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09 Jul 2019

## MEMORANDUM

SMITH, KEITH.

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From: K. M. Smith, RADM

Consolidated Disposition Authority

To: M. F. McAllister, VADM  
DCMS

Subj: FOULED ANCHOR COMMAND ACCOUNTABILITY DISPOSITION DECISION  
AND COMPLETION OF CONSOLIDATED DISPOSITION AUTHORITY DUTIES

Ref: (a) CCG memo 5810 of 16 Aug 18  
(b) VCG memo 5800 of 24 Oct 18  
(c) CGIS Command Accountability Report

1. In accordance with reference (a), I am the Consolidated Disposition Authority for all disciplinary and administrative action related to the "Fouled Anchor" investigation into reports of sexual assault at the United States Coast Guard Academy between 1992 and 2006.
2. As of 28 May 2019, I have reviewed all Coast Guard Investigative Service (CGIS) Reports of Investigation ("ROI") regarding specific allegations of sexual assault at the academy from 1992-2006 and have made disposition determinations regarding the forty-six individuals identified as subjects in those cases.
3. Reference (b) requires that I also consider "whether any actions should be taken related to the advisors and decision makers at the Coast Guard Academy" and that I provide you with a summary of dispositions and outcomes. This memorandum and reference (c) ("the Report") focus on the Coast Guard Academy leadership during the Fouled Anchor period and their actions. Specifically, the Report addresses whether the alleged sexual assaults comprising the Fouled Anchor investigation were handled in accordance with then-existing requirements (including referral to CGIS for investigation by trained criminal investigators).
4. After a review of the Report regarding actions by those in leadership positions during the Operation Fouled Anchor period, and in consideration of applicable military law and Coast Guard policy, and consistent with the advice of my staff judge advocate, I am taking no action with regard to any Coast Guard Academy command cadre member identified in the investigation.

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5. My decision to take no action was driven (and generally required by) by two primary factors. First is the fact that all of those in command or leadership positions at the Coast Guard Academy during the Fouled Anchor timeframe, who may have had responsibility to act, retired years ago and are no longer on active duty (and in several cases have passed away). Additionally, the statute of limitations for any potential offenses has run – in most cases decades ago – precluding consideration of criminal charges (even if members remained on active duty or are otherwise subject to personal jurisdiction). Similarly, by Coast Guard policy, the ability to take administrative action lapsed decades ago (even were members still on active duty).

6. Often contributing to these primary factors was the lack of sufficient evidence to adequately satisfy all elements of the offenses potentially implicated or to identify or affix specific culpability to any particular individual. This was frequently due to lack of historical documentation of actions taken (or not taken) or the inability of those who were interviewed to remember the details of the specific cases (most of which were over 20 years old), and in some instances individuals declined or were otherwise not interviewed. Ability to assign specific accountability was also limited by the fact that the relevant instructions were not punitive in nature,<sup>1</sup> were often not “general orders,”<sup>2</sup> and in places were inexact or seemed to provide discretion for action by Academy leadership. These and other factors also limited my ability to take action in some previous individual cases.

7. Regardless, I am nonetheless compelled to convey some of my observations about how Academy leadership handled allegations of sexual assault during various periods throughout the Fouled Anchor timeframe, and what I believe was the failure to adequately respond to those allegations.

8. The response by Academy officials to allegations of sexual assault must be judged, in large degree, on the governing policy of the time. The response to allegations of sexual assault during the Fouled Anchor time period was primarily controlled by three policy directives:

a. Commandant Instruction 5520.5D (Investigative Assistance). This version of the directive was first promulgated thirty years ago, in December of 1989, and remained in effect and unchanged until updated in 2004. All but one of the Fouled Anchor cases occurred while this version of the manual was in effect.

(1) The stated purpose of this Instruction was simply to “reaffirm jurisdiction and responsibilities in the conducting of criminal...investigations.” Although this Instruction did not specifically direct commanding officers to report all incidents to CGIS, it did clearly provide that the Coast Guard Investigations Program (now CGIS) was “responsible for the investigation of

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<sup>1</sup> Not all provisions in general orders or regulations are punitive in nature, particularly those which only provide guidelines for performing military functions. The regulation or instruction must normally contain language clearly establishing that it is punitive in nature in order for its violation to be punishable under the UCMJ. None of these instructions were punitive in nature.

<sup>2</sup> General Orders, which are enforceable regardless of whether a member had *actual knowledge* of the order, must be signed by a flag officer in command or a general court martial convening authority (or a superior commander). Only the Superintendent Instruction discussed below is a general order; the others would require proof of actual knowledge of their requirements in any prosecution for their violation.

actual, suspected, or alleged felony offenses committed against a person”<sup>3</sup> and instructed that “requests for investigative assistance may be made through [Coast Guard Headquarters, a District Office], or local Resident Agent Office.”

(2) The only specific reference to sexual offenses contained in the instruction was a requirement for commanding officers to “provide available information to CGI[S] to determine if a request for a full investigation is warranted” for “incidents of perverted sexual behavior...”.

(3) The manual also notes that if a commanding officer “declines to refer a suspected or alleged criminal matter to CGI[S] for investigation, the facts shall be referred to a higher authority for review and determination whether an investigation should be initiated by CGI[S].” It also recognized command authority to commission fact-finding bodies to determine the circumstances of specific incidents, to use command investigators for criminal offenses of a purely military character involving only Coast Guard personnel and confined to a ship or station, and stated that “nothing herein is to be construed as infringing upon, conflicting with, or restricting in any way the investigative functions of a command, e.g. courts of inquiry, or investigations conducted pursuant to the UCMJ, or [the Administrative Investigations Manual].”<sup>4</sup>

b. Commandant Instruction 1754.10 (Reporting of Rape and Sexual Assault). This instruction was initially promulgated in 1990 (six months after the first of the twenty-seven Fouled Anchor cases which were contemporaneously reported to CGA officials). This version of the manual was in effect for the vast majority of the Fouled Anchor cases contemporaneously reported to Academy official (over 90%). It was updated in April of 1999.

(1) The stated purpose of this instruction was to ensure treatment of victims of rape and sexual assault, recognizing that rape and sexual assault are physically and psychologically traumatizing events. It specifically cautions that a victim will “feel powerless to exert control in his or her situation, can experience shock, anxiety, a fearful lack of trust in anyone, and sometimes will deny that the rape or sexual assault ever occurred.”

(2) It required immediate telephone notification to Commandant (G-PS-4), as well as District (ole) when a Coast Guard member was the assailant. Telephone reports, vice written reports, were specifically required. A later version of this Instruction (1754.10A in 1999) did specifically require CGIS notification for all alleged incidents of rape or sexual assault to ensure the “involvement of trained investigators.” As in the previous version, telephone was the prescribed method of reporting.

c. Superintendent Instruction 1754.1 (Handling of Rape and Sexual Assault Incidents). This instruction was initially promulgated by the Academy in May of 1991, was signed by RADM Matteson (the Superintendent at the time), and remained unchanged and in effect until updated by RADM Olsen in 2004. All but one of the Fouled Anchor cases occurred while this version of the Instruction was in effect.

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<sup>3</sup> The two most relevant punitive articles under the version of the UCMJ in effect during the Fouled Anchor period – Rape and Canal Knowledge (Article 120) and Indecent Assault (Article 134) – were both felonies.

<sup>4</sup> Although this last provision may have been intended to apply to internal procedural investigation, it added to the ambiguity of the Instruction’s requirements.

(1) Its stated purpose was to bring together “all Academy resources for the physical protection, emotional support, medical evaluation, psychological treatment, media inquiries, and legal assistance for victims of rape or sexual assault occurring on the Coast Guard Academy....”

(2) It was intended to implement the *Reporting of Rape and Sexual Assault* Commandant Instruction outlined above. It restated the impact that rape or sexual assault may have on the victim, and alerted Academy staff to be “particularly sensitive to and aware of the risk of sexual assault of women cadets ... by men with whom they are acquainted or with whom the socialize” and to “be mindful that social familiarity between the victim and the rapist does not lessen the physical and emotional injury suffered by the victim.”

(3) This Instruction does mention, albeit briefly, CGIS notification. Watchstanders and duty officers at Academy were tasked with notifying the medical clinic, the chaplain, the legal officer, public affairs, the Personnel and Administration Divisions Chiefs and Commandant of Cadets, and Coast Guard Academy Security for “any reported rape or sexual assault which occurs on the Academy.” It was CGA Security who, in turn, was directed to “notify resident agent and local authorities, if appropriate.” There was no other explanation of “appropriate” and no other specific reference to CGIS notification in the Instruction.

9. While I believe the language of the Instructions conveys the intent that sexual assault should be investigated by CGIS, the language is often passive, at times contains ambiguous guidance, and lacks clear and unequivocal direction to commanding officers that CGIS was to be notified immediately and that investigation into sexual assault is reserved exclusively for trained professional investigators. These Instructions, promulgated decades ago, represent the beginning efforts in some of the significant changes that have occurred in the understanding we have today and our sharp organizational focus on both ensuring the freedom to report sexual assault and our response to those reports. It is important to note that the primary intent of these instructions, beyond outlining the role of the Coast Guard Investigative Service, was to care for and provide assistance to victims alleging sexual assault. It is in this respect, beyond the existence of any technical requirement to notify CGIS, that I found Academy leadership most lacking.

10. The following paragraphs outline five discrete time periods within the Fouled Anchor investigation. These periods correspond to periods of Academy leadership and the individuals responsible for both the conduct and the care of the cadets. They provide an overview of their response to allegations of sexual assault (twenty-seven of the cases investigated during Fouled Anchor were reported contemporaneously, or nearly so, to the alleged assault; the remainder were initially unreported and were discovered during the course of the Fouled Anchor investigation), help illustrate a clearer picture of accountability for the handling of Fouled Anchor cases and, perhaps, show some evolution in the Academy’s response to allegations of sexual assault. The vast majority of Fouled Anchor cases – both reported and unreported – eighty percent – occurred during the earliest two periods. (See Enclosure (1) for a more detailed representation)

11. Period 1: June 1989 to June 1993. This period, during which RADM Matteson was the Superintendent, is the earliest period of cases investigated by Operation Fouled Anchor, and includes a three-year period prior to the prescribed Operation Fouled Anchor start date. (My CDA detailing letter outlines the Fouled Anchor period as 1992 to 2006; however, eleven of the

cases investigated by CGIS and which I examined as CDA occurred prior to that 1992 start date). Two different individuals served as the Academy's Commandant of Cadets during this earliest time period: CAPT Joseph Maka (1989-1992) and CAPT Rube Olsen (1992-1994)(CAPT Olsen would later serve as the Assistant Superintendent of the Academy, and then promote to Rear Admiral and become Superintendent in 2001).

a. Of the twenty-seven Fouled Anchor cases in which a cadet reported an incident of sexual assault to an Academy official close in time to the alleged assault, forty percent were reported during this period (eleven cases).

b. CGIS did not contemporaneously investigate any of these cases, and I saw no evidence of CGIS notification by CGA leadership.<sup>5</sup>

c. When interviewed by CGIS, RADM Matteson indicated that he was not aware of the CGIS office located at the Academy, and believed that any CGIS involvement would have been by or at the direction of the Headquarters Chief of Personnel. CAPT Maka, the Commandant of Cadets for a majority of this period, also did not believe CGIS was located aboard the Academy, and stated that the Academy's internal Executive Board, not the UCMJ, was the normal procedure for cadet discipline. RADM (then-CAPT) Olsen, his successor during this period, reinforced this belief, indicating that he believed the Academy had discretion in whether or not to notify CGIS, and that reports were generally handled in-house. RADM (then-CAPT) Piche, the Assistant Superintendent during this period, also confirmed belief in the idea that incidents at the Academy were handled internally, and does not recall outside law enforcement ever being brought in.

d. The institutional belief that incidents at the Academy could best be investigated and adjudicated internally, without outside investigation, is a strong theme that runs throughout the Fouled Anchor investigation. On at least one occasion during this period the Staff Judge Advocate indicated that he recommend that an alleged assailant be court-martialed. He said the Academy leadership instead referred the member to treatment and handled the matter administratively.

12. Period 2: June 1993 to June 1997. RADM Paul Versaw was the Superintendent of the Academy during this period. Three different individuals served as the Commandant of Cadets during this period: RADM (then-CAPT) Rube Olsen (1992-1994) and, RADM (then-CAPT) Patrick Stillman (1994-1996) and CAPT Bruce Stubbs (1996-1997).

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<sup>5</sup> The ROI did not contain interviews of the CGA Resident Agents during this period detailing either their normal interaction with Academy officials or any informal notification or awareness. The ROI also did not contain interviews of any CGA Security personnel, or any Headquarters personnel from the period regarding whether telephone notifications were made in accordance with the Commandant and Superintendent Instructions discussed above. It did indicate that no formal records or Letters of Predication were found in CGIS files. Unlike current practice, during the Fouled Anchor period notification to CGIS typically required a Letter of Predication, in which the command formally requested CGIS investigatory assistance (The governing Instruction, *Investigative Assistance*, discussed above, stated that "investigations will be initiated...only upon receipt of a written request from appropriate authority."). Comments from Academy officials interviewed indicated that such notification would not have been the normal or preferred practice.

a. Of the 27 Fouled Anchor cases reported to an Academy official close in time to the alleged assault (and during the timeframe examined by Operation Fouled Anchor) forty percent (eleven cases) were reported to the Academy during this period (and almost half of all alleged Fouled Anchor sexual assault cases occurred during this period).

b. Of the eleven allegations of sexual assault made to Academy officials during this period, there was evidence of CGIS notification in only two cases. However, in at least four other cases, Academy investigating officers conducting the internal investigation requested or recommended CGIS assistance, but the cases were ultimately disposed of administratively.

c. In one particularly egregious example, a cadet was implicated in the rape of another cadet in Chase Hall. The Academy's Staff Judge Advocate provided a memorandum to the Superintendent recommending preferral of criminal charges, and that a hearing under Article 32 of the UCMJ be convened to determine whether to refer those charges to a general court-martial. He expressed concern that handling the matter administratively and discharging the cadet would send the student body a message "tantamount to the declaration of 'open season' on women." Contrary to this advice, the cadet was administratively discharged from the Academy without military justice action.<sup>6</sup> The SJA recalled that he did have a good relationship with CGIS, but that he was often the last one to hear about incidents of sexual misconduct, and, as noted previously, there was a belief by Academy leadership that incidents could and should be properly investigated and handled within the confines of the Academy.

d. RADM (then-CAPT) Stillman, the Commandant of Cadets for much of this period, indicated that during his tenure, all of the sexual assault cases he could recall were handled administratively by the Academy Executive Board in compliance with the code of conduct for the corps of cadets. He did not recall CGIS being brought in to conduct any sexual assault investigation and stated that CGIS involvement was not the normal process.

13. Period 3: June 1997 to June 2001. RADM Doug Teeson was the Superintendent of the Academy during this period. Three different individuals served as the Commandant of Cadets during this time: RADM (then-CAPT) Gene Brooks was the Commandant of Cadets for the majority of this period (1997-2000).

a. Of the twenty-seven Fouled Anchor cases that were reported to an Academy official close in time to the alleged assault (and within the timeframe examined of Operation Fouled Anchor) only four were reported during this period (eleven percent of those cases contemporaneously or nearly contemporaneously reported).

b. Of the four cases reported, only one case was not referred to CGIS.<sup>7</sup>

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<sup>6</sup> Coast Guard Headquarters reviewed the case prior to the member being discharged and issued an opinion stating that a discharge characterized as Other Than Honorable was appropriate under the facts of the case.

<sup>7</sup> This case involved a member who self-reported after hearing a definition of sexual assault that he believed may have applied to his past conduct. Although the Academy investigating officer expressed concern that she was not qualified to investigate such an offense and requested CGIS involvement, the case was heard by the Academy Executive Board, which unanimously found that the member did not commit sexual assault.

c. RADM Teeson stated that he was aware there was a CGIS office on board the Academy, but believed they primarily worked on outside cases. He recalled that staff officers typically conducted the more serious cadet investigations, but believes he would have called CGIS in the event of a rape or sexual assault.

d. It was during this period that Commandant Instruction 1754.10A was updated to explicitly require commanding officers, upon receipt of a report of sexual assault or rape, to immediately notify CGIS, a law specialist, and to refer victims to mental health and medical providers. The amplifying Academy instruction, Superintendent Instruction 1754.10A, would not be updated for another 5 years.

14. Period 4: June 2001 to June 2005. During this period, RADM Rube Olsen was the Superintendent of the Coast Guard Academy. None of the cases examined under Operation Fouled Anchor occurred or were reported during this period. It was also during this period that RADM Olsen (who had been the Assistant Superintendent under RADM Versaw, and the Commandant of Cadets under RADM Matteson), significantly updated the Superintendent Instruction outlined above, and required that "Academy personnel are strictly prohibited from investigating reported sexual assaults, to include interviews or inquiries into actual, suspected, or alleged assaults" and unequivocally required CGIS notification.

15. Period 5: June 2005 to the conclusion of Operation Fouled Anchor (2006). During this period, RADM James Van Sice was the Superintendent of the Academy. Only one of the Fouled Anchor cases occurred during this period, and it was reported to CGIS for investigation.

16. Regardless of the factors outlined above that drove my decision to take no formal action in this case, it is evident to me that Academy leadership often failed to undertake sufficient action to ensure a safe environment - particularly for female cadets - and instill a culture intolerant of any form of sexual misconduct; they did not promote and maintain a climate conducive to reporting incidents of sexual assault; and they did not adequately investigate alleged offenses as serious criminal matters and hold perpetrators appropriately accountable. Most importantly, the Academy too often failed to provide the support, trust, and care that is so vital for victims of sexual assault.

17. I am fully aware of the very real peril of judging action (or inaction) from twenty-five years ago through the lens of society's current views and efforts regarding the crime of sexual assault, and our Service's significant and ongoing efforts to eliminate it completely. Throughout the Fouled Anchor investigation, I have taken care to ensure my disposition decisions were based on the UCMJ Articles, state statutes, and Coast Guard regulations in place at the time - as wholly inadequate as many of them seem by today's standards. We have made vast improvements in those laws and regulations, and in how we respond. We have a far greater understanding that sexual assault is a crime and cannot be minimized or treated differently because offenders are students, and that we best protect the status and reputation of our Service and our Academy by giving victims the care and the voice they deserve and by holding perpetrators fully and immediately accountable. We know that sexual assault is a criminal act requiring experienced criminal investigators. That victims deserve the assistance of special victims counsel and a host of other protections and safeguards we now recognize as indispensable to any response. Sadly, this was always not the case twenty-five years ago.

18. Notwithstanding that fact, I am left with the belief that Academy officials too often did not fulfill their responsibility to ensure the physical protection, emotional support, and medical and psychological care for those alleging rape or sexual assault. Many of these individuals continue to struggle with the impact of this today.

19. I recommend that a copy of this memorandum and Enclosure (1) be required reading for current and future Academy leadership teams. One way to drive success in our continued effort to eliminate sexual assault from our Service and to shape our future efforts is to be reminded of and have a clear and sophisticated understanding of past mistakes.

20. I also recommend consideration of this memorandum and reference (c) when evaluating whether to invite or retain any former member of Academy leadership from the Fouled Anchor period to participate in leadership, advisory, governance or oversight roles at the Academy or in the Service generally.

21. Pending further direction or guidance, this memorandum completes my duties and responsibilities as the Consolidated Disposition Authority.

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Enclosures: (1) Timeline of Fouled Anchor Reports and Alleged Incidents of Sexual Assault  
(1989-2006)