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MEMORANDUM

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From: M. F. McAllister, VADM
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To: VCG
Subj: "FOULED ANCHOR" INVESTIGATION – FINAL REPORT
Ref: (a) DCMS-D memo 5800 dated 8 Nov 2018 (Interim Report)

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1. Executive Summary. This report concludes this investigation, notes that all disposition actions are complete, and helps inform Service leaders as we consider future actions to improve our Sexual Assault Prevention, Response, and Recovery program.

- a. This final report arises out of an investigation the Coast Guard Investigative Service (CGIS) opened in September 2014 after an officer disclosed she was raped while at the Coast Guard Academy (CGA) 17 years earlier. Her supervisor immediately reported this allegation and CGIS opened a criminal investigation. The subject in that investigation became the initial subject in an investigation that spanned more than four years.
- b. During the initial interviews CGIS learned of three additional historical sexual assault allegations involving different subjects and victims. All of the victims stated they had reported the allegations to CGA near the time of the incident. A review of records stored at CGA uncovered additional sexual assault allegations. These early investigative efforts revealed that during the 1990s there appeared to be a disturbing pattern of conducting internal administrative investigations and/or initiating disenrollment for sexual misconduct instead of referring the matter for criminal investigation. This investigation expanded until it ultimately included allegations against 43 separate subjects.¹
- c. The Commandant appointed a Consolidated Disposition Authority (CDA) to handle all disposition decisions and administrative actions arising from this investigation. The CDA had broad powers to address all relevant issues; powers that included the ability to pursue both criminal and administrative sanctions. The CDA retained this designation

¹ As used in this report the term "subject" refers to a person identified as having possibly committed a sexual assault who was subject to investigation. The term "case" is synonymous with "subject" and generally refers to a completed investigative matter referred to the CDA for disposition.

throughout the investigation, despite a change in assignment, in order to maintain a consistent and unified approach.

- d. The following sections summarize the actions taken to investigate these historical allegations, review and act upon the findings, and engage in victim recovery.

2. **CGIS Investigation.** CGIS formed the Operation Fouled Anchor ("OFA") task force after early investigative efforts indicated multiple sexual assault allegations from CGA in the 1990s, with no criminal investigations and limited documentation. The records that did exist seemed to indicate a pattern of administrative process and sanctions, including removing criminal subjects from the Academy in some cases, without pursuing criminal investigation/prosecution options. CGIS initially prioritized cases with a rape allegation because at the time there was no statute of limitations for rape under the UCMJ. That changed in February 2018 when the Court of Appeals for the Armed Forces held that rape, under the version of the UCMJ in effect at the time, was subject to a five-year statute of limitations.² As a result, CGIS re-prioritized investigative efforts towards allegations against individuals who remained on active duty, and thus could still be subject to other, non-criminal, actions. Ultimately, CGIS investigated all allegations.

- a. From September 2014 through June 2019, CGIS investigated 102 events (separate allegations of sexual assault whether made by the victim of the assault or a third party). Over 70 agents expended almost 20,000 investigative hours, including a review of over 1200 documents and interviews with more than 300 witnesses. The investigation looked into all allegations of sexual assault, both contact offenses (the majority) and penetrative offenses (the minority).
- b. Forty-three individuals were ultimately the subject of investigation for sexual assault allegations at CGA in the 1990-2006 period covered by the investigation. Sixty-three potential victims were identified.³ The CGA was aware of allegations against 30 of those individuals at or near the time of the alleged offense but only five were reported to CGIS and/or local law enforcement for investigation. Allegations against 13 of those individuals only became known during the Fouled Anchor investigation.
- c. **Outside review.** During the course of the investigation CGIS consulted with a group of outside experts including a DoD sexual assault prosecutor, the head of a DoD Military Criminal Investigative Organization sexual assault program, and two cold case detectives from a large city police department. They reviewed investigative files and made a series of recommendations that CGIS investigators and Legal Service Command implemented.

² U.S. v. Mangahas, 77 M.J. 220 (C.A.A.F 2018). Although this is an Air Force case, the misconduct originated at the Coast Guard Academy in 1997 when LtCol Mangahas was a cadet there. The allegations against Mangahas were the origin of Operation Fouled Anchor. The practical result of the holding in this case was a loss of military criminal jurisdiction for sexual assault cases that occurred prior to 2007.

³ This updates the interim number of victims and subjects reported in reference (a). The final numbers account for continued investigation and use of consistent terminology. Further, the number of victims and subjects differ because allegations against some subjects involve more than one incident or potential victim, while in other situations allegations against two subjects involve only a single victim, and some victims alleged assault on more than one occasion by different subjects.

- d. Command accountability. As the investigation evolved, CGIS was directed to interview senior Academy officials from the 1990-2006 period who had a role in decision making related to sexual assault allegations. This included those who served as Superintendent, Assistant Superintendent, Commandant of Cadets, or Staff Judge Advocate. None of these individuals remains on active duty. Several key officials were deceased. CGIS ultimately interviewed 20 individuals.

3. Consolidated Disposition Authority (CDA) Review. The Commandant appointed an experienced flag officer and General Court-Martial Convening Authority to handle all disposition decisions and administrative actions arising from this investigation. The Commandant designated the O-6 Commanding Officer of the Coast Guard Legal Service Command (LSC) as the Staff Judge Advocate. As CGIS completed the investigative report in each case, a team of judge advocates at LSC conducted legal evaluation and prepared recommendations for the CDA. The CDA was able to review investigative reports prior to a formal brief. The CDA was briefed by the legal team on each subject, the results of the legal case review, and the range of possible and recommended action(s). These briefs included a full and robust discussion regarding both the substantive and procedural aspects of each case.

- a. Potential criminal action. The facts of each case were examined under the version of the UCMJ and Manual for Courts-Martial in effect at the time of the alleged offenses.⁴ The then-existing state statutes were also examined.⁵ Other factors included: whether the member remained on active duty or was otherwise subject to Coast Guard jurisdiction; whether there was probable cause to prefer charges; whether the investigation contained sufficient evidence to obtain and sustain a conviction beyond a reasonable doubt (including the impact of the passage of substantial time on the availability and quality of the evidence); victim input; and the statute of limitations under the UCMJ and state law.
- b. Potential administrative action. The facts of each case were also examined to determine whether the Coast Guard retained the ability to take any administrative action. The factors examined included: whether the member remained on active duty or was otherwise subject to administrative action; whether the investigation provided sufficient evidence to determine by a preponderance of the evidence that an offense occurred (including the impact of the passage of substantial time on the availability and quality of the evidence); the impact of prior decisions by the Board for the Correction of Military Records; victim input; and the statute of limitations that exists under Coast Guard policy for the entry of administrative actions into personnel records.
- c. Command Accountability. The CDA reviewed the CGIS interviews of the 20 Academy officials and received legal advice to determine whether the cases were handled properly under then existing requirements. The ability to assign specific accountability was limited because none of these individuals are subject to administrative action, the

⁴ The current version of the UCMJ (2019) is comprehensive in its coverage of sexual assault and related offenses, containing some five theories of liability for rape and an additional seven theories of liability for sexual assault. This is the result of four substantive amendments since 2007. However, the version of the statute in effect prior to 2006 was far more rudimentary – virtually unchanged since the original enactment of the UCMJ in 1950.

⁵ Applicability of state statutes was also discussed with the Connecticut state attorneys.

evidence for the decisions made on these cases (most of which were over 20 years old) was incomplete, and many of the policies of the time period were imprecise.⁶

4. Consolidated Disposition Authority Action. All 43 cases were presented to the CDA for a decision on disposition. Following the CDA's independent review of the information contained in the CGIS investigations, the review and recommendations of legal counsel, and the discussion and dialog during the in-person brief(s) on each case, the CDA took the following actions:

- a. Referred three cases to other military services (where Coast Guard members had subsequently joined other services and remained on active duty).
- b. Took administrative action in two cases where sufficient evidence existed to support the allegation (by, at a minimum, a preponderance of the evidence) and the subjects remained on active duty (and where applicable statutes of limitation precluded consideration of criminal prosecution).⁷ Two officers, who had been selected for promotion, were removed from the promotion list and are no longer in the Service.
- c. Took no action in five cases where administrative action was possible but the CDA determined that the allegations were not supported by a preponderance of the evidence.
- d. Took no action in 33 cases where the subject was no longer subject to Coast Guard jurisdiction for administrative action, and where applicable statutes of limitations precluded consideration of either federal or state criminal charges. The CDA did not make a probable cause determination in these cases.
- e. Took no action with regard to any Academy official who may have had a decision-making role in these cases. However, the CDA perceived that the Academy leadership during much of this period failed to take sufficient action to ensure a safe environment - particularly for female cadets - and failed to instill a culture intolerant of sexual misconduct. They did not promote and maintain a climate conducive to reporting sexual assault and they did not adequately investigate allegations 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.

5. Coast Guard Academy. Coast Guard and Coast Guard Academy policies concerning sexual assault prevention, response, reporting and investigation were closely examined and have evolved considerably from the period in the Fouled Anchor investigation. Those policies are now more precise and directive, developed in the context of wider changes in law and policy regarding sexual assault that applied across the armed forces as well as experience with responding to and investigating sexual assault.⁸ In several respects, the Coast Guard Academy has been at the forefront of the evolution and development of sexual assault prevention and response initiatives in the Service. For example, in 2004, the Coast Guard Academy adopted the

⁶ While retired officers are potentially subject to court-martial jurisdiction, the available evidence and circumstances did not support that option.

⁷ One case was documented with a CG-3307, the other case with a historical Officer Evaluation Report.

⁸ Some of the more visible changes include multiple amendments to the UCMJ that now require Sexual Assault Response Coordinators, Victim Advocates, Special Victims Counsel, expanded rights for sexual assault victims, and intensified training for investigators, judge advocates, and commanders.

concept of confidential reporting of sexual assault and in 2007, the Service applied this practice Coast Guard-wide with its policy on restricted reporting. Further, in 2013 the Service adopted the Academy's model for a Sexual Assault Prevention and Response Crisis Intervention Team as the process for integrating sexual assault response. Finally, the Academy now has a robust Cadets Against Sexual Assault program with over 450 cadets trained to receive reports, maintain confidentiality, and provide victim support. Further details were provided in reference (a).

6. Victim Recovery Efforts.

- a. CGIS, the LSC, and the Sexual Assault Prevention, Response, and Recovery (SAPRR) Program assembled a victim services and recovery plan for all victims identified by the Fouled Anchor investigation. Actions taken included:
 - Each victim was provided the opportunity for an in-person brief by an outreach team comprised of the lead CGIS agent for the Fouled Anchor investigation, the SAPRR Program Manager, and the senior prosecutor for Fouled Anchor matters.
 - The briefs were conducted at a date and place of the victim's choosing. Twenty-one victims elected in person meetings and three additional meetings were conducted by phone. The meetings took place from 7 January 2019 to 8 February 2019 in 13 states.
 - The team provided each victim with an apology on behalf of the Coast Guard and tailored to the circumstances of their respective case, information on their respective case disposition, information on the full range of support services available, and the opportunity to provide feedback and ask questions.⁹
- b. Almost all of the victims indicated the entire process of participating in the Fouled Anchor investigation was hurtful, yet healing and cathartic. A number asked how they could help in terms of using what happened to them to aid in sexual assault prevention.¹⁰ Almost all expressed frustration at the gender bias and the ways in which women at the Academy were made to feel inadequate during this period. Moreover, nearly all expressed frustration at the lack of intervention of others when behaviors clearly indicative of gender bias were demonstrated in public situations.

7. Summary. Despite the peril in judging action (or inaction) from twenty-five years ago through the lens of society's current views regarding the crime of sexual assault and our Service's significant efforts to eliminate it, a few things are clear. Our Service adopted its core values in 1994, including the value of respect. The victims identified in this investigation did not receive that respect on several levels. This investigation revealed that organizational and CGA reputation during this period often weighed against initiation of a criminal investigation and took precedence over concern for the victim. Although we have made significant improvements in the laws and regulations, and in how we respond to sexual assault, we must continue to proactively look for ways improve our Service's SAPRR efforts.

⁹ None of the victims requested specific services. One victim indicated some difficulty in her attempt to work with the Department of Veteran Affairs regarding military sexual trauma. The outreach team provided assistance.

¹⁰ CGIS has already created powerful video based on the story (and personal appearance) of one victim. The video will be used to train investigators and others involved in sexual assault cases.

8. Next Steps. This report and the considerable investigative effort behind it will remind leaders of the need for consistent, uniform application of law and policy, the need to protect all of our service members all the time. I will ensure that we apply the lessons learned from this investigation in weighing future actions to improve our SAPRR program through our Workforce Wellness and Resiliency Council and the SAPRR Subcommittee. Further, I will direct CGA leadership to consider this report, and the history behind it, as it continues to lead with SAPRR initiatives. The outcome we must continuously strive for is a culture, at CGA and throughout our Service, where everyone is treated with dignity and respect, and an intolerance for those who do not show that respect.

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