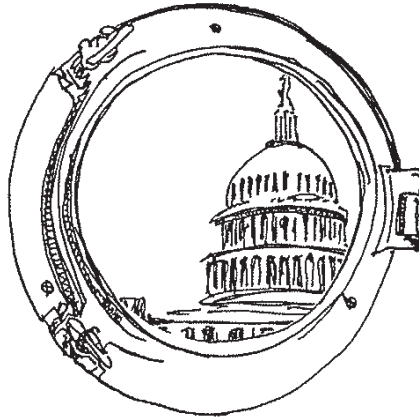


WINDOW ON WASHINGTON



RIGHTING THE SHIP OR DANGEROUSLY OFF COURSE?

By: Bryant E. Gardner

U.S. Maritime Administrator Paul N. “Chip” Jaenichen may have hoped to develop a sweeping new U.S. Maritime Strategy to revitalize the internationally trading U.S.-flag fleet and then sail off into the sunset with that success in tow. But, as they say, life is what happens when you’re busy making other plans. The U.S. Maritime Administration (“MARAD”) and the industry have been engulfed by tidal surge of concerns about the operation of the United States Merchant Marine Academy at King’s Point, New York, which falls under MARAD’s purview.

The commercial seafaring industry, traditionally populated by males isolated in close quarters for extended periods of time in many cases, has a unique close-knit culture which has at times struggled with modern shore-side mores regarding sexual harassment and sexual assault. At a time when higher education campuses are pursuing zero-tolerance attitudes toward expanding definitions of sexual harassment, the collision was bound to happen, and nowhere has it been more spectacular than at the Academy.

The Duncan Hunter National Defense Authorization Act for 2009 first imposed the requirement that the Academy prescribe a policy and conduct an assessment to determine the effectiveness of its policies, training, and

procedures with respect to sexual harassment and sexual violence prevention, and to provide regular reports to Congress.¹ In recent years, these reports have reinforced the evidence posted on both the Academy’s and MARAD’s websites, which points to substantial changes and program developments aimed at reducing misconduct and changing the overall institutional culture. The Academy has put in place an overarching Sexual Assault Prevention and Response Program (“SAPR”), staffed by the Sexual Assault Response Coordinator (“SARC”) to ensure there is an effective progressive training, accountability of incidents, a robust victim advocacy system, and an overall climate of confidence for victims to report incidents of sexual harassment and assault around the clock, in coordination with the Nassau County rape crisis center. As part of its SAPR, the Academy has ramped-up both midshipmen and staff training, and formed a panel of

¹ Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417, § 3507, 122 Stat. 4356. *See, e.g.*, Preliminary 2014-2015 Academic Program Year Annual Report on Sexual Harassment and Sexual Assault at the United States Merchant Marine Academy, <https://www.usmma.edu/academy-life/sexual-assault-prevention/sexual-assault-prevention-and-response-program> (*last visited 10/24/16*).

Sexual Assault Victim Advocates on campus. Additionally, the Academy's vaunted "Sea Year" program, which provides midshipmen apprenticeships on operating commercial U.S.-flag vessels, provides emergency communications services for reporting to shoreside services, and on-board conflict resolution procedures to counter misconduct.

After years of new programs and steady improvement, the issue snow-balled over the Spring and Summer of 2016. In April 2016, the Middle States Commission on Higher Education visited King's Point and subsequently issued a report, which concluded that the Academy met only 9 of the Commission's 14 evaluation standards. Among the standards not met were No. 2 "Planning Resource Allocation, and Institutional Renewal," No. 3 "Institutional Resources," No. 4 "Leadership and Governance," No. 5 "Administration," and No. 9 "Student Support Services." Although the Commission alleged shortcomings across a broad range of issues, including lack of budgetary and resource control inherent in reliance upon annual congressional appropriations, Standard No. 9, which relates to the Academy's handling of sexual harassment and assault, has drawn the most scrutiny and all of the media coverage.

The Middle States report concludes that "The campus climate and incidence of sexual harassment and sexual assault have been a serious and recognized problem for over 10 years. . . . The pervasiveness of the incidents is undeniable and disturbing. While the Academy has consistently recognized the serious problem that it faces and has officially recorded it, the efforts in place to prevent new recurrences have been insufficient and ineffective. Perhaps most disturbing is that the victims do not report the incidents, and the only evidence of its pervasiveness is obtained through confidential surveys."² The Commission recommends that the Academy establish mandatory training for employees and make "every effort" to disseminate information on sexual assault and harassment policies, campus

resources, and prevention mechanisms "via every available medium."³ Moreover, the Commission report states that, to achieve compliance with Standard No. 9, the Academy will need "To improve the safety and climate of respect that all midshipmen encounter during the Sea Year experience" by "tak[ing] demonstrable steps in preparation for and upon return from the Sea Year experience," and address sexual harassment "as a pressing and substantial concern that has fostered a hostile environment for many cohorts of midshipmen" by implementing "specific steps to build a climate of mutual respect and trust among midshipmen, faculty, and staff with respect to sexual assault and sexual harassment."⁴

The Academy and the Department of Transportation responded to the Middle States report in May 2016. Admiral Jim Helis, Superintendent of the Academy, vowed that "the prevention of sexual assault and harassment remains one of my highest priorities," outlining the many initiatives established to promote a cultural shift at the institution.⁵ Admiral Helis also indicated that there would be a conference among MARAD and senior leadership in the maritime industry on June 24, 2016, to address conditions during the Sea Year apprenticeships afloat. Furthermore, Secretary of Transportation Anthony Foxx wrote to the Middle States Commission underscoring his support for the Academy's initiatives to put a stop to sexual assault and harassment and to reform the restrictive legislation which has hampered the school's finances.⁶ Unquestionably, by the time the Secretary felt compelled to put his name behind the effort, the pressure was on MARAD and the Academy to fix the problem and fix it soon.

But in June 2016, the Middle States Commission wrote to Admiral Helis "[t]o warn the institution that its

² Report to the Faculty, Administration, Advisory Board, and Students of the United States Merchant Marine Academy, 300 Steamboat Road, King's Point, New York 11042, by A Team Representing the Middle States Commission on Higher Education Prepared after study of the institution's Self-Study Report and a visit to the campus on April 3-6, 2016 at 20, <https://www.usmma.edu/sites/usmma.edu/files/docs/2016%20Final%20MSCHE%20Team%20Report%20-%20USMMA.PDF> (last visited 10/24/16).

³ *Id.*

⁴ *Id.*

⁵ Letter from Admiral James Helis, Superintendent, U.S. Merchant Marine Academy, to Dr. Elizabeth Sibloski, President, Middle States Commission on Higher Education (May 20, 2016), <https://www.usmma.edu/sites/usmma.edu/files/docs/2016%20Institutional%20Response%20USMMA.PDF> (last visited 10/24/16).

⁶ Letter from Anthony Foxx, U.S. Secretary of Transportation, to Dr. Elizabeth Sibloski, President, Middle States Commission on Higher Education (May 20, 2016), <https://www.usmma.edu/sites/usmma.edu/files/docs/2016%20Institutional%20Response%20USMMA.PDF> (last visited 10/24/16).

accreditation may be in jeopardy because of insufficient evidence that the institution is currently in compliance” with the five standards the Commission gipped the Academy on following its April audit.⁷ The Commission warning set a two-year deadline for the Academy to come into compliance with its standards. In response, the Academy vowed to make the necessary reforms and noted the many positive elements that the Commission found during its April visits, including the Advisory Board reports and the Sea Year. At the same time, the Academy response characterized the Commission warning as focused upon “combating sexual harassment and assault, particularly during Sea Year, and governance of the USMMA.”⁸ Then, on June 16th, MARAD and the Academy took the drastic step of suspending the Sea Year program until further notice.

The suspension of King's Point's prized Sea Year program, which provides real-world experience to midshipmen training for a career at sea, ignited further controversy. Midshipmen and their parents expressed concern about students' ability to meet licensing and graduation requirements without necessary sea time, and alumni rallied in support of their alma mater. In July, lawmakers on the Academy's Board of Visitors pushed legislation sponsored by influential Senate subcommittee Chair Deb Fischer (D-Neb.) and Ranking Member Cory Booker (D-NJ).⁹ And on August 12th, a dramatic Washington Post article brought the issue to a national audience, further increasing the already withering political pressure on the institution.¹⁰

In September 2016, Secretary Foxx announced that the school would hire a team of outside experts to address

the campus culture, enlisting the help of Vice President Joe Biden's office, which is leading a nationwide public awareness campaign to end sexual assault on college campuses.¹¹ The result being that the Sea Year program will likely remain on hold indefinitely through the third-party audit, potentially threatening some students' ability to graduate on time with the necessary sea time. The Academy subsequently moved to find berths for midshipmen on federally-owned, non-commercial vessels such as those mothballed in “Reduced Operating Status” dockside for sealift surge purposes or on Military Sealift Command grey hulls. However, critics have questioned the educational value of serving on a ship tied up to the dock, particularly for rising deck officers.

Many in the maritime community have expressed concern that the Administration's suspension of the Sea Year program is an over-reaction that harms the students while not doing enough to address the root cause of the problem. In the same vein, there has been real outrage that the broader commercial fleet and the Sea Year have been unfairly scapegoated over a cultural problem which manifests itself ashore on campus just as it does on college campuses around the country. On September 2, 2016, a bipartisan group of lawmakers wrote to Secretary Foxx, MARAD Administrator Jaenichen, and Admiral Helis demanding insight into the decision to suspend the Sea Year program and inquiring whether the Department and MARAD are considering closing the Academy. Later in September, the major seafaring unions wrote a forceful five-page letter to Secretary Foxx questioning the Department's handling of the matter, calling it “dangerously off course.”¹² While acknowledging the seriousness of the problem at the Academy, the unions challenge the Administration's focus upon the commercial fleet instead of the Academy itself. Further, the unions underscored the

⁷ Letter from George A. Pruitt, Chair, Middle States Commission on Higher Education, to Adm. James Helis, Superintendent U.S. Merchant Marine Academy (June 24, 2016), <https://www.usmma.edu/sites/usmma.edu/files/docs/MSCHE%20Letter%20-%20June%202016.pdf> (last visited 10/24/16).

⁸ U.S. Merchant Marine Academy, “USMMA Reaccreditation Update” (June 30, 2016), <https://www.usmma.edu/academics/usmma-reaccreditation-update> (last visited 10/24/16).

⁹ Maritime Administration Authorization and Enhancement Act for Fiscal Year 2017, S. 2829, Title II, 114th Cong. (2016). The legislation largely codifies programs and initiatives in place at the Academy such as a Sexual Assault Response Coordinator, 24/7 Victim Hotline Access, and increases congressional oversight.

¹⁰ Lisa Rein, *Merchant Marine midshipmen endure rough waters as sexual misconduct roils their ranks*, WASHINGTON POST, August 12, 2016, <https://www.washingtonpost.com/news/powerpost/wp/2016/08/11/merchant-marine-academy-under-fire-for-sexual-assault-allegations/> (last visited 10/24/16).

¹¹ On January 22, 2014, Vice President Biden and President Obama created the White House Task Force to Protect Students from Sexual Assault. See, e.g., “About Vice President Biden's Efforts to End Violence Against Women,” <https://www.whitehouse.gov/1is2many/about> (last visited 10/24/16).

¹² Letter from Paul Doell, President American Maritime Officers, Donald Marcus, President, Masters, Mates & Pilots, Marshall Ainley, President Marine Engineers' Beneficial Association, and Michael Sacco, President, Seafarers International Union, to Anthony Foxx, U.S. Secretary of Transportation (Sept. 6, 2016), http://mebaunion.org/MEBA/wp-content/uploads/2016/09/union_leaders_letter_to_foxx_9-16.pdf (last visited 10/24/16).

professional harm done to students by the suspension of the Sea Year, called for the return of midshipmen to the fleet within 60 days, and for the inclusion of experienced U.S. merchant mariners on the board of "independent outside experts" assigned to investigate the problem at the Academy.

The issue continues to metastasize. The Academy, MARAD, and the Department are tightly focused upon reforming the culture of the institution. Additionally, both unions and companies sailing in the Sea Year program are sure to re-tool and strengthen their preven-

tion and reporting policies with Federal oversight. Hopefully, those with their hands on the tiller will ensure the continued vitality of an important American maritime institution with deep roots and a proud history of partnership with the U.S. fleet.

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