the SARC (who will consult the USARHAW SHARP office) and their legal advisor on all instances of sexual assault victim collateral misconduct prior to taking any disciplinary action.

11. VICTIM ADVOCATES:

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a. Every battalion commander will appoint, in writing, at least two Unit Victim Advocates as required by paragraph 8-5o(10) of reference g. A commander may appoint a collateral duty SARC in lieu of one Victim Advocate.

b. Under reference r, I have the authority to appoint collateral Victim Advocates at the battery and company level. I direct every company and battery-sized unit to nominate at least two qualified individuals to serve as collateral Victim Advocates.

c. All Victim Advocates will be screened, trained, and certified IAW references c and q. Provide al D-SCAAP initial and renewal packets to the DIVARTY SARC.

12. TRAINING REQUIREMENTS:

a. Reference I (AR 350-1) requires SHARP training semi-annually. However USARHAW policy (reference t, para. 14) requires one hour per quarter for a total of four hours annually, not to be given consecutively at the end of the calendar year. This is in addition to any distributed learning or online training requirements that may be published with proper authorization by the DoD Sexual Assault Prevention and Response office or the USARHAW SHARP Program manager.

(1) Commanders will incorporate SHARP training into the overall unit training plan and reflect it on unit training schedules.

(2) Commanders, with the assistance of the DIVARTY SARC and their unit Victim Advocates, will ensure that training complies with enclosure 10 of reference c (DoDI 6495.02) and paragraph 8-7b(3) of reference g (AR 600-2).

(3) Commanders will forward all training statistics, copies of any presentation materials, and copies of sign-in rosters to the DIVARTY SARC no later than the last day of the month in which training occurs.

(4) Commanders will ensure all training is recorded in the Digital Training Management System IAW reference I (AR 350-1).

b. All Soldiers and DA Civilians will attend scheduled SHARP Training. I expect commanders and leaders to be present for this training.

c. Commanders will ensure Soldiers receive pre-deployment and post-deployment training IAW reference g (AR 600-20) paragraph 8-7c and 8-7d.

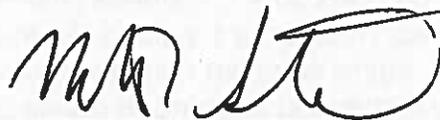
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d. The DIVARTY SARC will ensure all newly assigned personnel receive the initial SHARP training required by Table G-1 of reference I (AR 350-1).

13. COMMAND POLICIES: As directed by reference g, paragraphs 7-2b and 8-5o(17), commanders at every level will issue written sexual harassment and sexual assault command policy statements. Commanders will obtain a legal review of their policies prior to issue.

14. The primary Point of Contact for this policy is SFC Ray Kreft, DIVARTY SHARP/SARC at 808-655-4564, blackberry 808-859-5781 or email: ray.c.creft.mil@mail.mil. The alternate Points of Contact are MAJ Robert Murdough, DIVARTY Brigade Judge Advocate, 808-655-1003, and CPT Eugene M. Gray, DIVARTY Trial Counsel, 808-655-6943.



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