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Commonwealth of Virginia
State Council of Higher Education for Virginia
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**“MARCHING TOWARD INCLUSIVE EXCELLENCE: AN EQUITY AUDIT
AND INVESTIGATION OF THE VIRGINIA MILITARY INSTITUTE”**

**FINAL REPORT OF THE BARNES & THORNBURG LLP
SPECIAL INVESTIGATION TEAM**

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Exhibit 4	May 5, 2021 letter from VMI to SCHEV
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Throughout the investigation, the Special Investigation Team met regularly with representatives of the State Council of Higher Education for Virginia and reported on the progress of the investigation. The Team discussed the investigation's process, but did not disclose findings or recommendations. No person or entity other than the Team and its members reviewed the findings and recommendations in this report prior to its release.

I. Executive summary

The Virginia Military Institute, founded in 1839, is a historically important institution that has produced generations of respected citizen soldiers and leaders. VMI has also traditionally been run by white men, for white men. VMI's overall unwillingness to change—or even question its practices and traditions in a meaningful way—has sustained systems that disadvantage minority and female cadets and faculty, and has left VMI trailing behind its peer institutions. If VMI refuses to think critically about its past and present, and to confront how racial and ethnic minorities and women experience VMI, it will remain a school for white men.

Following the developments of 2020 and the arrival of MG Cedric Wins, VMI has taken incremental steps towards a more diverse, inclusive VMI, and it has outlined plans to address the existing culture. However, many in the VMI community, including senior leaders, perceive no issues or reasons to change. To accomplish its goals, VMI must recognize three things: (1) that racial and gender disparities in how cadets are treated persist at VMI; (2) that VMI's culture creates and reinforces barriers to addressing those problems; and (3) that as a state-funded institution, VMI must be held accountable to the taxpayers and the General Assembly and prove that it is implementing its diversity, equity, and inclusion (“DEI”) proposals.

Racial and gender disparities persist at VMI

First, VMI must acknowledge that racial and gender disparities exist and that improvement is needed. This report provides detailed findings from the investigation, some of which support the presence of equity gaps in VMI's culture, policies, practices, and traditions. A high-level summary of key findings follows:

- Perceptions about the racial climate at VMI are often dependent on the respondent's race or ethnicity. According to survey results of current cadets, half of African American cadets strongly or somewhat agree that there is a culture of racial intolerance at VMI, while only 10% of Caucasian cadets agree with that sentiment. Similarly, 42% of African American cadets responded that African Americans are discriminated against “a lot” at VMI, compared to only 4% of Caucasian cadets who feel that way. Half of African American cadets strongly or somewhat agree that it is harder for people of color to succeed at VMI, compared to 5% of Caucasian cadets who feel that way. The interviews reflected a similar dynamic. More than one Caucasian survey respondent insisted that the real racial issue at VMI is racism against whites. These responses and perceptions paint a picture of a VMI where African Americans experience racism but Caucasian cadets do not or choose not to see it. Other minority respondents did not report experiencing racism at the same level as African American respondents.

- Racial slurs and jokes are not uncommon on post.¹ VMI's approach to the use of racial slurs or racist jokes is insufficient. These comments contribute to an atmosphere of hostility toward minorities regardless of where they are directed. Those who use slurs and who are reported to the administration are at times excused by administrators based on a lack of diversity in the cadets' upbringing. VMI provides education and training to those individuals, but not proactively to all cadets. VMI should commit to educating all cadets including at matriculation and deterring the use of racial slurs and jokes on post.
- VMI lags behind other Virginia institutions of higher education and other military academies in race and gender metrics and diversity efforts. A comparison of VMI's demographics with publicly available data from other comparable colleges and communities demonstrates that VMI is consistently less diverse. Additionally, VMI trails its peer institutions when it comes to implementing, supporting, and publicizing DEI initiatives.
- One of the most common opinions among investigation participants, especially Caucasian ones, is that there is not a race problem, but a problem with a divide between athletes and non-athletes. The investigation found that a significant rift does indeed exist between athlete and non-athlete cadets. Both athletes and non-athletes feel the rift. They stated that non-athletes tend to resent athletes because they are given what is perceived as preferential treatment. Athletes, in turn, take offense to this resentment and feel that non-athletes minimize their sacrifices, hard work, and contributions as NCAA athletes. The investigation found that this divide breeds racial resentment due to the incorrect perception that "athlete" means "African American" when in reality only 18% of athletes are African American. Even on the football and basketball teams, which some respondents described as "black" teams, African American cadets are in the minority. Reliance on the misperception that VMI "does not have a race problem, it has an athlete problem" allows the Institute to avoid addressing the underlying association between athletics and race and the issue of race in general.
- The review of the Honor Court and Honor Code found that most Honor Court cases, when examined in isolation, involve fair proceedings, follow documented procedures, and produce defensible results. However, analysis of the 91 cases that resulted in a conviction in the last 10 years shows that while cadets of color represent 23% of the corps of cadets, they make up 41% of dismissed cadets since 2011. The racial disparity exists regardless of whether the cadet is an athlete. Elimination of the fundamental elements of the Honor Code or Honor Court is not recommended. However, it is recommended that the Superintendent's plans to examine the Honor Court system should include a root-cause analysis of these statistics, revisions to training and procedures to

¹ VMI refers to its grounds as "post," instead of "campus."

implement more equitable processes, and improvement in the documentation and monitoring of statistics to better identify disparities.

- VMI must also recognize that the Honor Code system is not, in reality, a true “single sanction” system with straightforward application, as it is often described and portrayed. Instead, the Honor Court allows certain students who are reported for or charged with Honor Code violations an opportunity to go through an education process rather than face a trial and expulsion. This “education exception” grants wide, undefined discretion to the Honor Court prosecutors and carries the potential for disparate application due to implicit bias. The Honor Court’s discretion to impose this alternative path needs to be studied to analyze whether this practice is implemented equitably and is consistent with the Honor Code. VMI either did not produce or does not have materials to permit this analysis as part of the investigation and it needs to improve its documentation on this front.
- The athlete and non-athlete divide also plays a role in Honor Court proceedings. Honor Court prosecutions and convictions disproportionately affect athletes as a whole. Some non-athlete participants opined that athletes miss Honor Court training on the Rat Line and thus do not understand the implications of the Honor Code. Others even proposed that athletes just cheat more, and thus they are more likely to be caught and prosecuted. In contrast, numerous participants, including athletes, non-athletes, and professors, felt or witnessed that VMI staff used Honor Court referrals to target athletes for prosecution and expulsion.
- Many interviewees expressed frustration that VMI leadership, in its focus on the Honor Court, fails to make clear that other severe conduct is unacceptable. This includes instances of racial and sexual misconduct. While these offenses are often punished, sometimes with expulsion, frustration remains that VMI leadership and traditions often treat these offenses as less severe and that their adjudication results in less public shame and stigma than some Honor Code offenses—like receiving undisclosed help on a paper or lying to a roommate about whom you visited over the weekend.
- Cadets, alumni, and faculty repeatedly described the culture at VMI as one of silence, fear, and intimidation, especially as it relates to the reporting of problems or issues that reflect negatively on the Institute or its leadership. Interviewees reported that, in some sexual assault cases, members of the VMI administration have actively dissuaded victims from making reports. Interview respondents also explained that they perceived or experienced that VMI leadership puts a high priority on suppressing information and avoiding difficult situations, and less of a priority on addressing underlying problems. The Team had the same experience. VMI has taken affirmative steps to prevent negative information from making it into this report. Just one example of this

was when VMI attempted to, and in some cases did, put VMI attorneys in rooms with interviewees under the guise of legal representation, knowing that the attorneys' presence would chill or limit the candor of the interviewee. VMI also withheld requested information, dissuaded members of the VMI community from participating in or providing information for this report, and has actively sought to undermine the findings in this report before its release.

- VMI maintains an outdated, idealized reverence for the Civil War and the Confederacy. While VMI has recently taken steps to address this, many VMI traditions relating to the Civil War era are still given disproportionate attention. Some members of the VMI community still advocate for celebrating Confederate traditions (noting that it is a part of history that should not be “erased”) without appreciating or accepting that it offends many African Americans, whether or not they are members of the VMI community. In contrast, minority members of the VMI community are at times not afforded the same opportunities to celebrate holidays and dates significant to their community, and there is almost no representation of other military or civil rights iconography on post.
- Unlike the alumni associations at other Virginia and military schools, the VMI Alumni Agencies have not established affinity groups (such as an African American or women’s alumni group), do not fund scholarships for minority students, and do not organize activities specifically for minority alumni. Additionally, the Alumni Agencies took almost no action on DEI initiatives until the summer of 2020. In the last year, the Agencies have set up a chartered D&I Subcommittee, sponsored diversity discussions with alumni, sent out a survey, and established a partnership with the Citadel. The Agencies declined to provide any documentation on these or any prior DEI efforts.
- On gender, many respondents—including men—stated that VMI’s gender-equity issues are worse than its racial-equity issues. Respondents reported incidents of gender inequity; a culture of not taking women seriously; double-standards for women on matters of dress, social behavior, and sexual behavior; and disturbing sexist and misogynistic comments on social media apps such as Jodel. Some men reported resentment toward women for perceived preferential treatment in physical training standards, Rat Line experience, discipline, and leadership opportunities. Female respondents had varying views about whether women are discriminated against at VMI. Many women expressed pride in VMI and the treatment of women by male cadets and a desire not to be given any preferential treatment simply because they are women.
- Sexual assault is prevalent at VMI yet it is inadequately addressed by the Institute. In the survey, 14% of female cadets reported being sexually assaulted at VMI, while 63% said that a fellow cadet had told them that he/she was a

victim of sexual assault while a VMI cadet. Many female cadets reported a consistent fear of assault or harassment by their fellow male cadets. These fears are exacerbated by some procedures at VMI, including the inability to lock their doors. Many female cadets also feel that assault complaints are not or will not be taken seriously by the VMI administration or that a cadet will suffer retaliatory consequences for reporting them. Indeed, a Virginia statute makes it illegal for a university to punish a student for a drug or alcohol offense that comes to light during a report of sexual assault. The statute applies to every institution in the Commonwealth, with one notable exception: VMI. Although VMI conducts extensive sexual assault training on post, female cadets report that male cadets treat it as a joke and an opportunity for misogynistic humor, without consequence. Cadets perceive that the VMI-provided training is often not respected or taken seriously.

- VMI's Title IX records reflected a competent and compliant investigation and adjudication process, once a Title IX case is opened. However, the investigation revealed that some sexual misconduct incidents do not make it into that Title IX process due to victims' concerns of being ostracized for or retaliated against for reporting—or simply because their reports are ignored. Numerous female cadets say that reports are made, through proper channels, but still go unaddressed; some stated that they made a report of their assault but it received no action from the VMI administration. Cadets reported that VMI administrators have intimidated female cadets to reconsider assault reports, including by asking them to consider the impact on the male assailants' careers. In addition, cadets reported that VMI's support services, especially mental health services, were deficient and poorly communicated. One third of female cadet survey respondents somewhat or strongly disagreed that VMI's method of addressing reports of sexual harassment and assault is appropriate; 47% reported that they felt the opposite way. It is possible that instances reported as part of this investigation may, upon individual inquiry into each incident, constitute Title IX violations.
- The investigation addressed whether these findings might constitute civil rights violations. While the investigation identified significant issues with racial harassment, intolerance, and climate, it did not identify a clear Title VI violation. On gender and sexual misconduct, the investigation identified several instances and patterns that implicate Title IX that may require further investigation.

The picture of race at VMI that has emerged from this investigation is complex. Many alumni and current cadets (most but not all Caucasian) have reported that they never observed or experienced any instances of racial intolerance during their time at the Institute. On the other hand, a number of alumni and current cadets (especially African Americans) have reported that they

did experience racial discrimination or intolerance at VMI and that it was fueled or aggravated by VMI's culture. Yet, members of the VMI community who did not experience or observe racism or sexism at VMI (even if they believe those who did) often do not comprehend that VMI's own history, traditions, and unwillingness to change foster a racist culture at VMI. This culture impedes VMI's ability to recruit cadets and faculty from underrepresented populations. VMI's delay in addressing its Confederate symbolism and past, its delay in undertaking DEI initiatives, and the continued, loud resistance to reform efforts among many in the VMI community are a sign to African Americans that they are not valued or wanted at VMI. VMI has responded in the past that "these problems exist everywhere" and "we are no worse than any other school." Those statements are inconsistent with VMI's motto of "don't do ordinary" and are detrimental to VMI.

VMI's culture creates barriers to addressing and solving these problems

Second, VMI must address elements of its culture that contribute to an "us versus them" mentality, including with respect to race and gender. This culture includes VMI's potent and ongoing resistance to change, denialism, secrecy, refusal of oversight, and suspicion of outsiders that creates a barrier to forward progress.

The reaction to the investigation from the larger VMI community and the Institute itself demonstrates the effect of this problematic culture. The unusual amount of vitriol, criticism, condescension, and condemnation from many in the VMI community regarding the investigation has been alarming. Additionally, despite a pledge of cooperation, VMI's leadership sought to control the investigation, the message, and the report's findings. VMI also sought to keep members of the VMI community, including current senior administrators, from participating in interviews, and it engaged in public messaging designed to encourage the VMI community to disbelieve and reject this report, particularly when their efforts to thwart the investigation proved unsuccessful. These actions by VMI negatively impacted the investigation, especially because, as VMI knew, there was no process to compel VMI's cooperation.

In preparing for this report, the Team received reports that members of the VMI community wanted to come forward and participate, but were either too scared of retaliation from VMI or too intimidated by its leadership and alumni to do so. Moreover, many in the VMI community expressed to the Team, the press, online forums, and elsewhere that they were convinced that the investigation was biased, predetermined, or already discredited. Many individuals did provide information, but under the circumstances, the act of sharing critical views of VMI with the Team was riskier and more difficult than if VMI had supported the investigation. Had VMI expressed consistent public support for the investigation and a willingness to cooperate, listen, and improve, this investigation would likely have been more fulsome and less combative. Nevertheless, members of the VMI community were offered a variety of methods, some anonymous, to provide information.

The cooperation and candor of the current cadets and faculty who did come forward stood in stark contrast to the reaction from VMI's leadership. Many of the critical findings in this report came not from information provided by VMI but from individual cadets and faculty who provided information directly, outside of VMI's control.

VMI must be held accountable

Third, while VMI has taken recent steps to improve the culture around race at the Institute, it did not do so until forced, following intense media scrutiny, executive action, and legislative attention. VMI's planned steps to promote diversity and inclusion are important and significant. VMI has laid out a detailed, thoughtful plan of all of the activities it is undertaking to address issues of race at VMI.²

However, VMI's past reaction to suggestions of change do not inspire confidence that it will follow through on this plan. Moreover, VMI's messaging with respect to this investigation has been contradictory. Its initial reaction to the investigation was that it was unnecessary and had a predetermined result; as VMI Board of Visitors Chair William Boland stated in his October 20, 2020 open letter, which still appears on VMI's website, "systemic racism does not exist here and a fair and independent review will find that to be true." From the Team's interactions with Mr. Boland, it is clear that he is the lead decision-maker for VMI on all matters relating to this investigation. Mr. Boland has also concluded and announced that VMI's problems with race are commonplace, and that they are no worse at VMI than anywhere else: "Virtually all colleges in the 50 states can point to inappropriate behavior by their students or faculty members. VMI is not immune."³ VMI also issued a public letter, co-signed by Mr. Boland, rebutting this investigation's initial reporting on race-related findings, further denying the existence of any racial problems at VMI. It has been apparent that VMI wants nothing to do with an actual independent review, and will only consider a report "fair" if it supports VMI's own assertions.

This investigation found that institutional racism and sexism are present, tolerated, and left unaddressed at VMI. The racist and misogynistic acts and outcomes uncovered during this investigation are disturbing. Although VMI has no explicitly racist or sexist policies that it enforces, the facts reflect an overall racist and sexist culture. Until last fall, VMI had shown no appetite to significantly change the biased outcomes their programs produce. The changes underway since then are part of a critically important and positive step forward. But VMI's conduct throughout this investigation, and the facts that the investigation uncovered, cannot be ignored. They show that VMI will likely follow through on its promised

² VMI's summary plan is attached here as Exhibit 6.

³ <https://www.vmi.edu/news/headlines/2020-2021/a-letter-from-the-president-of-the-board-of-visitors-to-gov-northam.php>.

reforms only if it is forced to do so. For the betterment of the school, VMI must be held accountable to its promises and plans to change the current culture. This should happen through the requirement of regular written reporting to stakeholders, including the Board of Visitors, SCHEV, the General Assembly, and the Governor.

This report does not recommend that any of VMI’s core policies, practices and traditions, including the Honor Code and Rat Line, be abolished. It recommends that VMI leadership examine how it can create an environment that does not disadvantage or impose disparate effects on minorities. These recommendations, detailed below, can be organized into eight categories. They are largely consistent with recommendations previously presented to VMI and its leadership from a variety of sources, including current and recent VMI cadets, the Promaji Club, Del. Jennifer Carroll Foy ’03, a group of senior African American alumni, and other alumni groups that have been vocal in encouraging change. The Team has considered all of these recommendations as part of its investigation. The recommendations listed below are proposed in addition to those outlined by VMI, or in some cases, in supplement to them. If a recommendation overlaps with a VMI plan, it is because VMI provided insufficient information on that activity (or its timing) or because the recommendation was worth highlighting.

1. Maintain accountability	
1(a)	VMI should create a comprehensive, unified, public strategic plan around DEI improvements, including measurable goals such as increased diversity in the corps of cadets and faculty; coordination with the Alumni Agencies; dedicated funding for recruitment of diverse cadets; and specific responsibilities for the chief diversity officer. VMI should consider following the model of the DEI plan at Texas A&M, another senior military college.
1(b)	Beginning in January 2022, and for a period of at least three years, VMI should submit quarterly reports to the Board of Visitors, to SCHEV, and to the General Assembly detailing VMI’s progress on their own DEI plans as well as the recommendations contained herein. The General Assembly and the Commonwealth’s executive branch should take the appropriate action to make this compulsory.

1(c)	The General Assembly and the executive branch should appoint a committee, governing body, or other entity to evaluate these reports measuring VMI's progress on its stated DEI plan and goals and to address any lack of substantial progress. This evaluating entity should be fully independent from VMI without any connection to VMI that would be deemed a conflict of interest or give the appearance of impropriety. Among other things, the entity should have the authority to collect and review VMI documents and conduct interviews as necessary. The organizing policies should provide the evaluating entity with wide-ranging authority to review VMI documents and contact any individuals, cadets, faculty and administration associated with VMI.
1(d)	In constituting the evaluating body referenced in 1(c) above, the General Assembly and Commonwealth's executive branch should incorporate a diverse panel of individuals including but not limited to higher education experts, military veterans, DEI experts, and a diversity officer with higher education experience.
1(e)	The Board of Visitors and administration of VMI should be required to take regular annual DEI training.
2. Improve diversity in leadership and the corps	
2(a)	VMI should include in its plan a strategy with measurable goals to recruit, maintain, and promote minority and female administrators, faculty, and staff.
2(b)	VMI should establish and support a Faculty Senate and Faculty DEI Committee (or similar bodies), the purpose of which would be to allow faculty an opportunity to discuss ideas and initiatives, including those related to DEI, and to have a direct reporting line to MG Wins and the Board of Visitors on such initiatives.
2(c)	VMI should monitor public statistical information on DEI metrics from other military colleges and Virginia institutions of higher learning and use that information to set goals and measure improvement. VMI should also examine the efforts made to implement DEI initiatives at those schools for best practices.

2(d)	Historically, DEI recruitment and scholarship funding at VMI has focused almost exclusively on athletes. VMI should review the feasibility of establishing and funding scholarships for minority non-athlete cadets as well as other mechanisms to provide support for minority non-athlete cadet recruitment and retention, including by using funding from the Alumni Agencies and other donors.
3. Monitor and adjust institutions and traditions	
3(a)	VMI should perform a root cause analysis as to why minority cadets are drummed out at a disproportionate rate.
3(b)	VMI does not track key data about cases brought to the Honor Court, including data about cases that do not reach an investigation or trial. Given that cadets of color are overrepresented among convictions, VMI should record and examine the following information about all Honor Court cases, regardless of the outcome of the case: first and last name of accused, race of the accused, gender of the accused, whether the accused is an athlete, the details of the charge, and the reporter’s position (cadet, faculty, staff). VMI should analyze these statistics to monitor and address any disproportionate impact on minority cadets when it comes to Honor Court charges and convictions.
3(c)	The understanding of what constitutes an actionable violation of the Honor Code varies widely among the corps, and particularly as between members of the Honor Court on one hand and members of the corps at large on the other. VMI should adjust its Honor Court guidance, training, and practices to clarify what constitutes an Honor Code violation (as opposed to other rule violations) and what penalty will be applied.
3(d)	Many cadets noted the incongruity between a harsh punishment under the Honor Court for what cadets would consider a relatively minor offense (lying to a fellow cadet about off-post activities), and a light penalty under another system for what they would consider a major offense (such as sexual misconduct and use of racial slurs). VMI should examine data related to punishments imposed by the Honor Court, the Cadet Equity Association, and other disciplinary organizations to ensure that they are applied equitably and that disparate penalties are not imposed for the same severity of behavior.

3(e)	<p>VMI should critically study the Honor Court’s “education” policy. It should assess whether and how this practice is consistent with VMI’s “single sanction” policy. VMI should also examine whether this practice can be applied reliably and consistently, and whether it produces disparate outcomes on race and gender lines. If VMI retains the “education” option, it should consider preparing clearer and better-defined criteria for when a cadet should be prosecuted and when he or she should be educated. VMI should also tell cadets, faculty, and administration that there is actually a “two-sanction system” in which one possible outcome of an Honor Court referral is informal “education” that obviates the need for a trial or a possible expulsion. Information on this “diversion” program should be maintained in the same manner as described in recommendation 3(a).</p>
3(f)	<p>VMI should formally examine and consider changing its Honor Court jury selection process and its policy of allowing convictions without unanimous verdicts. VMI should also consider including faculty in the jury process and should prohibit juror strikes based on race or gender. VMI should consistently track information on Honor Court juries to ensure fairness.</p>
3(g)	<p>VMI should permit cadets to have the assistance of legal counsel in an Honor Court proceeding.</p>
3(h)	<p>VMI should provide formal, comprehensive, and consistent training to all faculty defense advisors to the Honor Court and to the cadets who run the Honor Court, particularly with respect to implicit bias and its potential impact on prosecutorial decision-making.</p>
3(i)	<p>VMI should ensure that all incoming cadets, including athletic recruits, are provided with standardized, complete materials on what to expect as a Rat and a cadet before they matriculate. As part of these efforts, VMI should promote its “One VMI” philosophy to all incoming cadets, including athletes, to emphasize the goal of a unified cadet experience.</p>
3(j)	<p>VMI’s Alumni Agencies should supplement their DEI plans to evaluate and implement DEI efforts undertaken by the alumni associations at peer schools, including establishing affinity groups and associated events.</p>

4. Temper associations between VMI and the Civil War and Confederacy	
4(a)	VMI should continue to reduce the emphasis on traditions and iconography associated with the Civil War/Confederacy, to be replaced by other traditions and historical associations, including those that promote diversity, equity, and inclusion.
4(b)	VMI should solicit input from current cadets and organizations (including the Promaji Club) when considering any action related to Civil War or Confederate-era iconography, symbolism, and traditions.
4(c)	VMI should review its practices on allowing cadets to associate with and participate in community events and celebrations such as parades and should ensure (by implementation of a policy or otherwise) that these practices are equitable.
4(d)	VMI and the Alumni Agencies should adopt and adhere to a policy that prohibits the acceptance of funds from any entity that discriminates or supports discrimination based on race or gender.
5. Actively address racist, sexist, and other unacceptable language and behavior	
5(a)	VMI should design and implement sensitivity and bystander training for cadets (including incoming cadets) focused on racism, racial slurs, racial jokes, and racial stereotypes. As part of this training, VMI should emphasize that an individual’s background does not excuse the use of racist language.
5(b)	VMI should implement a social media policy with guidelines for cadets’ use of social media to promote VMI’s standards of respect and integrity and compliance with applicable laws. VMI should also monitor social media to help identify issues of racism and sexism in the corps.
5(c)	VMI should ensure a strong, vocal, unified, and public response by leadership condemning all discriminatory, racist, or sexist acts that occur on post or by a cadet or other individual associated with VMI. VMI should take measures to ensure that such misconduct is treated at least as seriously, and that it carries at least the same stigma, as instances of lying and cheating.

5(d)	VMI should augment its efforts to combat and prevent sexual violence, including (i) enact a policy that automatically and immediately places reports of misconduct into the Title IX investigation and adjudication protocol; (ii) augment support services and accommodations for victims of sexual violence; and (iii) implement a policy that requires prompt, clear, and written communication of those services and accommodations to the affected parties.
5(e)	The General Assembly should consider amending Va. Code § 23.1-808 to remove the carve-out for VMI, which discourages candid reporting of sexual misconduct at VMI.
5(f)	Regardless of whether the General Assembly amends Va. Code § 23.1-808's VMI carve-out, VMI should consider amending General Order 16's amnesty provision to apply to all instances of drug or alcohol use disclosed in conjunction with a good faith report of sexual violence, and thus take the approach that all other Virginia higher education nonprofit institutions take.
5(g)	VMI should formally study, and should consider amending or removing, the channel for reporting Title IX sexual misconduct through the Cadet Equity Association.
5(h)	VMI should revise its door locking policy to permit cadets to lock their doors without permission and at any time.
5(i)	VMI should make LGBTQ issues a priority in its diversity efforts, and should make clear, and enforce, that homophobic conduct and language is unacceptable at VMI.
6. Encourage reporting and transparency	
6(a)	VMI should, with the involvement of the chief diversity officer, design a campaign to encourage reporting of misconduct beyond simply making mechanisms and opportunities available. This campaign should be supported, demonstrated, and carried out by cadet leadership and commandant staff, among other individuals.

6(b)	Consistent with General Order 13, VMI should supplement its reporting procedures with a confidential, anonymous reporting system (to the extent permitted by law) for use by cadets, faculty, and staff to report incidents and concerns, including those involving racism or sexism. Those procedures should include, if possible, providing the reporter with information on how the report was addressed and its status, and should involve the chief diversity officer.
6(c)	VMI should collect and publish detailed financial information from the Alumni Agencies on how funds are raised and spent, including the source of the funds and any earmarks.
7. Recognize and celebrate other cultures	
7(a)	VMI should evaluate its policy on appropriate hair styles among members of the corps of cadets and consider adopting Army Regulation 670-1 in this respect. The current policy appears to produce different and unfair results for cadets of color, and in particular African American women.
7(b)	VMI should appoint an external committee to explore, determine, and make recommendations on formal actions that VMI should take to honor diverse individuals or entities on post, such as the creation of monuments, the naming of buildings, and the establishment of awards.
8. Address tensions between athletes and non-athletes	
8(a)	In light of the apparent role that the athlete/non-athlete divide plays in racial tensions at VMI, VMI should formally evaluate its status as a Division I institution, especially given its size and its priority of achieving a cohesive corps.
8(b)	VMI should create a written, detailed, measurable plan to bridge the athlete/non-athlete divide. The plan should specifically address racial attitudes and tensions related to the athlete/non-athlete divide and include measures to address it.
8(c)	VMI should develop and implement measures to make the athlete and non-athlete experience more uniform, and to build mutual understanding and appreciation for each group's sacrifices and contributions to VMI.

8(d)	VMI should increase opportunities for athlete/non-athlete interaction, such as through roommate assignments and the dyke system. ⁴ In particular, VMI should consider ways the dyke system might be reformed to avoid passing down anti-athlete bias and to avoid situations where athletes pair only with other athletes.
8(e)	VMI should establish uniform guidelines for the recruitment of athletes, requiring transparency and promotion of the VMI experience. VMI should require all athletics personnel and other recruiting personnel to follow them, and should verify compliance.

II. Objectives of the investigation and audit

The State Council of Higher Education for Virginia (SCHEV) selected Barnes & Thornburg to act as “an independent, interdisciplinary team to investigate the culture, policies, practices, and traditions” at the Virginia Military Institute.⁵ As SCHEV explained, the investigation arose in light of “the recent and historical complaints of racial intolerance at the Virginia Military Institute,” and included four major objectives.⁶ Those objectives, which were supported by guiding questions in the request for proposals, are:

1. to “identify any civil rights violations or immediate threats of racial violence”;
2. to “identify possible equity gaps in VMI’s culture, policies, practices, and traditions”;
3. to “examine VMI across multiple dimensions as compared to other Virginia Institutions of Higher Education and to the extent possible, other military academies”; and
4. to “provide a comprehensive recommendation and an assessment plan for any necessary reforms,” including recommending changes to VMI’s institutional policies, proposing legislation, or making budgetary recommendations.⁷

⁴ The “dyke system” or “dyke relationship” refers to the formal mentorship of rat (freshman) cadets by first class (senior) cadets.

⁵ RFP 245-110420 at 3 (attached as Exhibit 1).

⁶ *Id.* at 3, 4–5.

⁷ *Id.* at 4–5.

The guiding questions specifically tasked the Special Investigation Team with uncovering not just facts, but also perceptions about VMI, recognizing that understanding the perceptions within various segments of the VMI community is important to understanding the extent of any racial intolerance at VMI.⁸ As a result, the investigation considered perceptions and opinions offered by cadets, alumni, faculty, and administrators during the investigation.

SCHEV explained that the investigation should employ diverse methodologies (including “interviews, focus groups, anonymized surveys, and other investigative methods”) and should “pay[] particular attention to those vulnerable members who may be reluctant to participate for fear of retaliation.”⁹ To address that concern, SCHEV directed the Team to protect the confidentiality of those who provided information for the investigation.¹⁰

III. Investigative procedures and methodologies

The investigation was conducted from January 7, 2021, to June 1, 2021, a period of 145 days. In total, 39 professionals performed more than 5,000 hours of work.

The Team used a variety of procedures and methodologies intended to allow as many members of the VMI Community to participate in the investigation as possible. Information was collected from 2,496 survey respondents and from 385 interviews.¹¹ The Team also received information and thousands of documents from VMI and examined publicly available data.

A. Survey

The Team conducted a large-sample, anonymous, online survey of the VMI community consistent with standard best practices for surveys. The survey gathered input from a large number of people in an efficient and standardized manner, while allowing all eligible persons an opportunity to share their views anonymously, without fear of retaliation. The methodology used for the survey is described briefly below and in greater detail in Appendix A.

The investigation’s survey work was led by four social scientists. They designed the VMI community survey according to generally accepted methodological principles and practices associated with survey research. Each of these social scientists have advanced training assessing social attitudes and institutional culture, and each has significant experience framing, conducting, and analyzing anonymous online surveys. Focusing on the concepts of diversity,

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ *Id.* at 5–6.

¹¹ There is likely overlap in those numbers, as individuals were permitted to participate in both an interview and the anonymous survey.

inclusion, intolerance, and discrimination, a survey was developed with questions about the culture, policies, practices, and traditions at VMI. The survey also included benchmark questions used in national surveys (such as surveys on race relations conducted by the Pew Research Center in the United States).

The survey included 117 questions: 15 demographic questions, 95 conceptual framework questions, 3 benchmarking questions, 2 investigation attitudes questions, and 2 closing, free-response questions. Participants were allowed to skip any questions they chose.

The inclusion of a mix of fixed-choice and free-response questions meant that the Team could control for consistent analysis across topics while still allowing respondents to share, in their own words, any relevant issue or topic they feel to be important. Free-response questions can often provide context for trends seen in fixed-response questions.

Several steps were taken to minimize potential survey response biases. First, the survey followed the well-accepted practice of alternating the valence of question statements; in other words, some questions were phrased to test a favorable position statement of VMI and its culture, while other questions tested a more negative position statement. Second, the Team randomized the presentation order of the response scales themselves; for example, some respondents saw scales from Strongly Agree to Strongly Disagree, while others saw the reverse order. Third, the Team randomized question presentation order to minimize potential bias associated with seeing specific questions before others. In these and all respects, the survey methodology followed standard best practices for surveys.

To maximize the opportunity for members of the VMI community to provide input, invitations and responses were sought from every current cadet, alumnus/alumna, and VMI employee. VMI supplied contact lists for all current cadets and VMI employees. The Team worked with the VMI Alumni Agencies to notify alumni about the survey and provide them with the opportunity to sign up to participate. Then email invitations were sent to all cadets, all employees, and the participating alumni. Multiple follow up reminder emails were also sent to all invitees before the survey was closed.

In total, 2,496 individuals provided usable responses.¹² As set out in more detail in the following table, the respondents included 540 current cadets, 326 members of VMI's faculty and administration (58 of whom were also alumni, but for purpose of the survey results are reported only in their faculty and administration roles), and 1,630 alumni (who were not faculty or administrators) who graduated in the last 80 years.

¹² Two respondents' answers were discarded because they checked all nine possible responses for race.

Table 1: Overview of survey respondents

Category		Survey responses
Current cadets		540
Faculty and administrators		326
Alumni As noted above, 58 of these alumni respondents are also faculty or administrators, so their responses are categorized in their faculty or administrator roles.	2016–2020	74
	2011–2015	102
	2006–2010	110
	2001–2005	122
	1996–2000	97
	1991–1995	115
	1986–1990	149
	1981–1985	154
	1976–1980	172
	1971–1975	192
	1966–1970	203
	1961–1965	123
	1956–1960	42
	1951–1955	25
1950 or earlier	8	

The responses to the survey’s fixed-response questions are set out in 12 reports as statistical appendices to this report, and observations about particular responses are referenced throughout this report. As explained in more detail in Appendix A, the statistical appendices include raw data without weighting applied, to avoid introducing any bias in reporting the survey results.

B. Interviews

1. Interview metrics

The Team also interviewed 385 members of the VMI community, as broken down in the following table:

Table 2: Total members of VMI community interviewed

Category		Number interviewed
Current cadets		73
Faculty and administrators	Current	56
	Former	13
Alumni	2010–2020	41
	2000–2009	50
	1990–1999	32
	1980–1989	32
	1970–1979	58
	1960–1969	26
	1950–1959	4

Any cadet, employee, or alumnus/alumna was able to contact the Team either by phone or by email to request an interview through the Team’s hotline. The Team also reached out to certain individuals, including current cadets, to request interviews. The interviews were all voluntary and were often conducted by two members of the Team in addition to the interviewee.

Before the interviews, the Team advised the interviewee that he or she could have his or her own counsel present, if the interviewee desired, and explained to current cadets that VMI had pledged that there would be no retaliation in response to their statements. In the interviews, the Team sought information both about what individuals personally experienced and also about what they had heard from others, consistent with the direction to investigate perceptions held by the VMI community.

As to the 73 current cadets interviewed, the Team interviewed 21 cadets who reached out to the Team to be interviewed and 52 cadets whom the Team selected in an effort to interview a diverse cross section of cadets. The demographics for these groups are shown in the following charts.

Table 3: Current cadets interviewed, by race

Cadets interviewed, by race	
Caucasian	39
African American	17
Asian	9
Non-Resident Alien	4
American/Alaskan Native	4

Note that according to SCHEV and the Integrated Postsecondary Education Data System (IPEDS), Hispanic or Latino/Hispanic ethnicity is distinct from race, which is why the race and ethnicity categories are reported separately here. This approach is also used by the U.S. Census Bureau.¹³

Table 4: Current cadets interviewed, by ethnicity

Cadets interviewed, by ethnicity	
Non-Hispanic	66
Hispanic	7

Table 5: Current cadets interviewed, by gender

Cadets interviewed, by gender	
Male	43
Female	30

The cadet interviews also included a cross-section of cadets with respect to class year and with respect to status as an NCAA athlete, a distinction addressed later within this report.

Table 6: Current cadets interviewed, by class

Cadets interviewed, by class	
First class (senior)	28
Second class (junior)	22
Third class (sophomore)	11
Fourth class (freshman)	10
Former cadet (did not graduate)	1

Table 7: Current cadets interviewed, by athlete status

Cadets interviewed, by athlete status	
Non-Athlete	44
Athlete	29

The Team also interviewed 12 parents of current cadets. Of these parents, 10 were Caucasian, 1 African American, and 1 of unknown race. As to ethnicity, all 12 parents were non-Hispanic. As to gender, 10 of the parents interviewed were male, and two were female.

¹³ See <https://www.census.gov/topics/population/hispanic-origin/about/comparing-race-and-hispanic-origin.html>.

Turning to the faculty and administration, 13 of the 15 members of the Board of Visitors agreed to be interviewed and were interviewed, as was MG Wins on two separate occasions. A meeting was also held with all of the members of the Honor Court, who were accompanied by three faculty or administrator representatives of the Superintendent as well as VMI's outside counsel and counsel for the Honor Court members themselves.

Finally, the Team interviewed 243 alumni from graduation years spanning the 1950s to the 2020s. In total, 41 individuals from the last 10 graduation years reached out for an interview. The response from more recent alumni was not as robust as the response from older alumni. Because the RFP required that the investigation focus on the current VMI climate and culture on post, greater weight was generally given to comments from current cadets, current faculty, recent alumni, and recently departed faculty than to alumni, particularly where the other comments were not pertinent to the recent or current climate at VMI. Nevertheless, as with the cadets, faculty, and administration, any alumnus or alumna who reached out was given the opportunity of an interview, regardless of class.

A variety of steps were taken to ensure that information provided by interviewees would be kept confidential. Those steps included internal safeguards regarding access and content of documents, as well as using a randomized numbering system to identify interviewees. This report therefore refers to interviewees only by the number assigned to their interview, and additional efforts have been made to exclude identifying details where possible.

2. Limitations on interviews

This report sets out findings based on the evidence collected during the investigation. The Team's ability to collect information through interviews was limited in several ways.

First, due to the COVID-19 pandemic, the Team was largely unable to conduct interviews in-person or on post. Indeed, VMI reported that it was enduring a COVID-19 outbreak during much of the first portion of the investigation. As a result, most of the interviews took place by videoconference or telephone, which of course limited the personal connection that in-person conversations provide. Still, the Team made multiple trips to post for in-person interviews and open houses. All individuals on post were alerted to the presence of the Team and the location and time of the open houses so that they would have the opportunity to meet with a Team member if they wished.

Second, though the Team extended interview invitations to a diverse, representative sample of the cadets, many declined to be interviewed, many of them minorities. *Third*, as to alumni, the Team's efforts to interview alumni of diverse opinions and experiences was significantly hampered by the fact that the Team never received a list of alumni. The Team requested this list from both VMI

itself and from the VMI Alumni Agencies, the consolidated group that comprises VMI's alumni and fundraising entities. VMI did not provide this alumni information, and referred the Team to the Alumni Agencies; the Alumni Agencies, in turn, declined the Team's request for its alumni list, citing privacy concerns. This position prevented the Team from developing a representative sample of alumni or inviting specific alumni—primarily recent graduates, racial minorities, and women—to participate in interviews or focus groups. As a result, the Team had to resort to identifying alumni from publicly available information, referrals from other alumni, and, most often, outreach by alumni themselves. While the Team did collect relevant information from these efforts, the possibility exists that the alumni interviewed (particularly those who reached out to directly) felt, on balance, more strongly about the issues addressed in the investigation than the general alumni population. As a result, the alumni interviews may not have been representative.

Fourth, VMI attempted to have *its* counsel (as opposed to counsel representing the *individual* interviewee) present during interviews, particularly during interviews with cadets, faculty, and administrators. From the beginning of the investigation, the Team has objected to this practice. The Team repeatedly explained to VMI that the presence of VMI counsel, who would report back to VMI leadership, could make cadets and VMI employees reluctant, out of fear of retaliation, to convey sensitive information or information that might reflect poorly on VMI. As explained in prior reports, VMI (through counsel) denied this potential, insisting that having VMI counsel present would somehow benefit the interviewee and make them *more* candid and forthcoming.

The Team agreed that VMI could have its counsel present for individuals with the authority to speak for VMI as an entity—*i.e.*, a group of “control persons,” consisting of the Superintendent, individuals who report directly to the Superintendent, and members of the Board of Visitors. But soon thereafter, VMI counsel began appearing in interviews of VMI employees who did not fit the agreed parameters. For example, VMI's counsel were present during interviews with a number of mid-level staff who did not report directly to the Superintendent. These non-control persons for whom VMI nonetheless sent counsel included a number of personnel in the middle or near the bottom of the VMI organizational chart.¹⁴ This prompted a dispute between the Team and VMI, with VMI's counsel disputing the particulars of the prior agreement and stating that, in any event, it would not deny its counsel to VMI personnel who requested it. Subsequent interviews revealed that some interviewees were told or suggested by a superior to request that VMI's counsel participate in the interview.

¹⁴ See Exhibit 2 (VMI Organizational Chart (May 2019), available at <https://www.vmi.edu/media/content-assets/documents/Organizational-Chart-7-19.pdf> (last visited May 19, 2021)).

Fifth, these issues regarding representation delayed the Team’s access to faculty and administrators. As discussed in the Team’s last report, most of the first three months of this five-month investigation were wasted with disputes over access. While the Team was able to interview those who themselves reached out to the Team early on during the investigation, the Team was not able to send out invitations to faculty and administrators for interviews until March 3, had to pause the process on March 10, and were not fully cleared by VMI to affirmatively reach out to faculty until March 30, 2021. The Team does not know what, if anything, VMI communicated to faculty in the interim.

Sixth, a number of members of VMI’s administration, including several with responsibilities directly relating to some of the most critical race and gender issues that arose during the investigation, declined interview requests. This included two high-ranking current and former administrators.

Additionally, VMI’s counsel conditioned the participation of at least one interviewee on VMI’s counsel’s receipt of questions in advance, which was rejected.

Seventh and finally, some of the hostility encountered by the Team appears to have originated with VMI’s assertion that investigators asked VMI to suspend the Honor Code (discussed in more detail in the March 8 interim report).¹⁵ Intentionally or unintentionally, VMI and the Alumni Agencies fed that mistrust with inaccurate comments about the investigation that they issued to the press and to alumni. These actions may have limited the number of members of the VMI community who chose to participate in interviews or the survey and may have affected the substance of the interviews that did take place.

C. Focus groups

The Team conducted six focus groups: three involving cadets and three involving faculty and administration). The Team’s methodology for these focus groups is summarized here and explained in greater detail in Appendix B. Focus groups have advantages and disadvantages. They are good at eliciting deeper discussions about complex topics, and they allow for clarifications and follow-up questions. On the other hand, they are limited by the smaller number of participants (here, no more than 10 per group) to promote discussion within the groups and can be affected by interpersonal dynamics.

1. Cadet focus groups

The Team conducted three cadet focus groups, in person at VMI, with each consisting of a different group of cadets (a “general” group selected without regard to race or gender, a female group, and a racial minority group) in an effort to provide a variety of environments in which different cadets would feel comfortable engaging in frank discussions. Starting with a spreadsheet of current cadets, the

¹⁵ March 8 report at 2–4.

Team’s social scientists eliminated anyone who had already been separately interviewed (or had declined to be interviewed) and then sent invitations to 79 individual cadets. Based on initial response rates, the Team’s social scientists invited another 134 cadets, for a total of 213 cadets (about 13% of the corps of cadets). Of those invited, 30 cadets signed up to participate in a group, and 18 ultimately participated (7 cancelled, 4 confirmed but did not attend, and a scheduling conflict precluded 1 from attending). Their demographic information, based on the VMI-provided spreadsheet, is as follows:

Table 8: Demographics of the three cadet focus groups

Category		General Focus Group	Minorities Focus Group	Women Focus Group	Total
Total Participants		5	6	7	18
Race	Asian	0	3	1	4
	African American	0	1	0	1
	Caucasian	4	0	6	10
	Hawaiian / Pacific Islander	1	1	0	2
	American Indian / Alaska Native	0	1	0	1
Ethnicity	Hispanic / Latino	0	1	0	1
Class	First	2	1	1	4
	Second	1	2	4	7
	Third	0	0	0	0
	Fourth	2	3	2	7
Area of Study	Liberal Arts	3	1	1	5
	STEM	2	5	6	13
Gender	Male	5	4	0	9
	Female	0	2	7	9
Athlete		1	3	3	7

The cadet focus groups, which were moderated by social scientists from the Team, lasted two hours. The moderators posed questions on topics such as the Rat Line, VMI’s culture, traditions, and recent related changes, racial and gender related items, cadets’ desired changes, challenges to achieving those changes, and feelings about the investigation. The session also concluded with an “open floor” for discussing anything the cadets wanted to bring up.

2. Faculty and administration focus groups

The Team also conducted three focus groups with members of the VMI faculty and administration, remotely via videoconference. As with the cadets, the Team sent invitations only to individuals who had not already been interviewed. To recruit a roughly representative group without targeting any specific individual,

the Team initially invited 70 individuals and then, based on the response rate, invited another 71. As a result, the invitations reached 141 faculty and staff (about 71% of the entire faculty and staff population). Of those invited, 21 VMI faculty and staff signed up, and 17 ultimately participated (2 switched to requesting interviews, 1 cancelled, and 1 did not attend). Their demographic information, based on a VMI-provided spreadsheet, is as follows:

Table 9: Demographics of the three faculty focus groups

Category		Count
Total Participants		17
Race	Caucasian	13
	African American	2
	Asian	2
Ethnicity	Hispanic/Latino	1
Full-time Position	Teaching Faculty	8
	Admin. Professional	7
	Classified	2
Area of Employment	Administrative	6
	Liberal Arts	5
	STEM	4
	Athletics	2
Gender	Male	9
	Female	8

Like the cadet focus groups, the sessions lasted two hours. The moderators introduced topics such as valuation of demographic diversity, inclusiveness, the experience of different demographic groups, race-related events and their relation to VMI’s culture, desired changes, challenges to achieving those changes, and feelings about the investigation.

The feedback received from the cadet and the faculty focus groups was consistent with the feedback received through interviews and survey responses and so is taken into account in the report without specific citations. Again, those results are summarized in Appendix B.

D. Telephone number and email for contacting the Special Investigation Team

As explained in the Team’s interim report, the Team established a telephone number and an email to allow interested members of the VMI community to contact the Team directly during the investigation. A total of 594 have contacted the Team. Specifically, 289 individuals have used the dedicated telephone number or email address to reach the Team; the remaining 305 have either emailed team

members directly or used other means of contact. The individuals interviewed are included in the numbers reported in Table 2 above.

E. Documents produced by VMI

1. Document metrics

The Team sent its first document requests to VMI on January 27, 2021. Over the course of the investigation, the Team made 84 distinct document requests on various topics and received over 100,000 pages of documents.¹⁶ For example, these requests sought:

- Documents related to the population of cadets, including lists of matriculated cadets and cadets who attended VMI but did not graduate; rosters of athletic teams; and lists of cadet organizations and their members.
- Documents related to graduation and retention rates from 2015 to present.
- Documents related to the Honor Court, including standard operating procedures and policies, emails to cadets related to drum outs,¹⁷ files for cases that resulted in a drum out between 2011 and 2021, and data about cadets accused of an Honor Code violation and the outcome of the case.
- Documents related to other disciplinary systems, including the General Committee, the Rat Disciplinary Committee, the Officer of the Guard Association, and the Cadet Equity Association. The documents included files for cadets who received sanctions for violations of the rules within each system's jurisdiction, and records about incidences of sexual harassment and violence, bullying, discrimination on the basis of race, ethnicity, or religion, and civil rights violations.
- Financial documents that show where and how VMI spends its resources.

2. Limitations on documents

As with the interviews, the investigation was limited to the extent VMI did not have requested documents, did not produce them, produced them late, or produced incomplete documents. The production process was unnecessarily complicated because VMI representatives generally chose to communicate with the Team solely through counsel. Rarely, if at all, was the Team permitted to make

¹⁶ See VMI Global Document Request Tracker attached as Exhibit 3 for a full listing of documents produced by VMI.

¹⁷ "Drum outs" refers to the process of expelling a cadet for an Honor Code violation.

inquiries or clarifications regarding document requests directly to the VMI custodians of the documents, even when the custodians offered to produce them directly. These document-cooperation issues affected the investigation in a number of ways.

First, the Team faced significant obstacles in obtaining VMI's cooperation with its requests for Honor Court documents. The Team's very first document requests—made on January 27—sought all of VMI's Honor Court-related records. VMI's first substantial production of documents in response to this request did not occur until March 5, 2021. This was less than one business day before the interim report was due to SCHEV. This production included only Honor Court case files from 2015–2021 and included only conviction files, since according to its procedures, the Honor Court promptly destroys all case records for any acquittal or decision not to prosecute. VMI did not produce the files for 2011–2015 until weeks later, after repeated follow-ups.

Meanwhile, the Team had asked VMI's counsel in March if VMI kept any statistics or spreadsheets on Honor Court convictions, acquittals, and/or decisions not to prosecute. VMI said it did not. The Team then asked how the *Washington Post* was able to obtain conviction statistics cited in a January 29, 2021 article. VMI initially said that it did not know, but later admitted that VMI was the source. Then, in a meeting with the Honor Court members (cadets) in April, the members volunteered that the Honor Court *does* keep some of the exact data that the Team had requested weeks earlier and that VMI denied existed.

Throughout much of this time, VMI declined to answer what VMI would produce and when, why and how certain documents were not located earlier (particularly when the Honor Court members knew where they were), and how and why VMI's answers to the Team's questions changed over time.

The result was that most of these critical documents, requested in January, were not produced until late April or May, leaving little time for analysis. In particular, acquittal-related documents and other data that VMI shared with the *Washington Post* prior to January 29 was not produced until April 26; other data and documents on non-prosecution decisions were not produced until May 5; and the Honor Court's member-managed files and other natives were not produced until May 10.

Some critical documents still have not been produced. This includes a list of Honor Court members dating back to 2010, which the Team requested repeatedly, starting in January.¹⁸ Also still missing is a PowerPoint presentation, identified by the Honor Court members, that details current Honor Court procedures and possible changes. In the Team's meeting with the Honor Court, the cadets

¹⁸ Among other things, a list of the members would allow the Team to analyze the diversity of Honor Court composition and its potential effect on outcomes.

expressed a desire to share this document with the Team but the VMI administrators in attendance blocked them from doing so. The Team made follow-up requests to VMI for this document, and VMI did not provide it.

Second, VMI also refused to answer basic questions about key documents that track Honor Court cases, such as whether VMI produced (1) the documents as they are stored in the ordinary course of business or (2) modified versions of those documents. The Team unequivocally and repeatedly requested the former, but the Team is concerned that VMI produced the latter in at least some instances.

It is difficult to tell which documents were provided as-kept or in a modified form, especially given VMI's refusal to say. Still, at least one document was almost certainly altered to remove data. VMI provided a spreadsheet that lists the 91 drum outs that have occurred since 2011, with various characteristics listed in specific columns (such as race of the accused, whether the accused is an athlete, and description of the violation). It was clear from the spreadsheet that VMI had altered the spreadsheet. Specifically, the spreadsheet contained partial deletions where it was obvious that VMI had not scrolled down far enough to ensure that all intended deletions were made.

Third, the Team was unable to conduct analysis on certain topics because some data was incomplete, not kept by VMI, or not produced. For example, the data set listing cadets accused of Honor Code violations that did not result in drum outs dates back only to 2016 and is incomplete. This meant that there was no way to analyze whether minority cadets were disproportionately represented in all claims *brought* to the Honor Court, not just those that resulted in a drum out. The Team describes the consequences of these gaps in the Honor Court section below.

Fourth, separate from the Honor Court documents, the Team requested documents, including standard operating procedures, policies, and guidelines, that VMI uses to decide which disciplinary body has jurisdiction over a certain type of misconduct. These documents, if they exist, were not produced.

Fifth, while VMI produced budget documents, VMI for months would not produce the underlying documents that would have allowed the Team to determine the source of funds and the policies behind their allocation. VMI ultimately produced this information on May 17, roughly three and a half months after it had been requested, and after the Team had closed its investigation work and begun preparing this report. Relatedly, although alumni funds make up more than half of VMI's annual budget, VMI did not produce the memoranda of understanding it has with the Alumni Agencies relating to funds from their component alumni associations. The Alumni Agencies, in turn, also declined to provide these memoranda of understanding, or any documents at all on their finances or expenditures. The Alumni Agencies also declined to provide information on diversity initiatives, demographic information of donors, demographic information of recipients of scholarships, grants, and other funds, and information regarding

the establishment and expenditures of restricted funds. The requested documents would have provided significant insight into the processes by which funds are raised, donated, and distributed to VMI, as well as the institutional priorities of VMI and the Alumni Agencies and the extent to which diversity is included in those priorities.

Sixth, and as mentioned above, the Team did not receive any of the documents at all that it requested from the Alumni Agencies, except for a copy of an informational PowerPoint slideshow that the Alumni Agencies presented to the Team at the start of the investigation. For example, in addition to the omissions noted above, the Alumni Agencies declined to provide a response to the Team's request for any complaints from alumni related to racial justice or allegations of racial discrimination.

Seventh and finally, the Team experienced a delay in the production of certain documents, including documents relating to Title IX investigations, because VMI raised privacy concerns under the federal Family Educational Rights and Privacy Act. Once the Team resolved issues relating to that statute, VMI raised additional concerns under other federal statutes—the Americans with Disabilities Act, the Health Insurance Portability and Accountability Act (HIPAA), and Title IX. While legal compliance is important, VMI's extremely defensive posture, its habit of raising general concerns about the laws' applicability without identifying the specific perceived legal problem, the significant disagreements between VMI and the Team's subject-matter experts over the application of these laws, and VMI's decision to raise these serial objections over the course of weeks instead of all at once, caused avoidable delays and prevented timely production and progress of the investigation. Further, when, in an effort to make forward progress, the Team and VMI agreed that VMI could redact portions of documents it felt were protected by federal privacy laws, VMI responded by producing volumes of documents that were almost completely redacted (full pages, as opposed to redacting only the information that might identify an individual). This is not commonplace in legal practice and was not expected by the Team based on its experience. VMI only provided the unredacted records after it received a letter, at SCHEV's request, from the Virginia Office of Attorney General explaining that VMI misread the law and that state and federal law entitle SCHEV (and the Team, as SCHEV's designee) to the requested records *without* redaction.

F. A final note about maintaining an independent investigation

From the beginning of this investigation, VMI has repeatedly asked to receive a copy of the investigative reports before they became final.¹⁹ From the

¹⁹ *E.g.*, May 5, 2021 letter from VMI to SCHEV (“VMI has asked (and continues to request) a meeting with SCHEV and B&T to review and comment on the accuracy of the final report prior to its release—whether to the Governor's office or more broadly to the Commonwealth.”) (attached as Exhibit 4).

beginning, the Team has refused this preview request. In order to maintain the independence of the investigation and to avoid the conflict of having the entity that is under investigation attempting to alter or undermine the content of the report, the Team declined VMI's request.

The Team's refusal to preview the contents of the report has not inhibited VMI's cooperation and participation. It has not curbed VMI's ability to present all of the information it wants considered in the investigation, to draw to attention any facts that VMI believes are relevant, or to provide the investigation with accurate information. For example, VMI provided a two-hour presentation to the Team in the early days of the investigation and on May 14, 2021, it provided a 72-page submission to the Team that summarizes its diversity, equity, and inclusion initiatives.²⁰

IV. Results of the audit and investigation

A. Immediate threats of violence or evidence of civil rights violations

The first objective of the investigation was to identify any civil rights violations or immediate threats of racial violence.²¹

In evaluating whether there was evidence of civil rights violations and how those complaints are handled, the Team considered Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Title VI prohibits discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance.²² Title IX prohibits discrimination based on sex in education programs and activities receiving federal financial assistance, providing that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]”²³

The investigation did not identify conclusive violations of Title VI or Title IX, but it did identify several instances and patterns that may implicate Title IX. To be clear, determinations of civil rights violations are serious, and often require individualized, thorough investigations. The team heard numerous accounts of instances of racism or racial harassment, and numerous accounts of sexual assault reports that were ignored or insufficiently addressed. The Team did not have the

²⁰ Described more fully below, “Section G, Leadership, official policies, and training.”

²¹ RFP 245-110420.

²² See 42 U.S.C. § 2000d.

²³ 20 U.S. Code § 1681.

legal authority or ability to conduct thorough inquiries into each instance and make legal determinations on each one.

In the race context, Title VI violations can involve issues such as racial harassment and racially biased discipline.²⁴ Although the Team found racial harassment and racially disparate discipline at VMI, these issues typically involved individual cadets or cadet-run institutions. Title VI analysis for student conduct is extremely nuanced, often involving the question of whether the institution created a racially hostile student environment or permitted one to exist.²⁵ The Team therefore cannot definitively conclude that VMI currently violates Title VI. This is especially so given that VMI has recently undertaken many steps (discussed below) since before the start of the investigation to confront the issue of race and improve the post environment.

The investigation did not reveal any immediate threats of racial violence.

In the gender and sexual misconduct context, cadets raised several issues that implicate Title IX compliance. The report discusses these below in Section IV.I.

The investigation did reveal instances of sexual violence and risk of future such instances.

B. Climate of racial intolerance

The investigation uncovered concerns with racial intolerance, slurs, and discrimination on post. Racial minorities, in particular African Americans, observe and experience issues with race far more frequently than Caucasians.

The accounts below are representative and not exhaustive of the findings of this investigation, in particular to preserve the anonymity of participants and to avoid the disclosure of identifying facts.

1. Use of racial slurs

Reports about the use of racially divisive language varied significantly by individual. Interviewees ranged from never hearing racial slurs to hearing them “all the time” or “24/7.”²⁶ In responding to the survey, 88 current cadets (17% of the corps) reported hearing the n-word “more than a few times” while in contrast, 233

²⁴ *E.g.*, <https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/race-origin-issue.html>.

²⁵ *See, e.g., Stafford v. George Washington Univ.*, 18-CV-2789 (CRC), 2019 WL 2373332, at *11 (D.D.C. June 5, 2019).

²⁶ *See, e.g.*, Interviewee 332, Interviewee 1704.

current cadets (44%) reported “never” hearing the n-word. Alumni and staff were less likely to report that they had heard the n-word “more than a few times” (108 alumni (7%) and 10 staff (7%)) and more likely to report that they “never” heard it (969 alumni (60%) and 106 staff (75%)).²⁷

Responses about hearing other racial or ethnic slurs also showed a similar pattern, with some reporting hearing other slurs more than a few times and many reporting never hearing other slurs.²⁸ Further complicating this issue is the fact that some cadets and alumni reported hearing “racial slurs” only when being used familiarly within racial minority groups which, the interviewees noted, may carry a different connotation.²⁹

In addition to this survey data, interview responses from current or very recent cadets also revealed specific instances in which those cadets experienced the use of racial slurs at VMI. For example:

- One African American cadet stated that his roommates continually used the n-word around him after he asked them to stop. He said he reported this to the Cadet Equity Association, but said the CEA does not have enough authority to actually do something about instances of racism on post. The interviewee stated that an institution cannot truly be honorable with a racist culture.³⁰
- At least one African American cadet and one biracial cadet reported that they were called the n-word by peers.³¹
- Another African American cadet recounted a situation in which a brother rat was told by his roommate to “go back to Africa” and called the n-word, and the punishment was only to change roommates.³²
- An Indian cadet reported that his former roommate called him a “sand n***er” at one point, and also used the term “towel heads.”³³
- An Asian male was called a “Ching” by a corporal during his rat year, and told not to be a “commie Ching” in front of others.³⁴

²⁷ Appendix A at 74.

²⁸ *Id.*

²⁹ *See, e.g.*, Interviewee 223, Interviewee 224.

³⁰ Interviewee 204.

³¹ Interviewee 264, Interviewee 74.

³² Interviewee 215.

³³ Interviewee 2440.

³⁴ Interviewee 2441.

- A current cadet reported being called by the n-word. That cadet did not feel comfortable doing anything other than accepting the other cadet's apology and felt that he could not raise the issue with authorities, as he felt that minority cadets have a smaller margin of error on post.³⁵
- Similarly, a Caucasian cadet reported hearing the n-word "non-stop" from other Caucasian cadets: "10 times a day from various people, that's not an exaggeration. I might be undershooting it." He reported hearing it "in my own room, walking by people, at lunch," and among his athletics teammates.³⁶

In each of the above cases, the cadets who used the slur were Caucasian. These are examples from interviews, and are not comprehensive. Others reported similar experiences.

Interviewees also noted that the n-word was frequently used on Jodel or YikYak, social-media apps used by many cadets to communicate anonymously, and sometimes cadets were called out by name.³⁷

Some cadets reported that racial jokes are not uncommon on post,³⁸ and one noted that jokes of this sort are consistent with the "dark humor" prevalent at VMI.³⁹ One female cadet reported feeling like VMI has desensitized her to racist and sexist jokes.⁴⁰

One Caucasian current cadet appeared to defend the use of the n-word by Caucasians.⁴¹ He said he has heard the n-word from both African American and Caucasian cadets, but never as a "form of hatred" or in a "hateful tone" when said by either race. He believes the Caucasian cadets do not "mean anything" by using the n-word, and thus using it is harmless. It is unfair to the Caucasian cadets, he said, if the African American cadets say it themselves but then get angry when the Caucasian cadets say it. Although he opined that it is wrong for anyone of any race to say the word, he also said that he does not know why African American cadets get upset when the n-word is not used in a "hateful way."

³⁵ Interviewee 74.

³⁶ Interviewee 369.

³⁷ Interviewee 2454, Interviewee 171, Interviewee 287.

³⁸ *See, e.g.*, Interviewee 179.

³⁹ Interviewee 192.

⁴⁰ Interviewee 202.

⁴¹ Interviewee 170.

Some current cadets, in interviews and survey responses, reported hearing the n-word used only among cadets of color.⁴² Some narrative survey responses include the following:

- “The issue lies with conduct not color. A lot of black cadets use the N word frequently and conduct themselves poorly. There are black cadets who are incredibly well respected. It is just a matter of how they hold themselves, and that goes for all races. White kids who hold themselves poorly are disliked.”⁴³
- “The only time I heard the N-word was said wa[s] by an African American cadet, [to] another African American cadet in a joking manner. I have never heard it in a derogatory way aimed specifically from a white cadet to an African American.”⁴⁴
- “The vast majority of the times that I have heard racial slurs, it has come from black cadets.”⁴⁵
- “The only times I hear racial slurs is when my black, football playing, roommate calls people the n word.”⁴⁶
- “I stated that the n-word is used quite often here at VMI. I believe that question is unfair and vague. It should be known that yes, that word is used a lot but, it is used by African American cadets. We as an Institute have to get rid of this double standard. No one of ANY race should be allowed to use that word. It is derogatory and was created to shame and humiliate African Americans. They shouldn’t want to use that word anymore [sic] than they want white people to use that word.”⁴⁷

Alumni from different time periods recalled hearing racial slurs with varying degrees of frequency:

2018–2021

- An African American graduate heard the n-word used and reported an instance where a cadet was caught on an audio recording using the n-

⁴² Interviewee 223, Interviewee 224.

⁴³ Survey results, row 266, race and gender unidentified.

⁴⁴ Survey results, row 84, Caucasian male.

⁴⁵ Survey results, row 88, Caucasian male.

⁴⁶ Survey results, row 75, Caucasian male.

⁴⁷ Survey results, row 92, Caucasian/Hispanic, gender unidentified.

word, but when the recording was reported, the speaker was not disciplined.⁴⁸

- An African American graduate reported being called the n-word “many times” at VMI.⁴⁹
- A recent African American graduate reported hearing the N-word on post with frequency.⁵⁰

2010–2013

- A Caucasian graduate who served as a cadet captain recalled incidents involving racial comments, where the speakers were disciplined by being demoted to private and required to walk penalty tours (a punishment consisting of one hour of supervised marching while carrying a rifle).⁵¹

2006–2009

- A Caucasian 2008 graduate reported hearing “a lot” of people using the N-word, but described these as “isolated incidents.”⁵²
- A Caucasian 2006 alumnus described hearing jokes about race “all the time.”⁵³
- An African American female alumna from the class of 2006 reported hearing racial slurs “regularly.”⁵⁴

2002–2005

- A Caucasian 2002 alumnus described hearing “many” racial slurs.⁵⁵

1998–2001

- A Caucasian graduate from rural Virginia stated that use of racial slurs was common and absolutely part of life in barracks. He noted that he did not interact with people of color before attending VMI and

⁴⁸ Interviewee 20 (example listed in March 8 Report at 10).

⁴⁹ Interview 17 (example listed in March 8 Report at 10).

⁵⁰ Interviewee 9.

⁵¹ Interviewee 33.

⁵² Interviewee 2460.

⁵³ Interviewee 519.

⁵⁴ Interviewee 231.

⁵⁵ Interviewee 2434.

that many cadets come from conservative families where racial sensitivity is not taught.⁵⁶

- An African American graduate did not hear racial slurs directed at him, but other cadets he knew heard the n-word or other racial slurs.⁵⁷

1994–1997

- An African American graduate from 1997 described a roommate who routinely taunted him, including asking if he had a father because “Black people don’t have fathers,” telling him that “Black people aren’t smart,” and asking “why did someone like you come to my school.”⁵⁸

1989–1992

- An African American alumnus from 1989 remembers hearing the n-word yelled out during the drum out of an African American cadet. That alum also noted that if an African American cadet hung up a picture of a girlfriend, it would be defaced with expletives. According to this alumnus, racism was “baked into the cake” at VMI.⁵⁹

1985–1988

- A Caucasian alumnus from 1985 described hearing racial slurs “24/7.”⁶⁰

Alumni (including a 2020 graduate) also pointed to coded language, noting that other cadets would sometimes use terms like “your kind” or “your type” to refer to African American cadets.⁶¹ Some alumni reported having significant issues, when they were still cadets, with older alumni who came on post.⁶² These alumni were permitted to come into barracks and would make offensive comments to female and African American cadets.

VMI’s own internal investigations have substantiated instances of racial slurs. Specifically, VMI provided a 223-page document titled “VMI Cadet Government Investigations with Racial Components from 2015 to 2020.”⁶³ The

⁵⁶ Interviewee 34.

⁵⁷ Interviewee 16.

⁵⁸ Interviewee 21.

⁵⁹ Interviewee 63.

⁶⁰ Interviewee 1704.

⁶¹ See, e.g., Interviewee 53, Interviewee 20.

⁶² Interviewee 350, Interviewee 137, Interviewee 26.

⁶³ From the information available, the Team could not confirm whether any overlap existed between the bulleted instances in this section and the instances identified in VMI’s internal investigations.

document described 17 accounts between 2015 and 2021 where allegations that VMI concluded had a “racial component” were made. Of those 17 accounts, 13 of the allegations were substantiated, while four lacked a preponderance of the evidence regarding the allegation. The 2019–2020 school year accounted for the highest number of allegations with a “racial component”—six allegations were made, of which four were substantiated and two lacked a preponderance of the evidence regarding the allegation.

Of the allegations, many, if not most, involved cadets using racial slurs, most commonly the n-word. Of the 17 allegations provided, a professor made at least one, an NCAA official and a basketball player at a sporting event alleged that cadets were using the “n-word,” and a company commander made the third allegation. The incident regarding the “Trump Wall”/“No Cholos Allowed” costume at a VMI Halloween party—as discussed in a *Washington Post* article, which linked to a photograph of the costume—was also among the allegations provided in the reports by VMI. For the substantiated claims, VMI punished the cadets. The punishments included penalty tours (ranging from five to fifty tours), confinement (ranging from one week to three months of confinement to one’s room, to the barracks, or to post), cultural awareness training and counseling for all or some respondents, and demerits. Some substantiated allegations also required written letters of apology as a penalty, one resulted in loss of rank, and one resulted in a suspension.

The Team’s investigation of the use of racial slurs revealed slurs and racist jokes have historically been spoken and heard at VMI, and they continue to be spoken and heard at VMI. VMI does punish the use of racial language when it is reported. However, it appears that there are instances in which racial language or jokes are used and not reported, or where administrators make excuses for cadets who use this language as being uninformed. VMI provides education and training to those cadets after the fact, but not proactively to all cadets, including incoming cadets. In fact, it appears that VMI does not provide any sensitivity training around racism to cadets that might deter the use of racial slurs and jokes. This should be addressed.⁶⁴

2. Perceptions about whether there is a climate of racial intolerance at VMI

According to the survey results, African American cadets and Caucasian cadets generally perceive the racial climate at VMI differently:

⁶⁴ See Recommendation 5(a)

- 50% of African American cadets strongly or somewhat agree that there is a culture of racial intolerance at VMI.⁶⁵ In contrast, only 10% of Caucasian cadets strongly or somewhat agree with this statement.⁶⁶
- 42% of African American current cadets rated the extent to which people who are African American are discriminated against at VMI as “a lot,” while only 4% of Caucasian cadets think there is “a lot” of discrimination against African American cadets.⁶⁷
- 50% of African American cadets strongly or somewhat agree that it is harder for people of color to succeed at VMI than it is for Caucasian cadets, as compared to 5% of Caucasian cadets agreeing with that statement.⁶⁸
- 33% of African American cadets strongly or somewhat agree the post environment at VMI is welcoming to all types of people, as compared to 81% of Caucasian cadets.⁶⁹ Likewise, 42% of African American cadets strongly or somewhat agree with the statement, “I feel comfortable being myself at VMI,” as compared to 86% of Caucasian cadets.⁷⁰

Consistent with these results, cadet interviewees reported different personal experiences. Some said they have never witnessed any instances of racial intolerance on post.⁷¹ In particular, several cadets of color said that they have not personally experienced any racial issues on post.⁷² A Hispanic cadet felt that every school has racial issues, and she feels like VMI is being picked on.⁷³

Some comments of note include the following:

2018–2021

- An alumna described her professor’s discussion in class about her father’s involvement with the Ku Klux Klan.⁷⁴
- There was an incident, as reported in the *Washington Post*, where a cadet threatened to “lynch” another cadet and “use his body as a

⁶⁵ Appendix A at 110.

⁶⁶ *Id.*

⁶⁷ *Id.* at 169.

⁶⁸ *Id.* at 116.

⁶⁹ *Id.* at 100.

⁷⁰ *Id.* at 102.

⁷¹ Interviewee 202, Interviewee 223, Interviewee 2438.

⁷² Interviewee 195, Interviewee 198, Interviewee 224, Interviewee 2447, Interviewee 2450.

⁷³ Interviewee 2450.

⁷⁴ Interviewee 17.

punching bag.” This threat resulted in the suspension of the cadet for one year. One alumnus with firsthand knowledge stated that the class voted to expel the cadet but that the administration commuted his punishment to a suspension.⁷⁵

2005–2002

- A former female cadet who was “very concerned” about issues of race and gender at VMI reported leaving the school after learning of a plan to physically assault her.⁷⁶

1994–1997

- An interview subject described a letter sent to a cadet of color containing racial slurs or threats. The administration investigated the issue, and the police were involved.⁷⁷

Both the written responses to the survey’s free-response questions and statements made during interviews illustrated these different perceptions. Some current cadets believed that racism at VMI is rare or nonexistent:

- “I have not experienced any sort of racism or discrimination at VMI. I am friends with cadets of all colors here and am proud to say I’ve never witnessed any type of racism.”⁷⁸
- “I have never experienced, seen, or heard of a black cadet being called the N-word at VMI. I have only frequently heard it used by black cadets to address other black cadets.”⁷⁹
- “I strongly believe that racism at VMI is purely isolated events, and not apart [sic] of a systemic problem.”⁸⁰
- “Nobody here cares what your race is it is all in your merit. We all go through the same ratline together black, white, Hispanic, purple it doesn’t matter. We all go through the same struggles as rats and see each other as equals. The way people see you at VMI is by how good of a cadet you are and how much you care about other people.”⁸¹

⁷⁵ Interviewee 9.

⁷⁶ Interviewee 2382.

⁷⁷ Interviewee 47.

⁷⁸ Survey results, row 195 (Asian, male).

⁷⁹ Survey results, row 196.

⁸⁰ Survey results, row 203 (Caucasian, male).

⁸¹ Survey results, row 210 (American/Alaska native, male, athlete).

- “Knowing that we truly do have a family here, I know I nor my [brother rats] would never discriminate against each other because we truly are family.”⁸²

In contrast, other cadets stated that racism against cadets of color exists at VMI:

- “I believe there is 100% racism present at VMI and it is disgusting.”⁸³
- “In my opinion as [an] African-American Cadet Athlete, I feel a lot safer at VMI now with Major General Wins as Superintendent knowing that he is accepting to change. I did not feel safe on campus when General Peay was Superintendent. I would never walk alone at night in fear of being harmed or targeted.”⁸⁴
- “My roommate is Asian-American, he has told me of multiple instances of other white cadets making covid-related ‘jokes’ behind his back.”⁸⁵
- “The issue here isn’t that there are rules designed to be racist, it is that this school attracts white conservative men like moths to a lamp and the culture here CLEARLY reflects that. Whether it is unequally enforced rules or people feeling very comfortable using slurs, the main issue here is that no one is willing to call these people out on it because this horrible culture is incubated by the fact that this school is demographically homogenous.”⁸⁶
- A mixed-race cadet felt as if approximately 20% of the corps are openly racist.⁸⁷
- A Hispanic cadet said that she had witnessed and personally experienced multiple incidents of racism. She reported that she often witnessed fellow cadets of color (and herself) being treated more harshly, or ignored, when similarly situated Caucasian cadets were not.⁸⁸

⁸² Survey results, row 23 (Asian, male).

⁸³ Survey results, row 186 (Caucasian, male)

⁸⁴ Survey results, row 67 (African American, male, athlete).

⁸⁵ Survey results, row 280 (Caucasian, male).

⁸⁶ Survey results, row 300 (Caucasian, female).

⁸⁷ Interviewee 171.

⁸⁸ Interviewee 205.

2018–2021

- A graduate reported that he counseled other minority cadets they needed to suppress their culture to make it through VMI. As an example, Caucasian cadets could blast country music while African American cadets would be penalized for dancing to hip hop music. He also reported being repeatedly harassed about his hair even when it was within standards.⁸⁹

2002–2005

- An African American alumnus expressed concern that someone on post needs to be trained to handle African American women’s hair. He noted that they are expected to wear their hair a certain way but that no one can do it properly.⁹⁰

1993–1997

- A 1996 alumnus noted that mixers were not inclusive, as they played Dixie and exclusively Southern music. Confederate flags were also present. “Everything” telegraphed that the mixers were not for him.⁹¹
- Some African American alumni reported other cadets and faculty assuming they were athletes.⁹²

Finally, a handful of survey participants went so far as to complain that the real problem at VMI is racism against Caucasian cadets and that, in their view, it is worse than racism against African Americans. These comments reflect the attitudes about racism that exist at VMI in the absence of sufficient DEI training and strong leadership on DEI:

- “I think that while everyone wants to focus on white racism towards blacks, they fail to realize that they themselves are being racist to white and black cadets alike. White people are treated horribly due to this investigation and are often met with more severe punishments now.”⁹³

⁸⁹ Interviewee 20.

⁹⁰ Interviewee 290.

⁹¹ Interviewee 53.

⁹² *E.g.*, Interviewee 47.

⁹³ Survey results, row 36 (Caucasian, male).

- “There is racism towards ‘White’ and ‘Black’ people at VMI... I have experienced more racist acts towards ‘White’ cadets than towards ‘Black’ cadets.”⁹⁴
- “There are race issues against black people, but I would say there are even more against white men here.”⁹⁵
- “I believe that VMI is rapidly approaching an environment that shames being white and only supports students of color.”⁹⁶
- “[T]here is more racism toward white cadets by black cadets that is unseen and unnoticed due to the white cadets not being listened to or believed. There is also more racial slurs, including the n-word, said by black cadets on a daily basis than any said by any other group of cadets in a year.”⁹⁷

The survey results suggest that the cadet experience varies among different groups of people of color. In particular, African American cadets feel less at home at VMI than do Hispanic cadets. The survey asked cadets to rate the extent to which they feel that people of their race have a difficult time fitting in or feeling like they belong in the VMI corps: 58% of African American cadets said that their African American peers had “a lot” of difficulty, while only 11% of Hispanic cadets responded that way about their Hispanic peers.⁹⁸

Several alumni highlighted the role of social media in relation to issues of race and gender. For example, some African American alumni did not feel they experienced racism during their time as cadets, but that they had seen racism in Facebook groups as alumni.⁹⁹ Since the beginning of the investigation, many alumni have actively posted on VMI alumni social media pages and message boards. While these posts discuss a wide range of topics from varying perspectives, a large portion of the posts and comments are cast in a political, left-versus-right, conservative-versus-liberal light, with the vast majority of commenters identifying with the right/conservative ideology and expressing disdain for the left. Some alumni posts include confederate flag photos and discussions that include disparaging references to African Americans and other minorities, the Black Lives Matter movement, members of the LGBTQ population, and women (including nostalgic call-backs to the “Old Corps,” a term used for the corps prior to the admission of women). The Team did not see any posts with explicit racial slurs,

⁹⁴ Survey results, row 52 (Caucasian, male).

⁹⁵ Survey results, row 98 (Caucasian, female).

⁹⁶ Survey results, row 121 (male, race undisclosed).

⁹⁷ Survey results, row 233 (male, race undisclosed).

⁹⁸ Appendix A at 105–06.

⁹⁹ Interviewee 47, 65.

although these are often monitored and taken down by Facebook or other social networking sites.

C. Demographic information about VMI as compared to other higher-education institutions

The Team also reviewed publicly available data comparing VMI to other Virginia higher-education institutions and to other military institutions. The data underlying these statistics comes from the State Council of Higher Education for Virginia and from the Integrated Postsecondary Education Data System (IPEDS). The comparison groups include 15 Virginia public institutions, 25 private Virginia institutions, and 10 military institutions (including the five federal service academies and five military colleges).¹⁰⁰ For specific details about the methodology used, see Appendix C at 3.

This data generally shows that, with limited exceptions, VMI tends to trail other comparable Virginia and military institutions when it comes to the diversity of its cadets and faculty, and that VMI's demographic makeup generally does not reflect the makeup of its surrounding populations or the U.S. Armed Services.

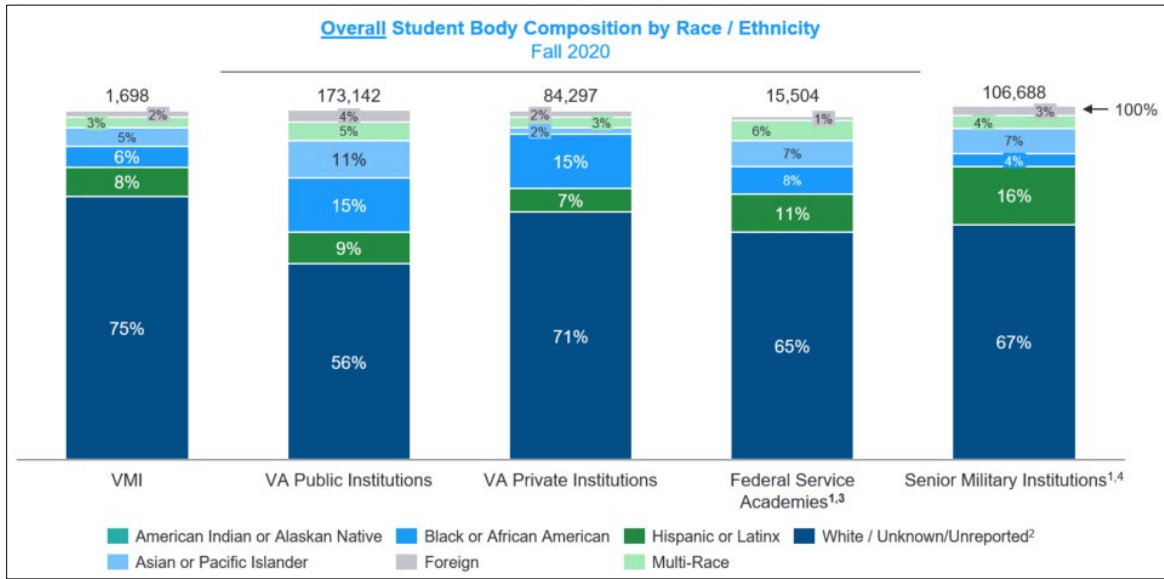
1. Student-body demographics

VMI's student body is 75% Caucasian or unknown, 8% Hispanic, 6% African American, 5% Asian or Pacific Islander, 3% multi-race, and 2% foreign (such as exchange cadets). Relative to the comparison groups, VMI had a higher percentage of Caucasian students, with Virginia public institutions at 56% Caucasian, Virginia private institutions at 71% Caucasian, and military institutions at 67% Caucasian.¹⁰¹

¹⁰⁰ Appendix C at 31 (listing the comparison institutions).

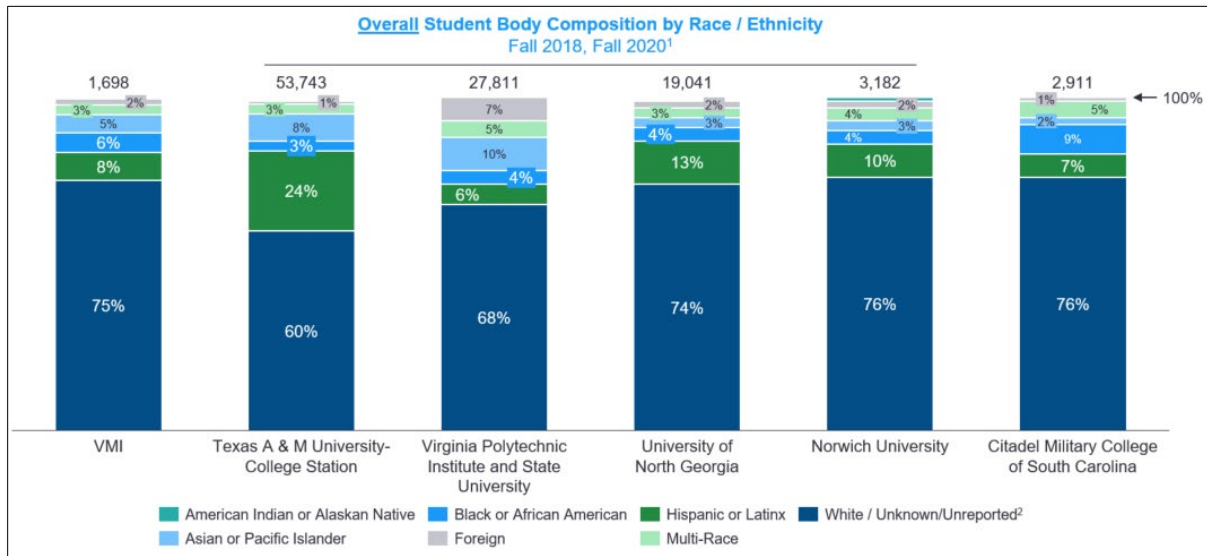
¹⁰¹ *Id.* at 6.

Figure 1: Overall student body composition by race and ethnicity



In comparison to the other senior military colleges, VMI, like the Citadel and Norwich, had higher percentages of Caucasian students than most larger institutions.¹⁰²

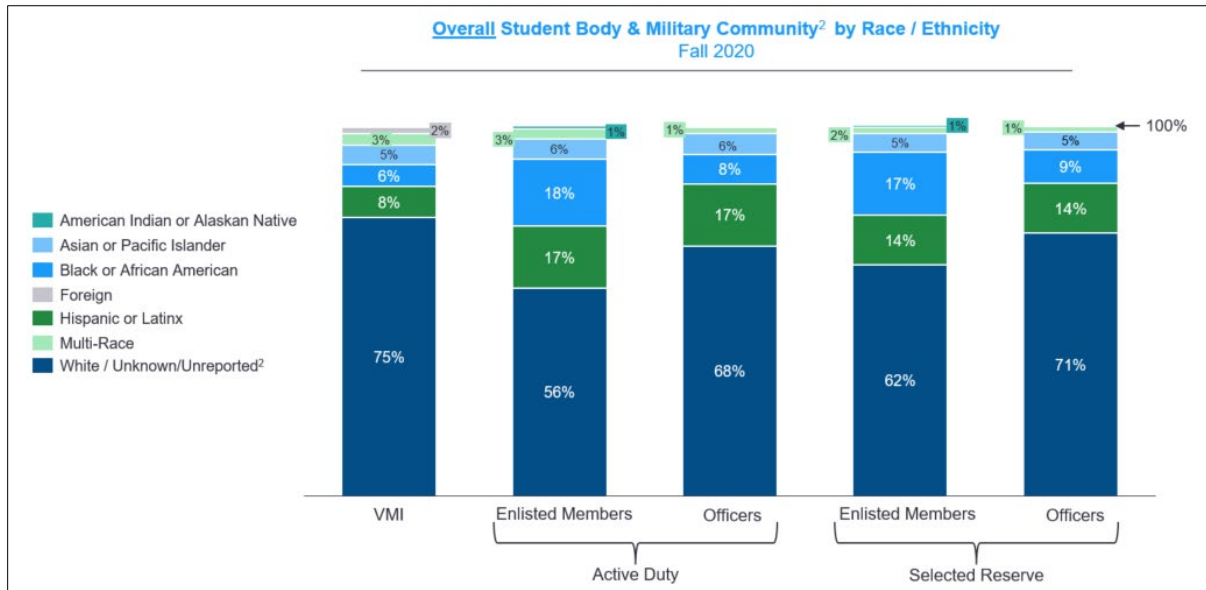
Figure 2: Student body composition at senior military colleges



¹⁰² Appendix D at 8.

VMI also had a higher percentage of Caucasian students than the U.S. military has of Caucasian active and reserve members.¹⁰³

Figure 3: Comparison with demographics of the U.S. military

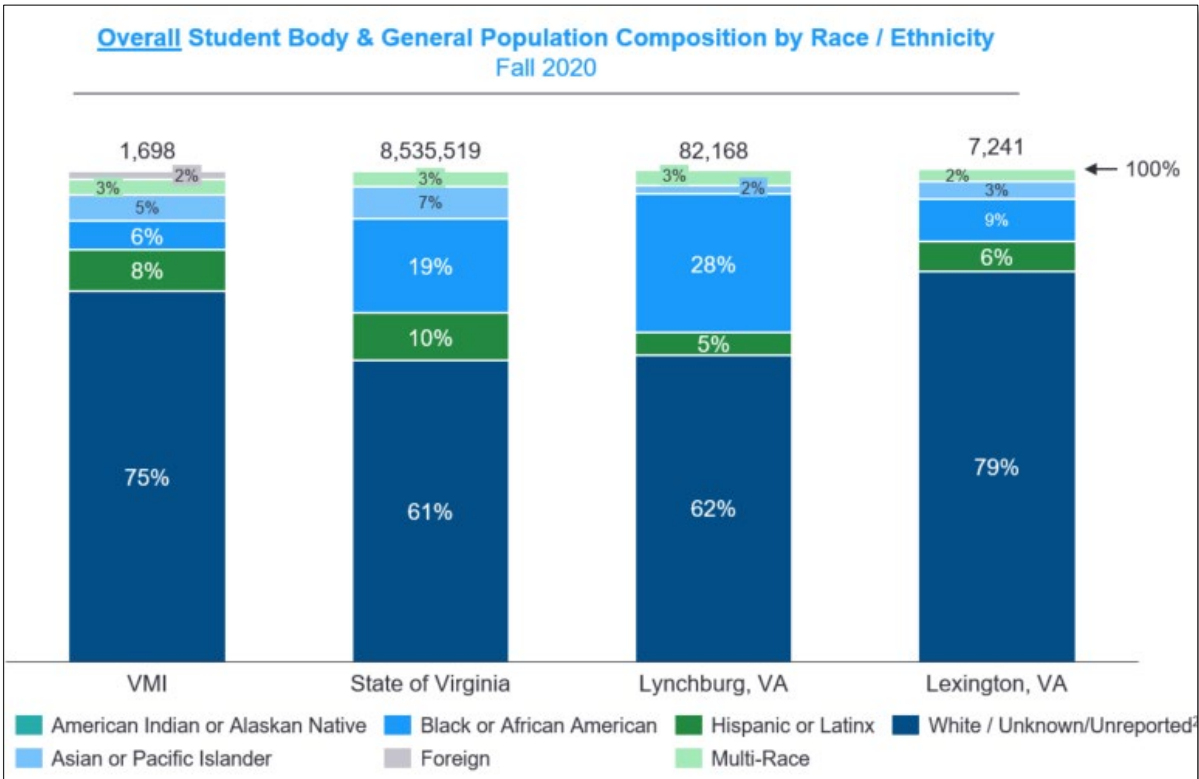


Further, VMI had a higher percentage of Caucasian cadets relative to the composition of the surrounding population and the Commonwealth, except compared to Lexington.¹⁰⁴

¹⁰³ *Id.* at 10.

¹⁰⁴ Appendix D at 11.

Figure 4: Comparison of demographics with surrounding populations

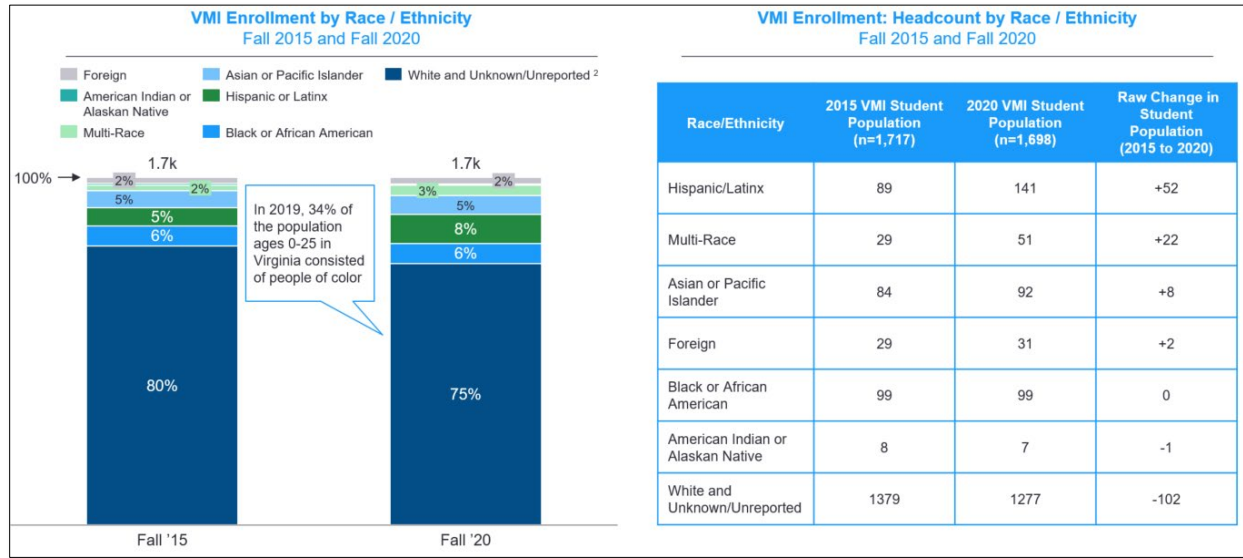


When comparing the number of students of color at VMI in 2015 with the number in 2020, VMI’s enrollment of students of color increased by 5 percentage points, but still lagged behind the comparison groups.¹⁰⁵ This increase between 2015 and 2020 enrollment was primarily the result of the enrollment of more Hispanic students.¹⁰⁶

¹⁰⁵ Appendix C at 8.

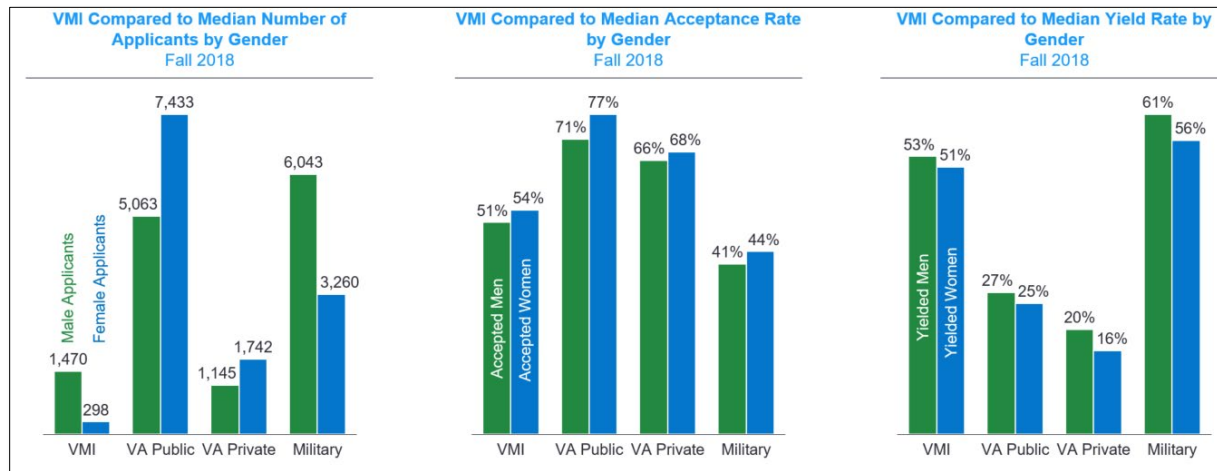
¹⁰⁶ Appendix C at 9.

Figure 5: Student diversity over time



According to recent data, VMI’s applicant pool was predominantly male, and the rates for accepted applicants and applicants who chose to attend VMI was similar for males and females.¹⁰⁷

Figure 6: Admission metric by gender



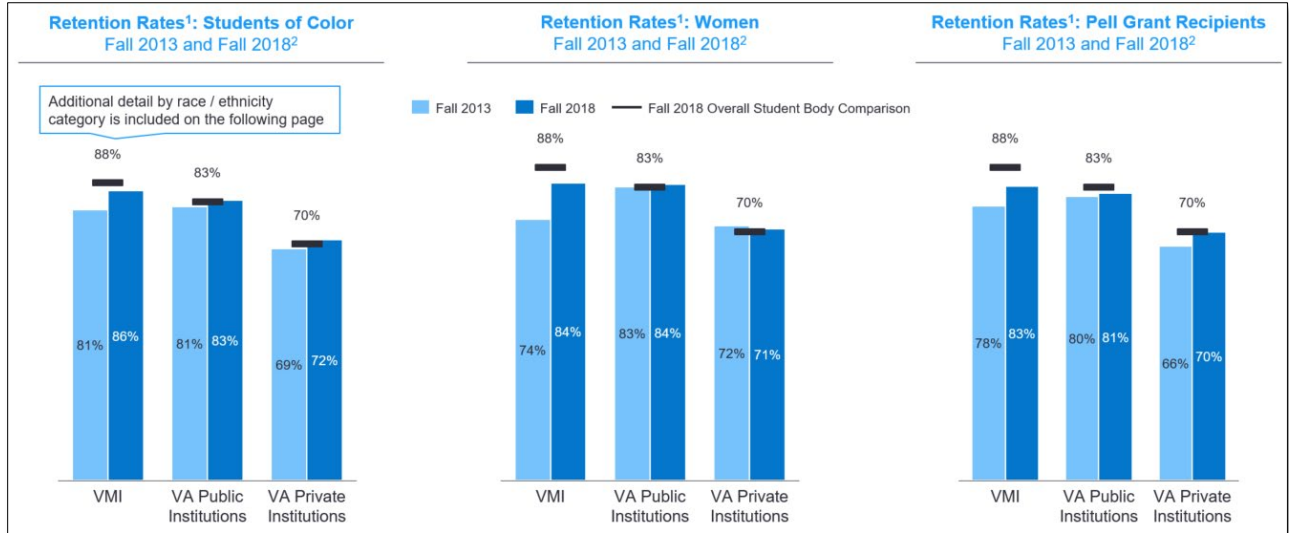
When comparing whether students who completed their first year were still at the institution at the end of the second year, VMI’s retention rates for students of color, for women, and for Pell Grant recipients were higher than the retention rates for the Virginia comparison groups in 2018.¹⁰⁸ Note that these rates would

¹⁰⁷ *Id.* at 11. Data for admissions metric by race or ethnicity was not available.

¹⁰⁸ Appendix C at 14.

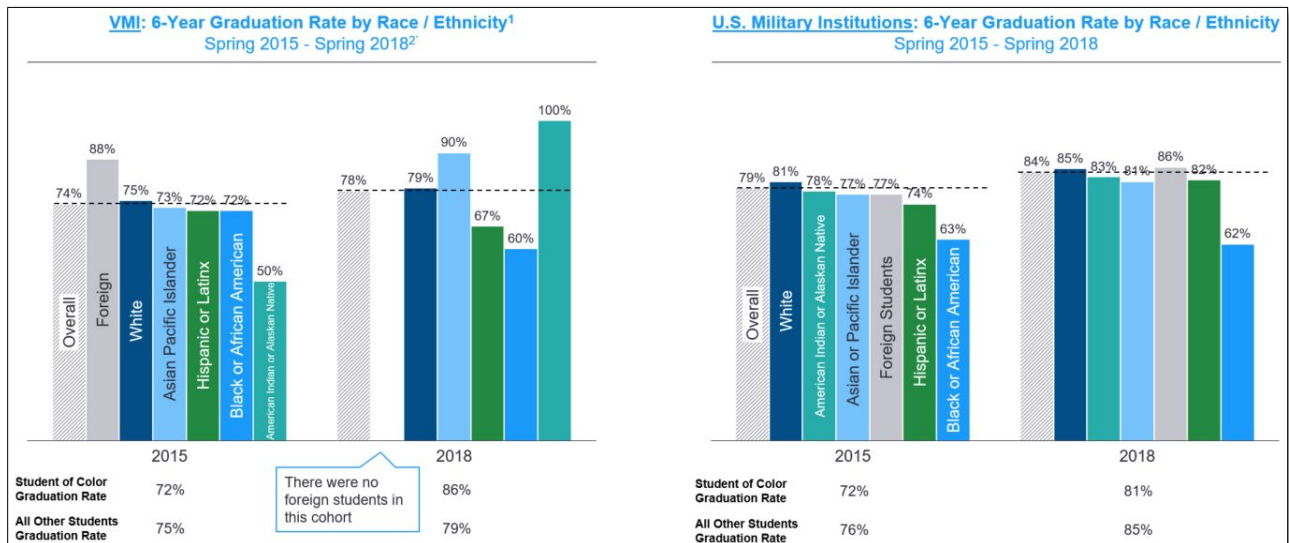
not account for students who enrolled but left during their first year at a particular school (such as during the Rat Line).

Figure 7: Retention rates across demographic categories



As for graduation rates, both VMI and the military institutions comparison group increased overall graduation rates from 2015 to 2018, but the graduation rates for VMI and the military institutions comparison group decreased for African American students.¹⁰⁹

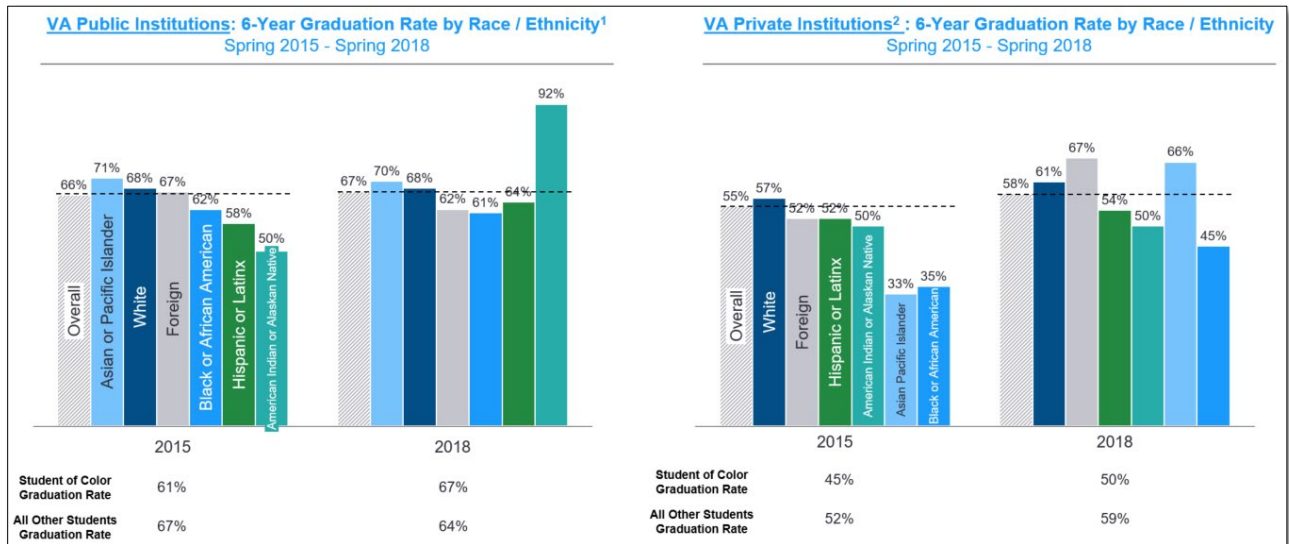
Figure 8: VMI and military institutions graduation rates



¹⁰⁹ Appendix C at 16.

As for graduation rates at other Virginia institutions, VMI's 2018 graduation rates were higher than the median rates for Virginia public and private institutions both overall and for most race and ethnicity categories.¹¹⁰

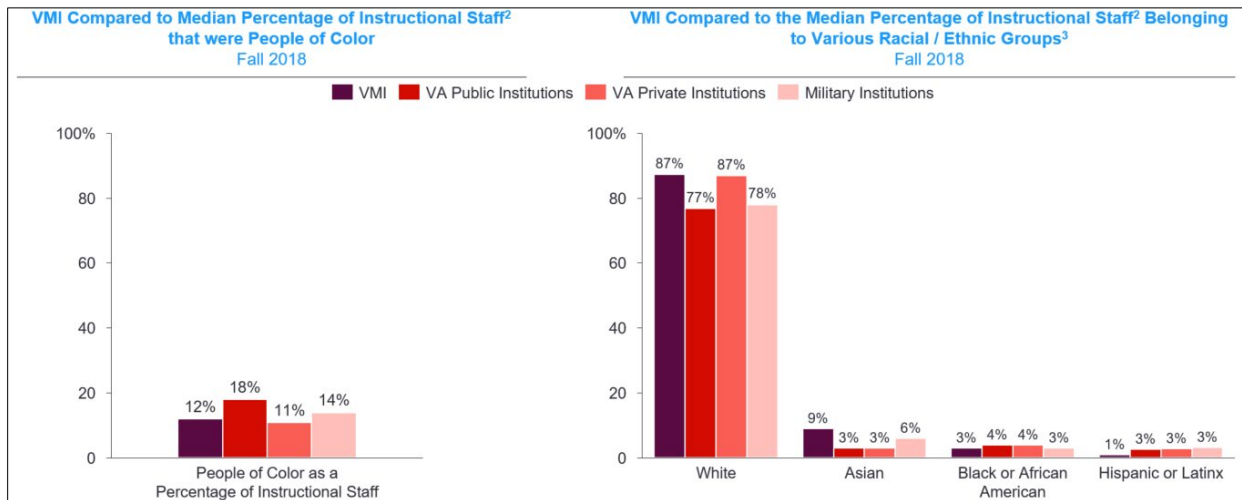
Figure 9: Virginia institutions graduation rates



2. Faculty demographics

On the faculty front, VMI's instructional staff had a smaller percentage of people of color than the median at Virginia public institutions and at the military institutions, but a slightly higher percentage than Virginia private institutions.¹¹¹

Figure 10: Instructional staff diversity

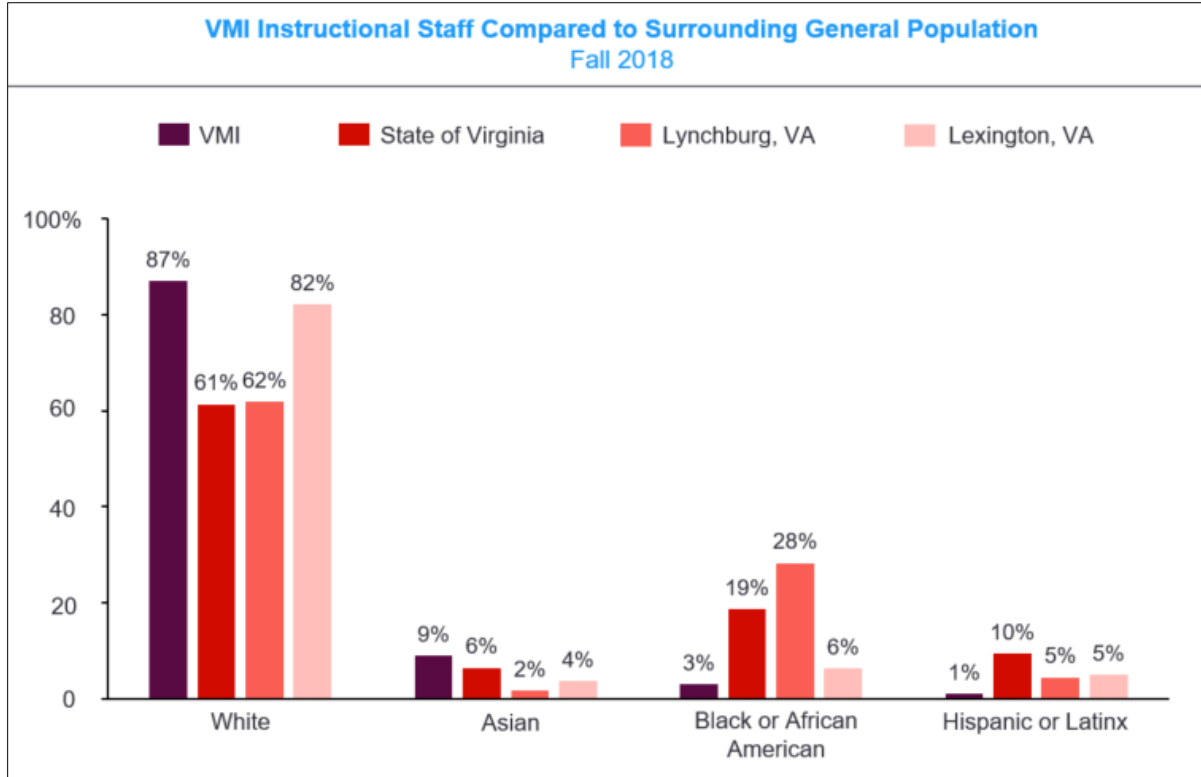


¹¹⁰ *Id.* at 17.

¹¹¹ Appendix C at 22.

VMI employed fewer people of color in instructional positions compared to its surrounding general population.¹¹²

Figure 11: VMI instructional staff compared with surrounding population

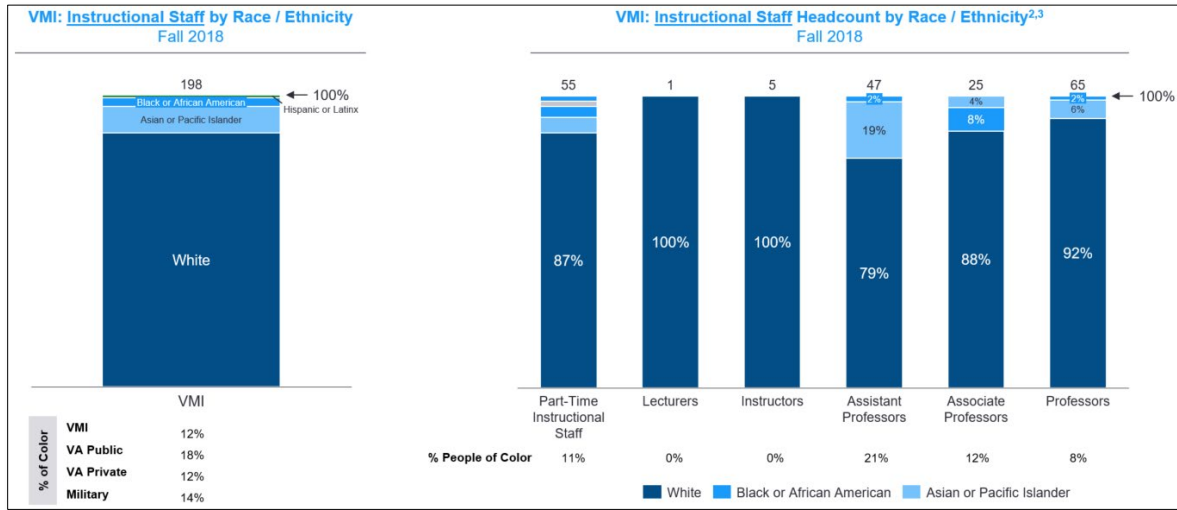


Within VMI, instructors at the rank of assistant professor had the most racial and ethnic diversity, while more senior faculty positions had a higher percentage of Caucasian employees.¹¹³

¹¹² Appendix D at 29.

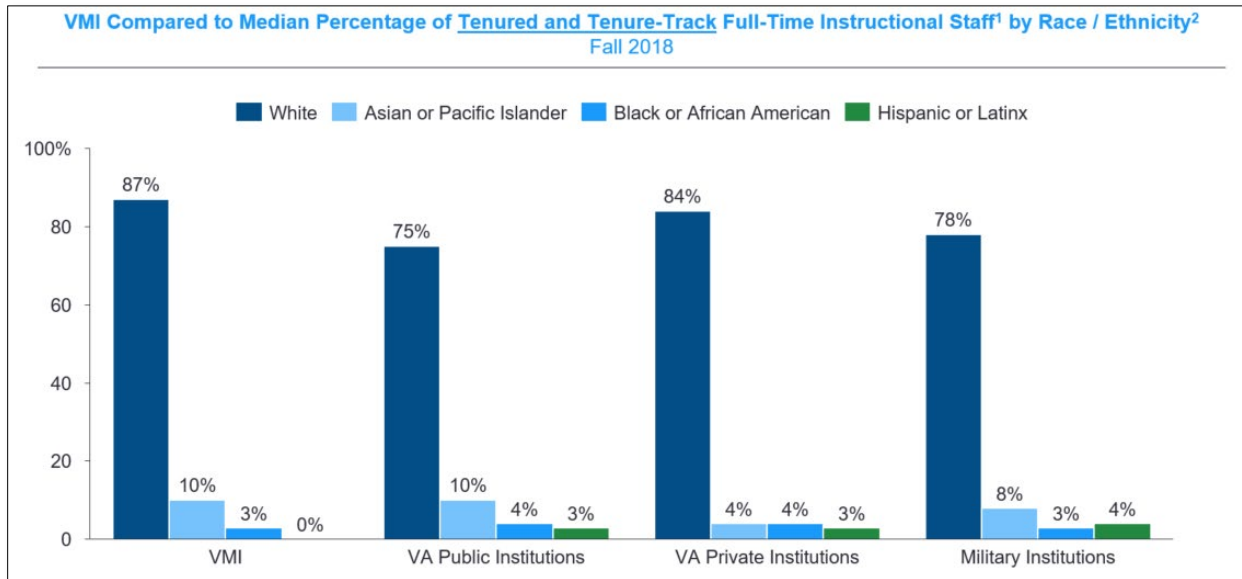
¹¹³ Appendix C at 23.

Figure 12: VMI instructional staff diversity



Further, VMI had the highest percentage of Caucasian tenured and tenure-track instructional staff compared to the median across comparison groups.¹¹⁴

Figure 13: Comparison of faculty diversity, tenure and tenure track

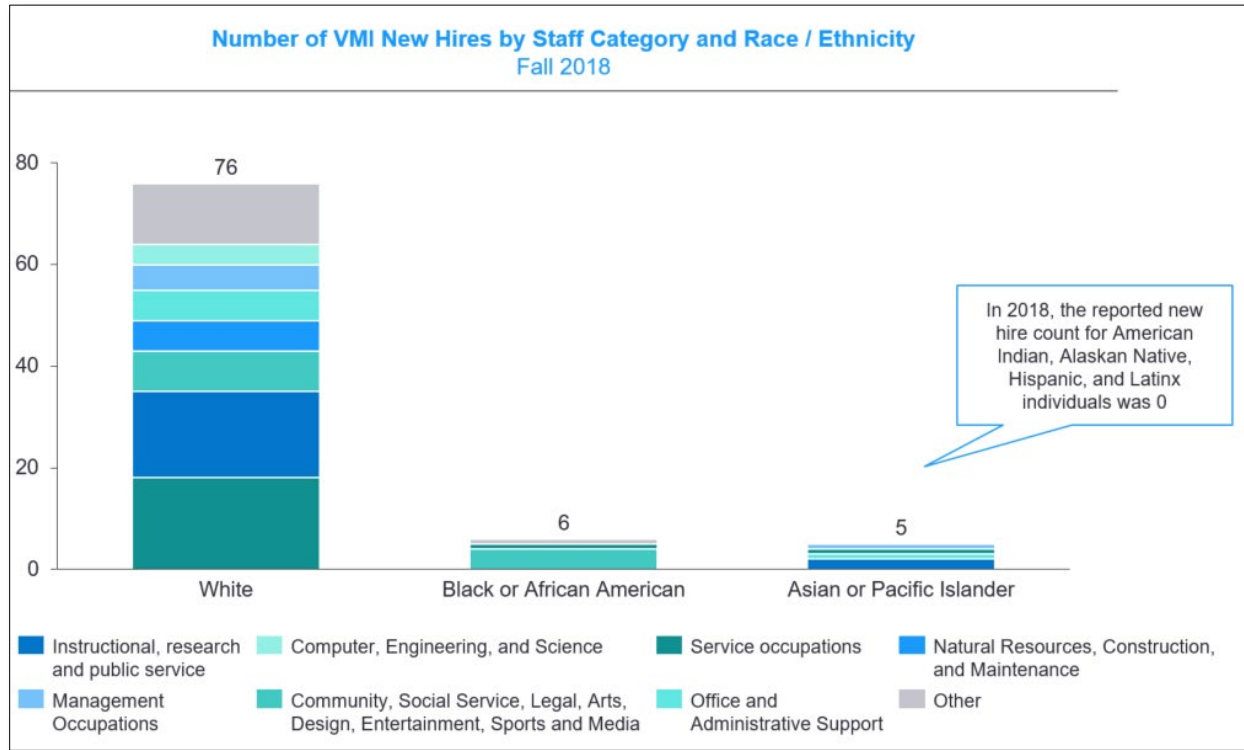


With respect to new hires, VMI hired seven Caucasian employees for every person of color, with new hires spread across a variety of roles and departments.¹¹⁵

¹¹⁴ *Id.* at 24.

¹¹⁵ Appendix C at 26.

Figure 14: New hires by race, ethnicity, and staff category



D. The divide between athlete and non-athlete cadets

As noted in the interim report, one source of tension among the cadets is perhaps not a direct issue of race, but is intertwined with race: the divide between those cadets who participate in NCAA athletics and those who do not. While some alumni observed that “every cadet is an athlete,” alumni and current cadets repeatedly referred to a divide between “athletes” and “cadets” or “athlete” and “non-athlete” cadets.

While VMI’s student body as a whole is only about 6% African American (see Figure 1), roughly 60% of African American cadets are athletes (based on the roster of current cadets provided by VMI). Put another way, if one were to meet an African American VMI cadet, there would be a 60% chance that cadet is an athlete. Based on this, some interviewees and survey responders opined (incorrectly) that a majority of the athletes are African American.¹¹⁶

In fact, 70% of athletes are Caucasian and non-Hispanic, and only 18% of athletes are African American. Some cadets indicated that the reason for this misperception is that, to some, the term “athlete” refers mainly to members of the football and basketball teams, but even on those teams, most players are not

¹¹⁶ See, e.g., Survey results, row 74 (Caucasian, female, non-athlete); Interviewee 162 (Caucasian male); Interviewee 85.

African American. According to VMI documents, five of 15 players on the basketball roster for 2020–2021 and 31 of 93 players on the football roster for 2020–2021 are African American. Accordingly, the assertion that “VMI doesn’t have a race issue, it has an athlete issue” is misconceived. Any effort to address racism at VMI will have to include addressing the athlete/non-athlete divide, but addressing the athlete/non-athlete divide alone will not solve VMI’s race issues.

The charts below shows the breakdown of athletes and non-athletes in various ways.

Figure 15: Cadets categorized by non-athlete compared with athlete

Non-Athlete	Athlete
1218	409
75%	25%

Figure 16: Caucasian and non-Hispanic non-athletes compared with non-athletes of color

Caucasian and non-Hispanic non-Athlete	Person of color Non-Athlete	Other Corps Non-Athlete	Total Corps Non-Athlete
941	247	30	1218
77%	20%	2%	100%

Figure 17: Caucasian and non-Hispanic athletes compared with athletes of color

Caucasian and non-Hispanic athlete	Person of color Athlete	Other Corps Athlete	Total Corps Athlete
281	127	1	409
69%	31%	0%	100%

Figure 18: Caucasian and non-Hispanic non-athletes compared with African American non-athletes

Caucasian and non-Hispanic non-Athlete	African American Non-Athlete	Other Corps Non-Athlete	Total Corps Non-Athlete
941	48	229	1218
77%	4%	19%	100%

Figure 19: Caucasian and non-Hispanic athletes compared with African American athletes

Caucasian and non-Hispanic athlete	African American Athlete	Other Corps Athlete	Total Corps Athlete
281	72	56	409
69%	18%	14%	100%

According to a number of current cadets and alumni, the divide between cadets and athletes stems from the different experiences cadets and athletes undergo. For example, incoming cadets undergo what is known as the “Rat Line” for roughly six months, which is similar to a basic training environment, with upperclassmen as the “cadre,” or leadership group.¹¹⁷ Additionally, cadets of all classes participate in parades, inspections, and other military events during the year. Athletes are excused from many of these events and experiences and therefore do not have to undergo a number of what might be thought of as the more military and physically taxing aspects of VMI.

From the athletes’ perspective, they have to commit significant time to their teams and undergo tough physical training as well. These cadet athletes are doing what is expected of them as NCAA Division I intercollegiate athletes. One graduate (class of 2011) described an athlete’s day as 0700 formation, breakfast, classes for first part of day, and then around 1700 going to the football field for practice, film, or lifting until 1930.¹¹⁸ Dinner formation followed at 1930, which meant around 2030 to 2100 it was time to study, and finally going to bed around 2300 to 0100 the next morning.¹¹⁹ Many athletes arrive at VMI on athletic scholarship, and so some view the military training as an obligation, not a desire.¹²⁰ For others, the corps events that they miss are a function of timing beyond their control.¹²¹

From the non-athlete cadets’ perspective, the non-athletes are required to participate in all corps obligations, no excuses, and “pick up the slack” for any missing cadets. They see completing the obligations normally assigned to the athletes as a necessary responsibility, but it is not one they particularly like. Cadets are also required to devote nearly all day Saturday during the football season to events associated with the games and attendance at the games

¹¹⁷ New Cadet Handbook 2020–2021 at 41 (defining the “Rat Line” as “[t]he whole experience of being a rat; also the specific path in barracks which rats must use in going from one place to another”).

¹¹⁸ Interviewee 49.

¹¹⁹ *Id.*

¹²⁰ Interviewee 116; Interviewee 8.

¹²¹ Interviewee 21.

themselves. For students with very little free time, this can give further rise to tensions. In addition, some non-athletes perceive that athletes are less invested in the military lifestyle, and less involved in VMI and its traditions, especially during the Rat Line. Some non-athletes feel that athletes are less willing than they are to conform with their fellow rats, and are more likely to cheat.¹²² A number of interviewees stated that this sentiment was even stronger toward members of the football and basketball teams, who are perceived as not working as hard as non-athletes and as receiving preferential treatment.¹²³

Members of the VMI community provided some examples of what they view as preferential treatment. For example, while each of the new athletic facilities built during GEN Peay's tenure included lounge areas for the athletes, there is no similar space available for non-athletes. Some cadets wonder why athletes get a tutor to help them with classes when other cadets do not.¹²⁴ A graduate noted that when athletes are disciplined, they get sent to a study hall, in contrast to non-athlete cadets who get penalty marches.¹²⁵

Similar tensions exist at other NCAA Division I institutions, but the unique aspects of academic, athletic, and military training at VMI make it much stronger and more complex to resolve. Everyone is under significant pressure, which can cause higher-intensity reactions.

Current cadets' responses to the free-form questions in the survey illustrate the divide:

- "I myself have a lot of friends who are athletes here, but one thing I can tell you and they will tell you themselves is that they did not come here for the systems we have. Many of them have no problem saying they just came here for [Division I] sports, or to play here for a year or two and then just transferring to a bigger school. When I was a rat, my first day, my roommate said after getting yelled at for not doing something fast enough or well enough was 'I didn't come here for this Sh*t.' It's hard to ignore that and forget that. I do not resent him for that, it just made me realize that a lot of athletes did not come here for the same things as me."¹²⁶

¹²² Interviewee 218, Interviewee 2411; Survey results, row 14.

¹²³ Interviewee 2451, Interviewee 2453, Interviewee 253, Interviewee 2411.

¹²⁴ See, e.g., Survey results, row 232.

¹²⁵ Interviewee 19.

¹²⁶ Survey results, row 185 (male, non-athlete, race undisclosed).

- “There is a known recent history that athletes do not care about the VMI system and try to oppose rules and authority.”¹²⁷
- “Talk more about the culture between student-athletes and the rest of the Corps. This is what divides the corps. This is where the tension is not in race but about people who care for the school and want to be here not those who came for just a sport and [treat] this place with disrespect.”¹²⁸
- “Cadet-athletes here in general are disliked due to the fact they give little to no care for the school.”¹²⁹
- “In high school, many athletes that will receive a college scholarship look forward to a life of sports, popularity and enjoying their college life. It seems to me that lots of athletes come in to this school with the impression that they can live that life and choose when to participate in the VMI system. That’s just not how it works. When you commit to one of the most respected lifestyles in America, you can’t decide which parts you feel like participating in.”¹³⁰
- “The reason athletes appear to be disproportionately targeted is because they tend to be the ones to disregard the system most. Not all, not even the majority, but some.”¹³¹
- “Athletes also, for the most part do not care as much about the system (they just care about their sport) as the rest of the corps who came here for the system, and not for a sport, and the corps resents them for it.” (Male, row 2.)
- “[T]here is a divide in this school. However it is not a race divide but a divide between athletes and non athletes. The athletes do not experience the ratline the way we do, and they get special treatment throughout their cadetship. This leads to them never really becoming a true part of the corp[s] unless they actively seek to do so. The highest concentration of People of color are on NCAA teams. Because of this people often misread a divide or a feeling of being an outsider as being because of [their] race when in fact it is because they are an NCAA athlete.”¹³²

¹²⁷ Survey results, row 197 (Caucasian, male, athlete), Interviewee 85 (stating that a group of athletes committed to ignore the Honor Code).

¹²⁸ Survey results, row 207 (Caucasian, male, non-athlete).

¹²⁹ Survey results, row 213 (non-athlete, race and gender undisclosed).

¹³⁰ Survey results, row 219 (male, athlete, race undisclosed).

¹³¹ Survey results, row 220 (multiracial, male, non-athlete).

¹³² Survey results, row 11 (Caucasian, male, non-athlete).

- “The issue at VMI is that you have some athletes who come here for the scholarship not knowing what they are getting themselves into. [It’s] not their fault, they aren’t fully informed on what the school is like but they get here and do not respect the rules the school or ratline and this builds resentment against them. Some of these athletes with this attitude are of color and interpret this resentment as racism, it isn’t. It is due to their attitude, or perceived attitude, of believing they are outside the rules.”¹³³
- “1. The first problem is NCAA coaches lie to prospective recruits about what VMI is such that they can get better players. Those players show up and have no idea what they are getting into and otherwise would not have come here if they had known. 2. The second problem is cadet athletes who only want to play sports who have no desire/want nothing to do with the rest of the school.”¹³⁴
- “I strongly believe cadet athletes are extremely discriminated against here, both by the people in power and by the students.”¹³⁵
- “The issues in the VMI culture do not strongly stem from racial origins. I would not argue that there are divides at this school[,] the largest being the divide causes by NCAA athletics and by gender, and without a doubt there should not be these divides present. I hope this investigation remains unbiased and uncovers the truth, that the issues surrounding this school do not stem from southern culture or [r]acial intolerance, but instead from easily solved surface level divides such as those discussed above.”¹³⁶

As the above statements illustrate, a number of survey responders and interviewees stated that the central source of tension on post is based not on race but on the athlete versus non-athlete divide. But those perceptions were based at least in part on the inaccurate premise that most athletes are African American, when in fact (as noted above) only 18% of athletes are African American. This reflects that the “athlete” problem is just a proxy for a race problem.

For example:

- “Personally I don’t think there is any racial discrimination[] or issues at VMI. The issue comes with cadet athletes and non athletes. Our

¹³³ Survey results, row 31 (Hispanic, male, non-athlete).

¹³⁴ Survey results, row 57 (male, athlete, race undisclosed).

¹³⁵ Survey results, row 61 (Caucasian, male, athlete).

¹³⁶ Survey results, row 184 (male, non-athlete, race undisclosed).

goal is to recruit the best athletes possible, it's not our fault that majority of athletes that come in are African American."¹³⁷

- “The issue of race at VMI comes from the athlete to non-athlete relationship at VMI. The majority of black students at VMI are athletes. The mentality of most athletes who are recruited for VMI is that they are coming to VMI to play [Division I] sports, and their primary goal is to be a student athlete. When any athlete comes to VMI not for the military system, they have a tendency to not fully participate in the system and sometimes actively rebel against it. The issue at VMI is not that of race; [it is] that of athletes and non athletes. It just so happens that most athletes on more ‘rebellious’ teams (football and basketball) are black. When majority black athletes refuse to conform to the military system at VMI, it causes an issue between athletes and non athletes who came to VMI for the military system. When the majority of those athletes are black, it creates unconscious bias within the corps against black cadets, which is the reason for the issues with race at VMI. The issue is that non athletes came to VMI for VMI, and athletes came to VMI for sports, and they just don’t see eye to eye.” [Some punctuation added.]¹³⁸
- One cadet stated that the perceived racial divide is actually more along the line of NCAA athletes vs. non-NCAA athletes, and that it’s coincidental that more NCAA athletes are African American.¹³⁹

Cadets also shared their views on the term “permit,” which many people use to describe athletes, because athletes are “permitted” to miss regular corps obligations for practice and games.¹⁴⁰ There is some disagreement about whether this term is a derogatory term or if it is derogatory when aimed at athletes of color. A non-athlete of color described the word as a dog-whistle term used toward African American athletes.¹⁴¹ He said that permits are thought of as rule breakers who get out of requirements. A Caucasian athlete reported that while he has never been called a “permit,” he noticed African American athletes were.¹⁴² A female athlete of color stated that although it did not bother her to be called a “permit,” it did bother her brother rats who are football players.¹⁴³ Some cadets reported that

¹³⁷ Survey results, row 74 (Caucasian, female, non-athlete).

¹³⁸ Survey results, row 263 (Caucasian, male, non-athlete).

¹³⁹ Interviewee 162 (Caucasian male).

¹⁴⁰ See New Cadet Handbook 2020–2021 at 41 (defining “permit” in part as a document that “grant[s] approval for exceptions to policies”).

¹⁴¹ Interviewee 2440.

¹⁴² Interviewee 369.

¹⁴³ Interviewee 2437.

the term is derogatory or is sometimes used in a derogatory way.¹⁴⁴ Other cadets, both athletes and non-athletes, did not find the term offensive.¹⁴⁵ A current member of cadre opined that “permit” is not racially charged.¹⁴⁶ Another cadet stated that it is used to describe all athletes, not just athletes of color.¹⁴⁷

Some alumni also shared the view that the term “athlete” is derogatory at VMI:

- When speaking about the tension that exists between the largely minority athlete population and non-athlete population, a recent graduate expressed the opinion that “athlete” is code for “black” and has just become another term to refer to African American cadets in a derogatory way.¹⁴⁸
- A Hispanic alumna (class of 2005) opined that people use the “athlete” title to cover up racism.”¹⁴⁹
- An alumna from the class of 2002 reported being ridiculed by fellow cadets for dating an African American athlete, and being asked if she “knew she was white.”¹⁵⁰

Many current cadets also believed that those recruiting the athletes were not forthright about the expectations of the school and that this contributed to the issues once they arrived. Some cadets stated that coaches affirmatively tell recruits that they will not have to participate in many military activities, or they fail to disclose the full extent of the Rat Line. Some athletes are frustrated that coaches and recruiters misrepresented the extent of the Rat Line. As one athlete said: “we [recruits] don’t actually know what is going on, coaches don’t tell us—you’re just shocked.”¹⁵¹ Another athlete reported that her coach did not tell her how strenuous the Rat Line was, and that if she had known, she would not have come to VMI.¹⁵²

Below are some additional statements from current cadets about the recruiting process:

¹⁴⁴ Interviewee 197, 198.

¹⁴⁵ Interviewee 2437, Interviewee 341.

¹⁴⁶ Interviewee 2411.

¹⁴⁷ Interviewee 2416.

¹⁴⁸ Interviewee 9.

¹⁴⁹ Interviewee 2476.

¹⁵⁰ Interviewee 2382.

¹⁵¹ Interviewee 374, initial interview.

¹⁵² Interviewee 363.

- “Being a cadet athlete, it was a shock to me because the coaches are not very transparent when they are recruiting you. This can be a problem because if you come to VMI and expect one thing but get a completely different experience, you will be very unsatisfied.”¹⁵³
- Athletes who are recruited to VMI often do not even know about the Rat Line, and when they arrive, they try to escape it by going to practice.¹⁵⁴
- Athletes are only shown good parts of VMI during recruiting, and none of the bad; and, they [athletes] may not have come to VMI had they been given the full picture.¹⁵⁵
- “The problem with athletes is that the athletic department is downright untruthful to prospective cadet athletes and tell them that they don’t have to follow our rules because they are athletes which is a borderline malicious lie and creates a divide.”¹⁵⁶

Whatever the impact of race, this investigation reveals a clear tension between two VMI objectives: (1) achieving a cohesive corps of cadets, who enjoy “a closeness at VMI that is rare in American colleges,”¹⁵⁷ and (2) fielding competitive Division I athletics programs. The prevailing view within the VMI community is that VMI is not succeeding at achieving both objectives, and that the latter compromises the former.

Coaches at VMI, and everywhere, are incentivized to attract the best athletic talent; and VMI coaches are responsible for winning, not for ensuring that athletes and other cadets get along, or for fostering a post-wide community of trust, dependability, and cohesion. This creates significant risk that recruiters will focus recruits’ attention only or mainly on the athletics-specific benefits (a scholarship and chance to play in Division I), and will not promote—and may even hide or misrepresent—VMI’s other, more strenuous aspects. The risk is especially acute given that VMI is one of Division I’s smallest institutions,¹⁵⁸ perhaps leading prospective cadet-athletes to consider VMI when they would not otherwise consider

¹⁵³ Survey results, row 349 (Male, athlete, race undisclosed).

¹⁵⁴ Interviewee 174.

¹⁵⁵ Interviewee 207, an African American male.

¹⁵⁶ Caucasian, male, row 329.

¹⁵⁷ <https://www.vmi.edu/cadet-life/daily-life/first-year/> <https://www.vmi.edu/cadet-life/daily-life/first-year/>.

¹⁵⁸ <https://vmikeydets.com/sports/2002/8/8/1420805.aspx>.
<https://vmikeydets.com/sports/2002/8/8/1420805.aspx>.

a military college. In any event, if athletes are misled about what they are getting into, they are bound to become resentful, making the divide worse.

Many alumni shared the same opinions as the cadet opinions above.¹⁵⁹

Some alumni also suggested that this tension starts in the Rat Line, where first-class mentors, known as “dykes,”¹⁶⁰ teach their “rat” mentees to resent athletes (and potentially pass on whatever other biases they might carry, such as disapproval of women).¹⁶¹ Many expressed the view that the tension is worst during rat year because the circumstances are so miserable that the perceived privileges afforded athletes stand in stark contrast to the other rats’ day-to-day experiences.

There is a common view among alumni that VMI has made little, if any, attempt over the years to remedy these issues. One cadet referenced a brief meeting in recent years where the commandant told them these tensions needed to cease, but there was no action plan or follow up. Another alumnus mentioned that the issue was discussed at a Leadership Focus Group in which he participated, but they were unable to come up with a solution.¹⁶² Indeed, several alumni noted that this divide has gotten worse lately, and that athletes were previously seen as an integral part of the corps. Some of this divide may well be attributable to the “corporatization” of Division I sports, but there are also structural issues at VMI which make it particularly susceptible to this problem.

VMI’s leadership is aware that this divide has existed for some time. General Peay acknowledged it in his July 2020 letter, encouraging NCAA athletes “to take advantage more fully of the numerous opportunities at VMI and to grow beyond the wonderful leadership opportunities they experience on their teams and in competition.” In turn, he encouraged the corps of cadets to “more fully understand and appreciate the difficulty of classmates competing at the highest levels in representing their school, while balancing common challenges of priorities, time, and difficult academics.”¹⁶³ Additionally, MG Wins—himself a very successful former cadet-athlete—is addressing this divide by developing a vision of “One VMI” as one of his strategic goals for VMI, and he noted in his May 14 letter

¹⁵⁹ See, e.g., Interviewee 118.

¹⁶⁰ The “dyke system” is one of the most revered traditions at VMI, whereby each incoming rat (freshman) cadet is assigned a first class (senior) mentor. Mentors are referred to as “dykes”; their mentoring relationship is the “dyke relationship.” According to the New Cadet Handbook, the term “dyke” “originated in the 19th-century mispronunciation of the term ‘to get decked out,’” and the term often refers to the white cross belts worn as part of dress uniforms.

¹⁶¹ Interviewee 290.

¹⁶² Interviewee 33.

¹⁶³ Peay Letter at 4 (attached as Exhibit 5).

that this divide is a theme that has arisen in his recent listening sessions with the VMI community.¹⁶⁴ Further, members of the Board of Visitors also acknowledged that many athletes at VMI do not share the same experience as other cadets.

Unless these issues are addressed directly, it is likely that the tensions, particularly the racial tensions, will remain as a central aspect of the VMI experience.

E. Disciplinary systems at VMI

1. Overview of VMI's disciplinary systems

As a military college, VMI has multiple organizations that play separate, but sometimes overlapping, disciplinary roles. This includes a regimental system, a cadet government that runs the class system, an Honor Court, and oversight by administrators, including the Commandant and Superintendent. These systems fall under different sets of regulations. As explained in a regulation that VMI provided, a series of manuals called the “Rainbow Books” codify procedures, regulations, and standards at VMI.¹⁶⁵ These five documents are:

- Blue Book – VMI's Cadet Regulations;
- Red Book – The Cadet Regiment's Operating Procedures;
- White Book – The Cadet Government's Operating Procedures;
- Yellow Book – The Operating Procedures for the Rat Line and 4th Class Training; and
- Green Book – The Operating Procedures for the Recreational Activities of Cadet Life Office.

One alumnus told the Team that the “Rainbow Books” also include a “black book” that governs the Honor Court. While the Team has asked for all Honor Court governance documents, the Team has not received a “black book,” and because of the other issues with the production of Honor Court materials, is not certain whether a “black book” exists.

The following provides a brief overview of these systems, to aid in understanding which aspects of cadet life they cover and how different values are enforced through different mechanisms at VMI.

a. The regimental system

The regimental system administers the military component of VMI and is based on a regular infantry regiment.¹⁶⁶ The cadet regiment consists of two

¹⁶⁴ Exhibit 6 at 3.

¹⁶⁵ Regulations for VMI at 10 (rev'd 2014).

¹⁶⁶ New Cadet Handbook 2020–2021 at 17.

battalions comprised of five companies each (nine line companies and a band company). The regiment is commanded by the cadet first captain, and the command structure continues from battalion down through companies, platoons, and squads. Cadets apply for leadership positions in the regimental system and are appointed as cadet officers and non-commissioned officers by the Superintendent on the recommendation of the Commandant of Cadets.¹⁶⁷

The regimental system resembles the structure of the military, but appears to have less influence on a cadet's daily life than the cadet government does, because it is the cadet government that administers the class system and the Rat Line.

b. Cadet government, including the class system and the Rat Line

The cadet government is separate from but interacts with the regimental system. The General Committee oversees the cadet government and administers the class system.¹⁶⁸ Under the class system, each class—the rats, who eventually become the fourth class (freshmen), the third class (sophomores), the second class (juniors) and the first class (seniors)—have different privileges and responsibilities. Unlike the regimental system, where the leaders are appointed by the administration, the General Committee consists of cadets who were elected by their respective classes. (The fourth class elects its officers after the spring furlough.) As a result, some alumni described the positions in the class system as “more prestigious” than those in the regimental system; consistent with this, the VMI administration, when briefing the Team, noted that the class system, through the General Committee, has more authority than the regimental system.

The General Committee authorizes privileges by class. For example, it controls general permits, certain rules governing which uniforms cadets may wear, and privileges such as where cadets may use phones and which sidewalks, sinks, and showers they may use. It also “strictly upholds the standards, traditions, image and welfare of the entire Corps.”¹⁶⁹ Its jurisdiction is broad, including punishment for violations of privileges and also VMI regulations, but not including jurisdiction for penalties involving sexual offenses.¹⁷⁰ As examples of the broad range of conduct it covers, the General Committee polices the following: unauthorized Rat Line activity, improper treatment of another cadet based on race, striking another cadet, failing to pay a debt, leaving the football stadium early,

¹⁶⁷ Regulations for VMI at 8 (rev'd 2014).

¹⁶⁸ New Cadet Handbook 2020–2021 at 17.

¹⁶⁹ White Book at 2-1.

¹⁷⁰ White Book at 2-4 & 7-1.

chewing gum in public, and anything that might “discredit[] the Institute.”¹⁷¹ The General Committee may award any penalty, other than demerits, with the concurrence of the assistant commandant for cadet government.

The General Committee has four primary subcommittees: the Officer of the Guard Association, the Cadet Equity Association, the Executive Committee, and the Rat Disciplinary Committee.¹⁷²

The Officer of the Guard Association enforces the conduct standards for the corps of cadets, manages the dyke system, and serves as the investigative arm of the General Committee; it is made up of first class privates (i.e., cadets who do not hold leadership positions in the regimental system).¹⁷³ For example, the OGA investigates cases of hazing, gross misconduct of a cadet, abuses of the dyke system, and violations of the professional-relations policy. The OGA has three subcommittees. The first is the Education Committee, which develops and provides training and education to the cadets as deemed necessary by the VMI Administration or first class president. The second is the Investigative Committee; it enforces the conduct of the cadets and investigates matters for the GC and EC and Administration as requested. Finally, the Dyke Committee oversees administration of the VMI dyke system and investigates any cases involving abuses of the dyke system.

The Cadet Equity Association provides education on equity and promotes respect and equitable treatment for cadets.¹⁷⁴ It also enforces equal treatment of cadets on the basis of race, gender, or position of leadership in the corps. And the CEA investigates instances of alleged discrimination and harassment (though in instances of sexual assaults, it may be involved in an investigation only at the discretion of the Institute’s Inspector General and Title IX coordinator).¹⁷⁵

The Executive Committee handles serious cases of misconduct.¹⁷⁶ It is made of the General Committee and the President of the Officer of the Guard Association (and so consists of cadets from the first, second, and third classes). The assistant commandant for cadet government attends Executive Committee hearings.¹⁷⁷

The Rat Disciplinary Committee adjudicates violations of rat restrictions, supervises Rat Line events, and assists in the development of rats. It consists of

¹⁷¹ White Book at 2-4, 2-5.

¹⁷² White Book (unnumbered second page).

¹⁷³ White Book at 10-1.

¹⁷⁴ *Id.* at 21-1.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 2-7.

¹⁷⁷ *Id.*; see also New Cadet Handbook 2020–2021 at 40.

first class cadets and second class cadets, but every cadet has a responsibility to implement the rat system.¹⁷⁸

c. The Honor Court

The Honor Court educates the corps on and administers the Honor Code, which states, “A cadet will not lie, cheat, or steal, nor tolerate those who do.”¹⁷⁹ According to the Honor Code Charter, “[t]he Code is the heart of VMI. It pervades every activity of the Corps—personal, academic, athletic, and military, and presents a rigid standard by which all cadets must live.” Alleged violations of the Honor Code are adjudicated by the Honor Court, which consists of first and second class cadets who are elected by their classmates.

The Honor Code is specifically and solely focused on honesty. It is limited in its scope in that it covers only actions that directly involve lying (such as false official statements), cheating (such as in academics), stealing, and tolerating those behaviors. In other words, instances of racial intolerance (such as the use of a racial slur) or violence (such as sexual assault), provided they do not involve lying, cheating, stealing, or tolerating, do not fall within the jurisdiction of the Honor Court. As discussed below, this is a critical consideration when it comes to the perceptions of VMI’s disciplinary systems.

The VMI Honor Code is known for the fact that it has a single sanction for its violation: dismissal from the Institute. Dismissal from VMI occurs via what is called a “drum out” ceremony. At 0330, drums are sounded and members of the Honor Court awaken members of the corps by opening individual cadet doors and instructing them to report to the stoops, and then making the following announcement (with specifics replacing the underlined words) to the gathered corps of cadets:

“Tonight your Honor Court has met and found, Cadet name,¹⁸⁰ guilty of number of counts of violation. He/She has placed personal gain above personal honor and has left the Institute in shame. His/Her name shall never be mentioned within the walls of the Institute again.”¹⁸¹

¹⁷⁸ White Book at 34-1.

¹⁷⁹ New Cadet Handbook 2020–2021 at 15.

¹⁸⁰ The “drum out” process apparently has very recently changed to exclude the announcement of the cadet’s name.

¹⁸¹ Standing Operating Procedures, Honor Court (Aug. 2017) at 24.

d. Oversight by VMI administration

The VMI administration oversees each of these disciplinary systems. For example, a cadet cannot be drummed out for an honor violation without the approval of the Superintendent.¹⁸² Similarly, the assistant commandant for cadet government works with the General Committee, and “[t]he General Committee has the authority to award any penalty it deems necessary, other than demerits, *with the concurrence of the Commandant.*”¹⁸³ The Commandant addresses violations of the Blue Book. Faculty members known as “tactical officers” are assigned to each cadet company and are regularly present in the barracks area.

2. Perceptions within the VMI community of the disciplinary systems

a. Perceptions of the regimental system

In general, cadets and alumni did not raise many issues with respect to race or gender and the regimental system; rather, their comments have focused on the class system and the honor system, which are addressed below. But two aspects of the regimental system that have drawn some comments are the topic of racial and gender diversity in leadership positions and the issue of hair-grooming standards for female African American cadets.

As to leadership positions, among African American cadets, 83% either somewhat agreed or strongly agreed that VMI should have more people of color in leadership positions.¹⁸⁴ In contrast, only 22% of Caucasian cadets agreed with that statement.¹⁸⁵ Similarly, on the issue of gender, 52% of female cadets either somewhat agreed or strongly agreed that VMI should have more women in positions of leadership, while only 17% of male cadets agreed with that statement.¹⁸⁶

It appears to be a widespread view among current Caucasian male cadets that minority and especially female cadets have an advantage in applying for positions within the regimental system. For example, some male interviewees told the Team:

- Females use their gender to access positions they are not really suited for and that they get these positions to fill a diversity quota.¹⁸⁷

¹⁸² Honor Charter 2020–2021.

¹⁸³ White Book at 2-1 (emphasis added).

¹⁸⁴ Appendix A at 91.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 360.

¹⁸⁷ Interviewee 211 (Caucasian, male).

- Women get leadership positions because of quotas or because the standards are relaxed for them, and this creates resentment from the male cadets.¹⁸⁸
- VMI is practicing equity over equality and putting women into leadership positions for which they are unqualified.¹⁸⁹

The free-form survey responses from current cadets included some of the same sentiments:

- “Being a woman and applying for rank increases your chances of getting a position from what I have witnessed.”¹⁹⁰
- “The only reason I answered [on the survey] that females were not treated equally is that they have a better chance at certain leadership positions than their male counterparts.”¹⁹¹
- “I walk around my school wondering if the positions I applied for and [am] qualified for will be in jeopardy simply because it looks better to pick someone of color, due to the current political climate.”¹⁹²
- “As far as leadership positions go, minority and female cadets are encouraged to apply and make the leadership structure more diverse. But those two groups make up a very small portion of our student body as is, and many of the members of those two groups have no interest in leadership positions so they do not apply. We can not complain about lack of diversity when no attempt is made to hold positions by diverse cadets.”¹⁹³
- “I also think women are sometimes given an unfair advantage when it comes to getting rank because there is a want to have women in leadership roles.”¹⁹⁴
- “Females are over represented in leadership positions. There are many examples of males who have much more qualifications not

¹⁸⁸ Interviewee 181 (Caucasian, male).

¹⁸⁹ Interviewee 187 (Caucasian, male).

¹⁹⁰ Survey results, row 286 (Caucasian, male).

¹⁹¹ Survey results, row 259 (male).

¹⁹² Survey results, row 22 (Hispanic, female).

¹⁹³ Survey results, row 19 (male).

¹⁹⁴ Survey results, row 302 (Caucasian, female).

getting positions and losing them to females who are under qualified”¹⁹⁵

- “Maybe realize women are put into positions because of the fact they are women. They don’t do as much, they are there just there because they are women. It seems they are put there to meet some quota about gender diversity.”¹⁹⁶

A number of female cadets emphasized that leadership positions should not be awarded based on quotas about gender:

- “[T]he questions at the beginning bothered me a bit, because as a woman, I earned my rank last year and this year, and I hope to earn rank again for my 1st class year. I do not want to ever go to a VMI that says ‘oh we need this many women’ and ‘oh we need this many POC’ in leadership. I want there to be competition and for only the very most qualified to have rank and leadership within the Corps. I obviously do not support discrimination of any sort, but when I look to those in leadership, I know they got there because they worked so hard for it, and they earned it, not because someone was trying to fill a quota or make it look good to the public.”¹⁹⁷
- “From what I have witnessed, being a minority myself, those who want leadership positions and work for those positions and persist in their endeavors are successful. It is those who would rather rely on a social status or associations with higher ups or who do not work as hard as others that take issue with ‘the system’ when they do not get what they want. it is easier to blame the system than to take personal accountability.”¹⁹⁸

The comments from alumni were similar. Some alumni reported a lack of racial and gender diversity in leadership positions within the regimental system.¹⁹⁹ But others reported that they believe women and minority cadets are at an advantage for being selected for regimental leadership positions due to a desire to increase diversity.²⁰⁰ For example, one alumna noted that she was promoted within the regimental system by VMI and felt that it was because she was a multiracial female; she also observed that the part of regimental staff she worked on had more

¹⁹⁵ Survey results, row 313 (Caucasian, male).

¹⁹⁶ Survey results, row 14.

¹⁹⁷ Survey results, row 35 (Caucasian, female).

¹⁹⁸ Survey results, row 22 (Hispanic, female).

¹⁹⁹ Interviewee 137; Interviewee 159; Interviewee 20.

²⁰⁰ Interviewee 1665.

minorities than was proportional for the corps.²⁰¹ Some alumni expressed frustration at this because they felt it led to less capable people being put in these positions. One alumnus noted that because the demands on a regimental leader are rigorous, candidates must truly want the position, and if someone is put in a position they do not truly want to be in, it can be “disastrous.”²⁰²

Comments from one alumna suggested that some female cadets were treated differently when they achieved leadership positions. The alumna served as the first sergeant of her company and recalls being heckled by male cadets every time she stood at formation and gave commands. She was often told by male cadets in her company to “shut the [f-word] up.” She noted that in her experience, male regimental leaders were never treated this way.²⁰³

Following Cadet Kasey Meredith’s appointment as VMI’s regimental commander for the 2021–2022 academic year, many alumni posted messages of support and congratulations on social media. Several noted that if Cadet Meredith is the most qualified for the position, then they are happy that she was chosen. A smaller group of alumni posted social media messages of skepticism that VMI was only now appointing a female regimental commander to “look good” for the investigation. The anonymous posts on Jodel regarding the appointment of Cadet Meredith were not as positive from the corps, many echoing the thought that her appointment was meant to pacify critics of VMI in light of the current investigation:

- “Roanoke Times publishes an article on Meredith 15 minutes after the announcement Seems like a PR stunt to me. #VMIconspiracy”
- “Meredith isn’t just representing women but also all those there gim²⁰⁴ riders and all those engaged to their cadre corporals.”
- “Shit. Since they givin out positions to minoritys, my black ass could’ve been RCO [lol emoji] #permitandprivate”
- “Let’s just get it out there: She was picked because she’s female not because she was the most qualified.”
- “The fact that there are already multiple news articles out immediately after the announcement shows that VMI told the press early and says all you need to know about the thought process in choosing her.”

²⁰¹ Interviewee 24, class of 2009.

²⁰² Interviewee 2286, class of 2013.

²⁰³ Interviewee 1768.

²⁰⁴ Gim is a term commonly used at VMI to denote that a cadet is injured or sick or otherwise dispensed from certain physical activities.

- “Barnes & Thornburg run the corps #fuck”
- “I love MG wins, perfect guy for the job ... but now meridith [sic] as rco? Seems like they’re putting minorities into leadership thinking that it will distract the public from the real racist/sexist problems that go on here.”

All of the posts above were posted on Jodel on March 30, 2021, the same day that VMI announced Cadet Meredith’s appointment. The all-male focus group expressed similar dismissive attitudes about this appointment.²⁰⁵

Multiple cadets also raised the issue of grooming standards for African American female cadets. One African American female cadet said that she and other African American women are scrutinized for their hair more frequently than others, and that they have to pay out-of-pocket to have their hair styled off-post because no one on post knows how to care for African American hair.²⁰⁶ Another African American female stated that African American women are singled out and treated differently because of their hair texture. She added that it is difficult to form a very neat bun, and that peers who are not African American do not understand this problem.²⁰⁷ This interviewee said that Caucasian women come to formation with disorderly hair and they are not reprimanded.²⁰⁸ Another African American female cadet also reported harassment by commandant staff regarding her hair.²⁰⁹ This interviewee requested that VMI adopt the Army’s standards for hair, but that request was denied.²¹⁰

b. Perceptions of the cadet government, including the class system and the Rat Line

Cadets and alumni generally described the Rat Line as mentally and physically grueling by design. The cadre responsible for overseeing and conducting Rat Line activities received training before participating and were given guidelines on what they could say and do to the rats before it crossed the line into physical abuse. Alumni also stated that if a member of the cadre was getting too heated or taking things too far with the rats, he or she would be pulled aside and told to

²⁰⁵ Appendix B at 7.

²⁰⁶ Interviewee 163.

²⁰⁷ Interviewee 172.

²⁰⁸ *Id.*

²⁰⁹ Interviewee 363.

²¹⁰ *Id.*; see Army Regulation 670-1, available at

https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30302-AR_670-1-000-WEB-1.pdf

correct their behavior, either by other members of the cadre or overseeing administrators, such as tactical officers.²¹¹

In the survey, when asked how much the Rat Line promotes racial intolerance and/or discrimination, Caucasian and African American cadets had different perceptions: while 96% of Caucasian cadets and 58% of African American cadets responded “none,” 33% of African American cadets said “a little,” and 8% “a lot.”²¹² This difference was much smaller when comparing male and female cadets, with 95% of male cadets saying “none” and 91% of female cadets also saying “none.”²¹³

Many alumni noted that the cadre would often say things to the rats intended to get under their skin to test them psychologically, often focusing on a particular weakness someone might have.²¹⁴ Rats were supposed to realize that this was part of a psychological “game.”²¹⁵ As a recent alumni explained in a short book written for incoming cadets, “[t]he hardest thing to accept is that you aren’t the only one struggling. You have to realize that the system is designed to ‘break people down’ and challenge them to their core. It’s easy to acquire the mindset that you have it harder than everyone else and that you are being treated differently.”²¹⁶ In his view, “you need to realize that your cadre isn’t personally ‘attacking’ you. You will get yelled at. Everyone does. It’s easy to start believing they hate you, or at least that they think you don’t belong at VMI . . . Believe me when I say that your cadre doesn’t actually think those things about you.”²¹⁷ No alumni interviewees recalled personally hearing or witnessing any racial slurs or use of targeted racial language as part of the Rat Line.

Some alumni noted that the class system enables racist and sexist behavior among cadets by creating avenues for harassment and a harmful power dynamic where class-chosen leaders and upperclassmen have the power to push around women and minority cadets.²¹⁸ If someone attempted to stand up to racist or sexist behavior by an upperclassman, they could be brushed off or even punished for being “disrespectful.”²¹⁹ Another African American alumnus noted that during his

²¹¹ See, e.g., Interviewee 38, class of 1961; Interviewee 539; class of 1976.

²¹² Appendix A at 130.

²¹³ *Id.* at 390.

²¹⁴ See, e.g., Interviewee 315, class of 1986; Interviewee 520, class of 1976; Interviewee 75, class of 2016; Interviewee 149, class of 1983.

²¹⁵ See, e.g., Interviewee 315, class of 1986; Interviewee 40, class of 1997.

²¹⁶ Colin D. Smith ’19, *How to Be Successful at the Virginia Military Institute*, Self-Published at 5 (2019).

²¹⁷ *Id.* at 7.

²¹⁸ See, e.g., Interviewee 16, class of 2001; Interviewee 22, class of 2001.

²¹⁹ *Id.*

time at VMI there was a “tangible fear” of upperclassmen for these reasons.²²⁰ Further, women may be underrepresented on the disciplinary bodies of the cadet government; for example, one female interviewee explained that the General Committee is nicknamed the “Gentleman’s Club” because no women are typically in that role.²²¹ This is indicative of an environment that still contains implicit bias against women when it comes to positions of power.

A number of current male cadets saw it differently, stating that women received better treatment. For example, one male interviewee said that female cadets are treated better in the Rat Line,²²² and another stated that women are generally given more leeway to get in trouble before serious consequences occur.²²³

Although perhaps not explicit, some African American alumni, particularly athletes, as well as female alumni reported feeling as though they were being targeted by the cadre in the Rat Line:

2018–2021

- An African American graduate reported that loud music would be punished if it were hip hop music, but not if it were country music.
- Some African American graduates recall being stopped to do more pushups than other Caucasian cadets, or being told they had bad attitudes or were too cocky. (This same observation was also made by alumni in earlier years.)²²⁴

2010–2013

- A Caucasian female graduate compared the Rat Line to the Stanford prison experiment (a famous social-psychology experiment).
- One alumna recalled several instances of unequal treatment, including being “pushed” (stopped and made to do pushups) at every possible opportunity when her male brother rats were not. She also recalled being told, “There’s no Title IX in the woods” as her company entered the woods for a few days to learn survival skills as part of rat training.²²⁵

²²⁰ Interviewee 21, class of 2001.

²²¹ Interviewee 202.

²²² Interviewee 211, Caucasian male athlete.

²²³ Interviewee 181, a Caucasian male.

²²⁴ See, e.g., Interviewee 20, class of 2020; Interviewee 22, class of 2001.

²²⁵ Interviewee 1768, class of 2010.

2006–2009

- Another alumna reported that women cadets were generally singled out in the Rat Line.²²⁶

1998–2001

- One African American alumnus recalled hearing “urban” language and slang being used in reference to him. He also noted that as the only African American rat in his company, he was usually treated worse than the other rats (for example, spitting in his face and making him do more pushups than everyone else).²²⁷

Despite the perceived targeting, alumni who were members of the Rat Disciplinary Committee did not recall seeing more African American and/or athlete rats being brought to them for infractions often than other cadets.²²⁸ A recent graduate, however, who looked into whether athletes received more infractions found a positive correlation.²²⁹

In contrast to these criticisms, a number of cadets and alumni described the Rat Line as having a leveling effect where all cadets have to endure similar hardships and so come together, viewing themselves as “brother rats,” regardless of race or background. According to some current cadets and alumni:

Current cadets

- “I was a female rat and appreciated how the ratline acted as an equalizer. I was expected to perform to the same level as all my BRs [brother rats] and was not targeted or treated differently due to being female.”²³⁰
- “I personally have a more racially diverse friend group here than I have ever had in my life. I believe that this place gives everyone a level playing field and doesn’t take into account race whatsoever. I believe any act of racism or discrimination at this school is a terrible horrific thing and it should be absolutely dealt with handily. Racism is a direct affront to everything that this school stands for and should not be tolerated. The wonderful thing about VMI is that people here

²²⁶ Interviewee 121.

²²⁷ Interviewee 22, class of 2001.

²²⁸ *See, e.g.*, Interviewee 120, class of 2013; Interviewee 2459, class of 2008; Interviewee 227, class of 1991.

²²⁹ Interviewee 234.

²³⁰ Survey results, row 146 (Caucasian, female).

are not White, Black, Hispanic, Asian, or mixed race, we are all Brother Rats.”²³¹

- “As a student who has transferred in to VMI, I have seen far more discrimination at my previous University than I have here. VMI brings people from entirely different backgrounds together and shows how at the end of the day it doesn’t matter how rich or poor you are, what the color of your skin is, or what gender you are, all that matters is coming together as a cohesive team.”²³²

2018–2021

- “I was a bit of a brat, middle class family, everything paid for, had it made. Didn’t understand what it meant to genuinely work hard. VMI instilled what it meant to work hard and dedicate yourself. . . . I was arrogant and naive, had a bad mentality coming in. I wasn’t disobedient but I wasn’t motivated. . . . I’d blame a lot of people for my problems, because I’m [a particular minority]. It took me a year to realize it was my attitude, and started taking up personal responsibility.”²³³

2010–2013

- A female graduate described the Rat Line as uneventful.

Pre-1993

- A graduate said that it is a strength of VMI that “anyone who comes there, black or white, rich or poor, is going to be made to do the same stuff—treated equally.”

As these examples show, despite its grueling nature and the potential for targeting underrepresented individuals, many alumni spoke positively of the Rat Line as a formative, equalizing experience that is essential to the spirit and character of VMI.²³⁴ Even those alumni who recalled being picked on or targeted in the Rat Line did not suggest any specific changes that should be made, other than to try to address the anti-athlete rhetoric that originates there.²³⁵ Alumni interviewees generally listed the Rat Line as one of the core elements of the VMI experience that should not be significantly changed or removed.

²³¹ Survey results, row 340 (American/Alaskan Native, male).

²³² Survey results, row 342 (Caucasian, male).

²³³ Interviewee 97.

²³⁴ See, e.g., Interviewee 153, class of 2010; Interviewee 241, class of 1990.

²³⁵ See, e.g., Interviewee 46, class of 2006.

c. Honor Court data analysis

Current and former members of the Honor Court devoted many hours to inquiries about the Honor Code and Honor Court procedures, including during one meeting in which the full Honor Court was present. In addition, the Team reviewed dozens of files of cases in which the accused was found guilty. (As noted above, the Honor Court Standard Operating Procedures (“SOPs”) require that acquittal and non-charge records be destroyed.) Notably, the Team could not review case files for cadets who are acquitted, because VMI reported that those files are destroyed. The Team also analyzed data breaking down findings of guilty from 2011 to present by race, ethnicity, gender, whether the accused was an athlete, and type of violation.

The most critical finding from the data that VMI produced is that cadets of color are overrepresented among the 91 drum outs since 2011. This is true for cadets of color compared with the Caucasian, non-Hispanic population at VMI as a whole. However, it is also true for athletes of color compared with athletes who are Caucasian and non-Hispanic. And it is true for cadets of color who are not athletes compared with Caucasian, non-Hispanic cadets who are not athletes. A more detailed description of these findings appears below.

At the same time, the data VMI produced does not suggest impropriety or unfair treatment among the 91 cases that resulted in a finding of guilty. To the contrary, overall, the cases appeared to be well-documented and justified.

It is important to note that the Team was not able to analyze demographic data for Honor Court cases that did not result in a finding of guilty or an acquittal. This was due to a significant delay in VMI’s production of relevant documents, as well as gaps and inconsistencies in the documentation and VMI’s failure to keep certain records. This is significant. The vast majority of Honor Court investigations result in the case being “dropped” or declined, or a cadet receiving “education” instead of facing the potential for trial. Indeed, Honor Court members stated that they meet five nights per week to discuss the various matters before them, and most of their work does not result in a drum out. However, VMI did not provide sufficient information to analyze the demographics of cadets against whom cases are brought (as opposed to only guilty verdicts). The Team was thus unable to determine whether discretion at the initial decision of whether to accuse a cadet of an honor violation raised any concerns about selective enforcement based on race.

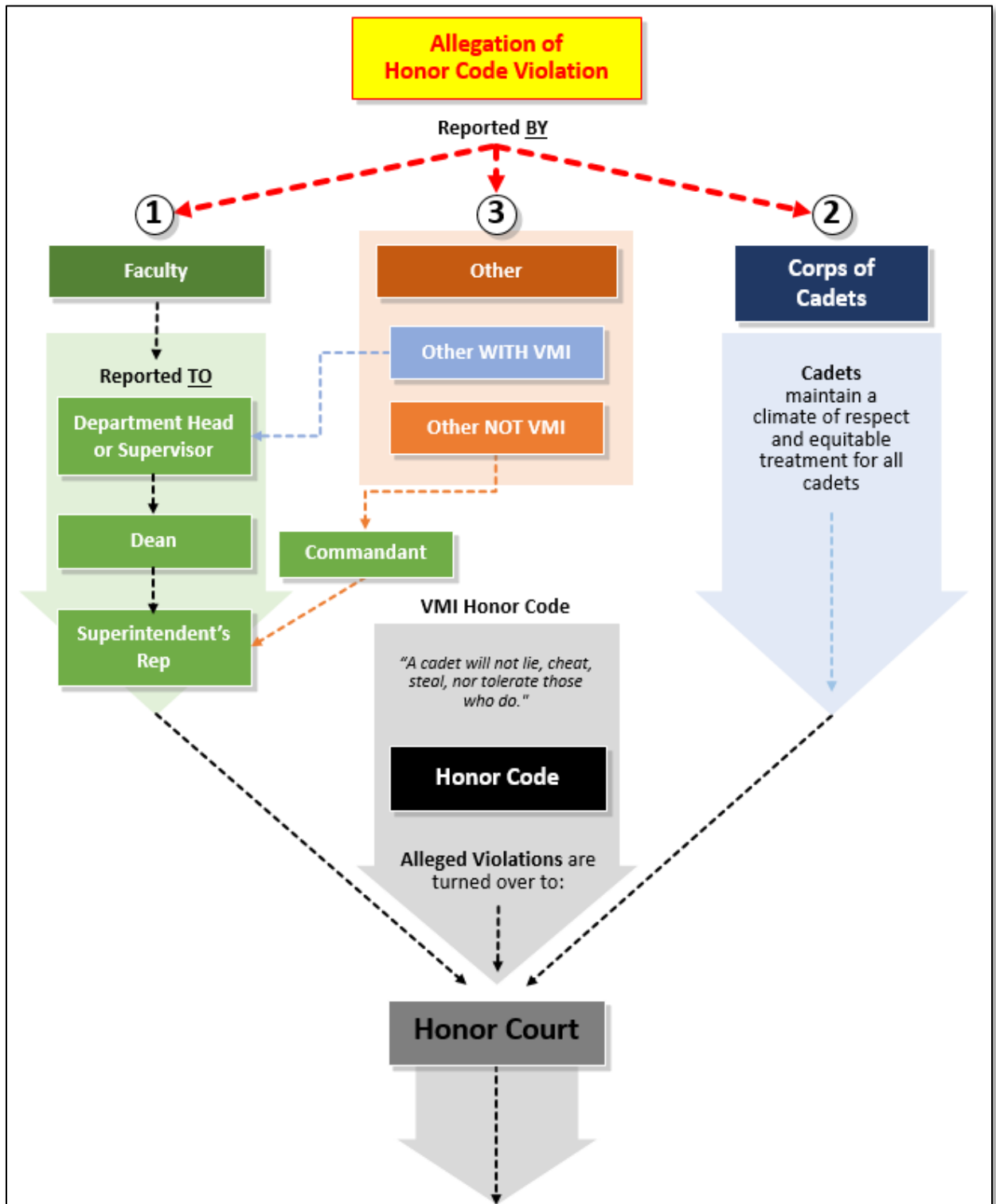
i. Honor Court process

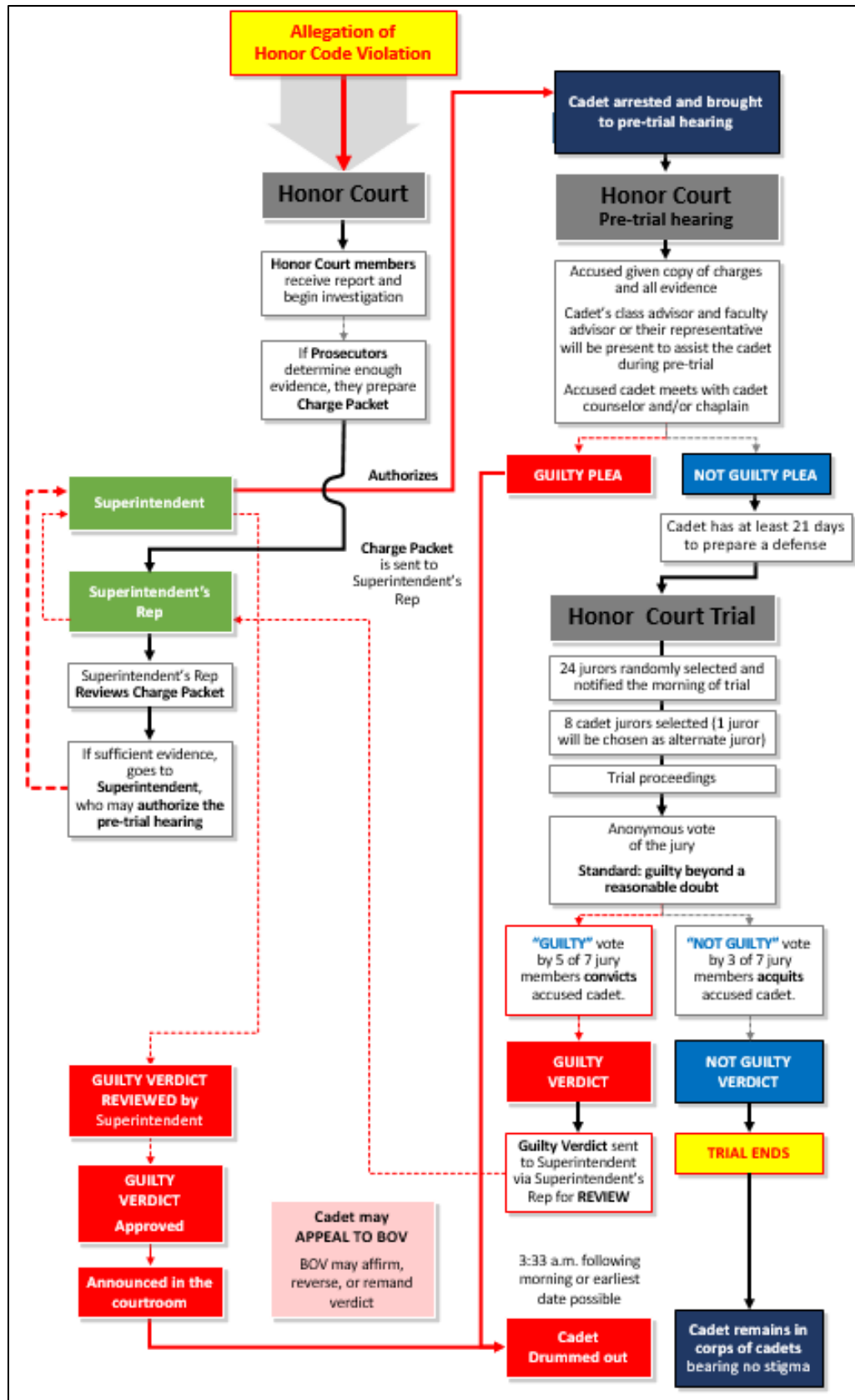
Below is a flow chart depicting the Honor Court process, based on the Team’s review of the Standard Operating Procedures and Charters of the Honor Court. Cases may be brought by a member of the faculty or staff, or by a cadet, or by a third party. When a case is reported by someone other than a cadet, one of the “Superintendent Representatives” who supervises the Honor Court must review the allegations. The Honor Court then analyzes the allegations and determines

whether there is sufficient evidence to warrant conviction. If the evidence is insufficient to warrant conviction, the case is either “dropped” or the accused receives “education” to avoid violating the Honor Code in the future.

If there is sufficient evidence, the Honor Court prepares a “charge packet.” The Superintendent’s Representatives review the charge packet, as does the Superintendent. If they approve, a pre-trial hearing is authorized. At this point, the accused cadet is arrested and brought to the pre-trial hearing, where he or she receives the charge packet. The accused may then decide to plead guilty, which results in a drum out. If the accused pleads not guilty, he or she faces trial at least 21 days later. In the event of a trial, the Honor Court selects 24 potential jurors from among the corps. The selection is random as to race, ethnicity, gender, and other characteristics, except that the pool includes a larger proportion of cadets from the class of the accused. Ultimately, following strikes for bias and allowed peremptory strikes, the jury is composed of eight individuals, one of whom is the alternate. All eight jurors vote on the guilt or innocence of the accused. The vote is secret. If at least five of seven jurors vote “guilty” on a given count, the accused is found guilty. The Superintendent reviews the guilty verdict before the verdict is made public. If the Superintendent approves, the cadet is drummed out. If three or more of seven jurors vote “innocent” on all counts, the accused is acquitted.

Figure 20: Flowchart for Honor Court procedures





ii. Composition of the Court

The Honor Court typically has 14 members. The data received from VMI was contained in the Honor Court charters for 2015 to 2019, and it included only 12 members for each year. Presumably, this is because two members are elected after the charter is published, per Honor Court procedures. Despite the Team’s early and repeated requests for this data, VMI did not provide documentation showing the complete list of members, including the additional two Honor Court members for academic years 2015–2019. Nor did VMI provide the requested member names dating back to 2010. Below is a chart summarizing the data:

Table 10: Composition of the Honor Court since 2015

Academic year	Gender	Race	Ethnicity
2020–21	14 male	11 Caucasian 2 Asian 1 African American	14 non-Hispanic
2019–20	12 male	9 Caucasian 1 Asian 1 African American 1 Non-resident alien	11 non-Hispanic 1 not reported
2018–19	11 male 1 female	9 Caucasian 2 African American 1 Non-resident alien	11 non-Hispanic 1 not reported
2017–18	11 male 1 female	9 Caucasian 3 African American	12 non-Hispanic
2016–17	12 male	12 Caucasian	11 non-Hispanic 1 Hispanic
2015–16	12 male	10 Caucasian 1 Hawaiian/Pacific Islander 1 African American	11 non-Hispanic 1 Hispanic

Thus, according to the data VMI provided, 81% of the members of the Honor Court from 2015 to present have been Caucasian. Since 2015, only 3% of Honor Court members have been female.

iii. The “education” exception

VMI’s Honor Court system is known for its “single sanction” policy—all convictions result in dismissal. The VMI website states: “The VMI Honor System is a single sanction system. The system does not recognize degrees of honor. The sanction for any breach of honor is dismissal.”²³⁶ However, there is some question as to whether and to what degree that is actually true. The Honor Court SOPs give

²³⁶ <https://www.vmi.edu/cadet-life/cadet-leadership-and-development/honor-system/>.

the Honor Court considerable discretion to choose not to prosecute an Honor Code offense seeking dismissal, and instead to conduct an “education session,” which involves an instructional conversation between two or three Honor Court members and the offending cadet:

Education/Correction Sessions: At times, the investigation into a report of a suspected honor violation does not produce enough evidence to support a conviction. However, the actions of the cadet in question may raise significant concerns that such actions are not in keeping with the spirit of the Honor System. If continued, such actions might lead to honor charges. Additionally, a Rat could engage in behaviors that may be violations of the Code. For example, during an inspection a Rat may respond “yes” when asked whether he had shined his shoes that morning when in fact he had not. This type of “pop off” or “heat of the moment” response, while a lie, must be considered in the context of the stresses of the Ratline. In such cases, members of the Honor Court may conduct an education/correction session. These sessions are designed to ensure that the cadet understands how such behavior may bring discredit to himself or herself and the Honor System and thus motivate the cadet to discontinue the questionable behavior.²³⁷

These SOPs are not clear as to when, in the course of an investigation, the Honor Court decides to impose “education” as opposed to going through with the case.²³⁸ The SOPs similarly offer no clear parameters and few guiding principles for when the Honor Court should prosecute and seek a cadet’s dismissal, and when the Honor Court should “educate” the cadet. Instead, the language is open-ended, using words and phrases like “[a]t times,” “may,” “might,” and “could.” The education policy is also inherently contradictory, stating that it applies when evidence may be insufficient to prove a lie, but then providing an example where a statement is clearly a lie, but excusable under stressful circumstances. The SOPs provide that a transgression that results in education is still considered an “honor issue.”²³⁹

iv. Guilty verdicts since 2011

There have been 91 drum outs since academic year 2011–2012. Of the 91 drum outs, 44 cadets resigned or admitted guilt, and 47 were tried. (The Honor Court treats a resignation as an admission of guilt.)

²³⁷ See Standard Operating Procedures, Honor Court, VMI, Lexington, Virginia, Updated August 2017, at 7–8.

²³⁸ *Id.*

²³⁹ *Id.*

The Team compared data about findings of guilt from 2011 through 2021 with the list of matriculated cadets as of early 2021 provided by VMI.²⁴⁰ The purpose was to compare the proportion of dismissed cadets of certain racial and ethnic backgrounds with the proportion of cadets of those backgrounds in the general population. The Team determined that using data for 2021 as the comparison puts the data about guilty findings in the most favorable light, because the proportion of people of color in the corps has increased steadily since 2011, as reflected in VMI's own documents.²⁴¹

Cadets of color represent 23% of the corps, but they make up 41% of dismissed cadets since 2011. Many at VMI attribute this racial disparity to the fact that *athletes* are prosecuted and convicted more—again, following the common misconception that most athletes are cadets of color. It is accurate that, as a group, athletes appear to be overrepresented among convicted cadets: while athletes make up 25% of the corps, they represent 62% of Honor Court convictions since 2011. However, athletes of color are overrepresented *among convicted athletes*. While athletes of color comprise 31% of athletes, they represent nearly 50% of dismissed athletes since 2011.

The racial disparity exists among non-athletes as well. While cadets of color represent 20% of non-athletes, they make up 26% of dismissed non-athletes since 2011.

Thus, across all relevant metrics, the number of cadets of color found guilty of an Honor Code violation is disproportionate to the number of cadets of color in the control population. The investigation found no evidence of overt bias in Honor Court proceedings; however, this data suggests that there is an implicit bias against cadets of color at least with respect to drum outs.

²⁴⁰ See VMI matriculated cadets spreadsheet at VMI EA_00000533-728. Athlete rosters are at VMI EA_00000741-850.

²⁴¹ See VMI EA_000007678, at 7680 (showing increase in percentage of people of color among enrolled cadets from 2009 (14%) to 2020 (23%)).

Table 11: Data on Honor Court guilty findings and race

	Caucasian	Person of color	Other	Total
Corps of cadets				
Number in corps	1222	374	31	1627 ²⁴²
Percent of corps	75%	23%	2%	100%
Number of guilty	54	37	0	91
Percent of total guilty	59%	41%	0%	100%
Athletes				
Number of athletes	281	127	1	409
Percent of athletes	69%	31%	0%	100%
Number of guilty athletes	29	28	0	57
Percent of guilty athletes	51%	49%	0%	100%
Non-athletes				
Number of non-athletes	941	247	30	1218
Percent of non-athletes	77%	20%	2%	100%
Number of guilty non-athletes	25	9	0	34
Percent of guilty non-athletes	74%	26%	0%	100%

d. Current cadet perceptions about the honor system

i. General comments

Some cadets or parents of cadets perceive the Honor Code system as unfair or biased in some way:

- According to one parent of a former cadet, when the cadet was arrested by the Honor Court, the cadet knew right away that his time at VMI was over because of how the Honor Court works.²⁴³
- A Caucasian male athlete thought that members of the Honor Court try to make other cadets afraid of them, but noted that the Honor Court does not target cadets because of race or gender.²⁴⁴

²⁴² The VMI matriculated cadets spreadsheet (VMI EA_00000533-728) contains data in 1,661 rows, but the Team determined that the file contained 34 duplicative entries.

²⁴³ Interviewee 73.

²⁴⁴ Interviewee 211.

- An African American female athlete described the Honor Court process as “scary” because it puts your fate in the hands of other cadets, and you do not know whether any of them are biased against you.²⁴⁵

Other cadets stated that the Honor Code and the attendant single-sanction system was one of the aspects of VMI of which they were the most proud:

- One Caucasian female cadet noted that the Honor Court system is part of the “beauty” of VMI and that she would want her friends to report her and hold her accountable to the system as well.²⁴⁶
- Similarly, a Hispanic female cadet said that she believes the Honor Court system is fair and would not change anything about it, despite that her friend was dismissed for an Honor Code violation.²⁴⁷
- One Caucasian female cadet explained that she believes the Honor Court procedures are fair and compared it to her time serving on jury duty in a court of law; after having served on the Honor Court jury, she found the processes to be very similar.²⁴⁸
- A Hispanic female cadet said that cadets “know what they’re signing up for” when they attend VMI with regard to the Honor Court process.²⁴⁹
- A Caucasian male cadet explained that while there is an untrue stigma that the Honor Court goes looking to get people in trouble, in reality the Honor Court is careful about investigating before bringing charges.
- Finally, a Caucasian male cadet stated that the Honor Code should be expanded because there is more to being honorable than what is currently in the Honor Code.²⁵⁰ However, the same cadet noted that he has seen professors threaten students with the Honor Code for making mistakes, including a mistakenly uncited source that was not intended to be plagiarism.²⁵¹

²⁴⁵ Interviewee 172.

²⁴⁶ Interviewee 223.

²⁴⁷ Interviewee 224.

²⁴⁸ Interviewee 2438.

²⁴⁹ Interviewee 2450.

²⁵⁰ Interviewee 197.

²⁵¹ *Id.*

The survey responses and interviews likewise revealed a strong sense of loyalty to the Honor Code from cadets as a whole. In the survey responses or in interviews with cadets, individuals often described the Honor Court's process as "colorblind" or fair regardless of skin color.²⁵² When asked in the survey "the extent to which the Honor Court promotes racial intolerance and/or discrimination," 93% of cadets said "none"; 4% said "a little"; and 2% said "a lot."²⁵³ Similarly, 89% of current cadets strongly or somewhat agree that VMI's Honor Court system consistently upholds the Honor Code,²⁵⁴ and 86% of current cadets strongly or somewhat agree that VMI's honor court produces fair decisions.²⁵⁵

However, among current cadets, only 50% of African American current cadets strongly or somewhat agree that VMI's Honor Court produces fair decisions, compared with 88% of Caucasian cadets who strongly or somewhat agree that VMI's Honor Court system produces fair decisions.²⁵⁶ When asked whether cadets agreed or disagreed that VMI's Honor Court system "is influenced by the race of the accused cadet," 5% of those who answered strongly or somewhat agreed.²⁵⁷ Breaking that down by race, 25% of African American current cadets strongly or somewhat agreed that VMI's Honor Court system is influenced by the race of the accused cadets; and 3% of Caucasian current cadets strongly or somewhat agree with the same statement.²⁵⁸ Similarly, 5% of current cadets strongly or somewhat agree that VMI's Honor Court system tends to be tougher on cadets of color—with 25% of African American cadets answering that way, compared to 3% of Caucasian cadets.²⁵⁹

Finally, 9% of current cadets strongly or somewhat agree that VMI's Honor Court system is influenced by whether a cadet is a cadet-athlete.²⁶⁰ Among those, 41% of African American cadets strongly or somewhat agree with that statement while only 8% of Caucasian cadets do.²⁶¹ At least one survey respondent, though, thought this influence went the other way, and weighed in favor of athletes: "There are numerous instances where I feel bias was taking place but not in a negative

²⁵² Survey results, row 132 (Caucasian, male).

²⁵³ Appendix A at 55.

²⁵⁴ *Id.* at 62.

²⁵⁵ *Id.* at 60.

²⁵⁶ *Id.* at 137.

²⁵⁷ *Id.* at 60.

²⁵⁸ *Id.* at 138.

²⁵⁹ *Id.* at 140.

²⁶⁰ *Id.* at 61.

²⁶¹ *Id.* at 139.

way for that person (i.e., cases being dropped due to the fact that they were a valuable asset on a NCAA team).”²⁶²

On questions of reform, 19% of current cadets somewhat or strongly supported reforming the Honor Court system.²⁶³ Among that group, 50% of African American cadets somewhat or strongly support reform, as compared with 19% of Caucasian cadets.²⁶⁴ It is not clear whether this is frequently discussed on post, as only 6% of current cadets believe that many or nearly everyone among the VMI community support this reform.²⁶⁵ Similarly, 29% of current cadets strongly or somewhat agree that VMI’s Honor Court system would benefit from updating some of its formal procedures.²⁶⁶ Among this group, 58% of African American cadets strongly or somewhat support some updating, while 28% of Caucasian cadets do.²⁶⁷

The free-form survey responses shared similarly positive views of the Honor Court. One cadet stated: “As a cadet, the only thing I have main issues with is the honor court. I believe the court is designed to churn out guilty responses, as cadets who go to trial are perceived guilty until proven innocent. However the cadets on the honor court are some of the most honorable people you will meet. I don’t think the honor court is racist by any means, just something that I do not think has a true purpose in the 21st century.” Two other cadets stated:

- “Also if you call the honor court racist, then you have not met some of these people. These are some of the most trustworthy, smart, honorable people I have ever met. I know all of them personally and have never heard them say a single word discriminatory against someone.”²⁶⁸
- “The Honor court is one of the primary reasons I came to this school for the strict one infraction expulsion policy because this is the one place on earth where it is truly upheld and how they go through the process is lengthy and thorough to avoid any unfair situations.”²⁶⁹

ii. Honor Court policies and procedures

With regard to certain policies and procedures of the Honor Court, cadets who answered the survey provided their feelings about the following aspects of the Honor Court:²⁷⁰

²⁶² Survey results, row 171.

²⁶³ Appendix A at 50.

²⁶⁴ *Id.* at 24.

²⁶⁵ *Id.* at 57.

²⁶⁶ *Id.* at 62.

²⁶⁷ *Id.* at 141.

²⁶⁸ Survey results, row 185.

²⁶⁹ Survey results, row 218.

²⁷⁰ Appendix A at 65–67.

Table 12: Survey responses of current cadets relating to aspects of the Honor Court

Topic	Views of current cadets
Drum Out Ceremony	<ul style="list-style-type: none"> • should remain unchanged – 88% • should be studied and possibly changed – 8% • should be abolished – 3%
Single-Sanction Policy of Expulsion	<ul style="list-style-type: none"> • should remain unchanged – 82% • should be studied and possibly changed – 12% • should be abolished – 6%
Secrecy of Honor Court Proceedings	<ul style="list-style-type: none"> • should remain unchanged – 79% • should be studied and possibly changed – 16% • should be abolished – 5%
Solicitation of faculty and cadets to gather information about other cadets covertly	<ul style="list-style-type: none"> • should remain unchanged – 55% • should be studied and possibly changed – 30% • should be abolished – 15%
Prohibiting cadets from having an attorney at trial or pretrial proceedings	<ul style="list-style-type: none"> • should remain unchanged – 50% • should be studied and possibly changed – 34% • should be abolished – 16%
Allowing expulsion based on non-unanimous verdicts	<ul style="list-style-type: none"> • should remain unchanged – 46% • should be studied and possibly changed – 40% • should be abolished – 14%

The survey results show that cadets feel strongest about retaining the drum out ceremony and the single-sanction policy, while there is more support for examining or abolishing the prohibition on attorneys at trial and non-unanimous verdicts.

The results above were generally confirmed in cadet interviews. Two Caucasian male cadets specifically stated that drum outs are an important part of the Honor Court process because it helps cadets focus on the magnitude of the situation and remember to follow the Honor Code to not lose everything one has worked for at VMI.²⁷¹ A Caucasian male cadet indicated that he believes removing the single-sanction system would encourage people to cheat since they might not be dismissed for it.²⁷² With regard to an accused cadet’s defense representation in Honor Court proceedings, a Caucasian male reported that if there is a student prosecutor, then the accused should have a student defender.²⁷³

iii. Honor Code actionable conduct

The investigation included many discussions with cadets, Honor Court members, and others about what constitutes actionable conduct under VMI’s

²⁷¹ Interviewees 169, Interviewee 174.

²⁷² Interviewee 181.

²⁷³ Interviewee 187.

Honor Code. The 2020 Honor Court charter contains general policies that govern the conduct of corps of cadets. The charter provides guidelines on (1) certified statements; (2) lying; (3) cheating; (4) stealing; (5) instigation; (6) malingering; (7) quibbling; and (8) toleration. Lying, as set forth in the Charter's guidelines, is "making an oral or written statement that a cadet knows to be false with the intent to deceive another person for the purpose of personal gain or advantage." In discussions with the Honor Court members, it was clear that the decision to prosecute centers around whether the individual who lied had an intent to deceive or lied for personal gain or advantage.

The question of what cadets may be prosecuted for also came up in cadet interviews. For example, one Caucasian male cadet said that it was his experience the Honor Court focuses on "nitpicky" things that he does not believe have anything to do with lying, cheating, or stealing.²⁷⁴ A faculty member indicated that professors often make up their own rules about what constitutes cheating because they don't want to see a student dismissed, which creates an arbitrary system.²⁷⁵ An Asian female cadet said that she felt the Honor Court "can" be fair depending on the offense. Specifically, she believed that cheating should carry a significant consequence; in her view, though, making a misrepresentation about where you are going off post should be less severe.²⁷⁶ A parent of an African American cadet felt that the Honor Code should be expanded to make instances of racism or hate crimes Honor Court violations.²⁷⁷ Finally, another Asian female cadet indicated that although she believes the Honor Code is applied fairly, she does feel that there are some unfair instances, such as a cadet who was dismissed for leaving post to visit with one person instead of visiting with another person she disclosed she would be visiting.²⁷⁸

Interviews also revealed that some cadets are aware that the Honor Code may not actually employ a single-sanction system and that education may be imposed even where a violation of the Honor Code occurred. For example, a Caucasian female cadet stated that VMI does not truly have a single-sanction system and that first-time offenders of all races typically received education instead.²⁷⁹

While the Honor Court members were open and forthcoming about the considerations for the prosecution of lies (and in general), it appears that not all cadets know which acts will result in education, which are prosecutable and which are not. This may contribute to feelings of bias or inconsistent application of the Honor Code. Many throughout the VMI community do not agree or do not

²⁷⁴ Interviewee 170.

²⁷⁵ Interviewee 48.

²⁷⁶ Interviewee 213.

²⁷⁷ Interviewee 278.

²⁷⁸ Interviewee 2442.

²⁷⁹ Interviewee 206.

understand what constitutes an Honor Code violation (or which will lead to education only), and that this broad disagreement and room for interpretation can produce unpredictable and inconsistent results and provide room for abuse of discretion.

Honor Court members discussed the importance of education of the corps of cadets at length, and this appears to be an area of focus for the Honor Court. Honor Court members stated that the Court intends to improve education about the Honor Court and Honor Code over the next year. This is also important insofar as the cadets have concerns regarding the overrepresentation of athletes versus non-athletes among cadets who are convicted and reports that athletes are not as educated as other cadets about the VMI experience.

iv. Honor Court juries

Another aspect of the Honor Court process that the Team evaluated was the non-unanimous jury aspect of the Honor Court. Some cadets thought that requiring unanimous juries might improve the fairness of the process. A Caucasian male said that the Honor Court should require a unanimous jury verdict.²⁸⁰ A Caucasian female said the Honor Court is generally fair but that votes should be unanimous to find someone guilty,²⁸¹ and an Indian male similarly stated that the Honor Court was fair in general but unanimous juries should be required due to the severity of the consequences.²⁸² In discussing why a unanimous jury may or may not be required, some Honor Court members noted that a unanimous jury would be a higher and more difficult threshold for the prosecutors to meet.

VMI produced ballots showing the jury count for the 2015–2020 Honor Court cases. Based on a review of these documents provided by VMI, nine cadets out of 61 who were dismissed from VMI after a guilty finding at an Honor Court were convicted by a non-unanimous jury. It is difficult to know if the outcome would have changed at all had the jurors known the verdict had to be unanimous.

The investigation also considered VMI's method of calculating the jury pool. VMI uses a computer algorithm to generate a random list of 24 cadets to make up the jury pool. The pool takes into account cadet class years in calculating who makes up the pool, but does not consider gender or race in selection of the jury pool. VMI provided information on some jury pools pulled for cadet trials. Between 2015 to present, the following occurred: two of the female cadets who went to trial did so with a jury pool including only one female cadet; two African American cadets had a jury pool that did not include a single African American cadet for a potential juror; one African American, Hispanic cadet on trial had only one African American potential juror and two Hispanic potential jurors in his jury pool;

²⁸⁰ Interviewee 209.

²⁸¹ Interviewee 210.

²⁸² Interviewee 2443.

another African American cadet had only one cadet of color in the jury pool; and another African American cadet had only one other African American potential juror in the pool. While there is no indication that this is the reason any cadet was found guilty, it is a point of consideration. While VMI has decided to take into account class years in the selection of the jury, there are other aspects to potentially consider when selecting a jury pool in order to ensure fairness in the proceedings.

Some cadets commented on the jury-selection process as well in interviews. An African American female cadet thought that the jury selection process for the Honor Court needs to change because too few women and minorities serve on the juries.²⁸³ Similarly, an African American male athlete stated that athletes specifically have a target on their back with the Honor Court and that it is his view that when a large portion of the corps of cadets is Caucasian, a fair jury pool for minority cadets is unlikely.

Moreover, some cadets made comments about the use of cadets on a jury more generally. One African American male cadet said that the Honor Court should be used only in situations where the penalty is not as severe as dismissal because it is “wrong” to have cadets make those decisions about other cadets.²⁸⁴ Similarly, an African American female cadet who served on an Honor Court jury stated that deciding the fate of another cadet felt like too much pressure.²⁸⁵

As stated at length above, the Team’s review of the 2015–2020 Honor Court files does not lead the Team to conclude that any one adjustment would change the outcome of past Honor Court proceedings. The information is instead posited merely as data points for consideration to ensure the discretionary aspects of the process are applied evenly across all cadets at VMI. Whatever the current system is or is not doing, the fact remains that in comparison to the number of cadets of color at VMI, the percentage of cadets of color dismissed at VMI because of Honor Code violations is significantly higher.

e. Alumni perception about the honor system

Alumni overwhelmingly supported maintaining the Honor Code in its current form, and the majority of alumni perceived the Honor Court as fair. However, a number of alumni expressed concern about certain aspects of the Honor Court, and alumni perceptions varied significantly along a number of dimensions related to the fairness of the process and outcomes. Many expressed openness to some changes to the process and level of oversight, but almost all alumni thought

²⁸³ Interviewee 219.

²⁸⁴ Interviewee 207.

²⁸⁵ Interviewee 215.

the single-sanction system was both distinctive and important to maintain the character of VMI. Only a few alumni thought, in retrospect, the single-sanction system was too harsh.²⁸⁶

While the Honor Court has always maintained certain characteristics, including being student-run, it has changed in some ways over time. Initially, the Honor Court members served as the jury. In the mid-90s, this changed following a cheating scandal and the exposure of “all right” clubs where cadets agreed to look the other way with respect to the others’ honor offenses (which is a violation of the non-toleration clause).²⁸⁷ After the scandal, the Honor Court began drawing juries from the corps of cadets. Alumni interviewed generally perceived this to be a positive change.

The Honor Court also has shifted between allowing and forbidding cadets to engage counsel in connection with trials. Cadets have the right to a faculty advisor, but before 2011 they also had the right to legal counsel. Interviewee 49, an African American football player alumnus, described a situation in which he was set up to be kicked out of school by his coach and others in the administration. He said that a faculty member told him that he (the faculty member) had heard this from the coach and that the effort long predated the cheating allegation that resulted in the cadet’s prosecution. The cadet had strong legal counsel, which his family had the resources to secure for him. He said he believes that the administration “assumed he was poor black boy” without resources to defend himself, and would just leave the school once he was charged instead of fighting it. He was acquitted. After his trial, the rules were changed to prohibit outside legal counsel.

Many alumni, even those who wanted to see the Honor Court retained in largely the same form, believed that permitting access to counsel was necessary or advisable.²⁸⁸ One former Honor Court President had no issue with permitting counsel but noted that faculty often performed better because they were more familiar with the institution.²⁸⁹ While alumni survey respondents largely disapproved of most potential Honor Court changes, 64% of them favored studying and possibly changing or abolishing the prohibition on counsel. Among alumni respondents, 60% favored studying or abolishing the use of non-unanimous verdicts; alumni generally opposed the other potential reforms tested.²⁹⁰

²⁸⁶ *E.g.*, Interviewee 52, 518.

²⁸⁷ *See, e.g.*, *The Cadet*, “Honor Regained,” vol. 104, issue 21 (Apr. 1, 2011); Interviewee 11, Interviewee 33.

²⁸⁸ *E.g.* Interviewee 99 (expressing view Honor Court is “perfect” but would be fine with permitting counsel).

²⁸⁹ Interviewee 239.

²⁹⁰ Appendix A at 65–67.

Alumni varied in their perceptions of Honor Court trials. Some were of the opinion that trials were merely a formality, and that if a cadet reached the point of trial and the evidence supported it he or she was guilty.²⁹¹ One alumnus who also served on the faculty recalled that the motto of the Honor Court his first class year was “the mission is attrition,” indicating that they were seeking to get as many cadets drummed out as they could.²⁹² Others recounted experiences where they had seen cadets acquitted at trial.²⁹³

One alumnus who was a defense advocate while he was a cadet and later joined the VMI staff noted that there was no need to offer a race-neutral reason to dismiss a juror.²⁹⁴ If the prosecutor was concerned about sympathy, they could simply dismiss all people of color from the jury. He suggested that more training and evaluation should be required to participate in the Honor Court to satisfy the demands of due process. Another alumnus was not aware of any African American cadets who had served on a jury.²⁹⁵

Some alumni suggested openness to requiring a unanimous jury to convict, both in interviews and survey responses. One recent graduate described an experience on a jury in which she did not believe the evidence was sufficient to convict. The cadet had been accused of cheating after the professor enlisted another cadet to monitor his test. The “monitor,” however, did not actually see the cadet look at anyone else’s paper. The interviewee was informed at the last minute that she was the “null” vote and would not be counted.²⁹⁶ This verdict based on seemingly tenuous evidence is not consistent with the perception held by several other interviewees that the prosecutors must collect overwhelming evidence.²⁹⁷

Alumni also varied in their perceptions of how strictly the single-sanction system was enforced. For example, according to Interviewee 43, one offense would not actually get a cadet drummed out. Others, particularly some of the alumni of color, never heard of any such exceptions and believed the system was “one and done.”²⁹⁸ A recent graduate noted that administrators had told him they provided some leeway for the Honor Code at the beginning to allow for education.²⁹⁹

²⁹¹ See Interviewee 234; *see also* Interviewee 116 (former prosecutor noting that he had to have an abundance of evidence to bring a case).

²⁹² Interviewee 308.

²⁹³ Interviewee 49, Interviewee 55, Interviewee 286.

²⁹⁴ Interviewee 25; *see also* Interviewee 365.

²⁹⁵ Interviewee 53.

²⁹⁶ Interviewee 17.

²⁹⁷ Interviewee 539.

²⁹⁸ Interviewee 53.

²⁹⁹ Interviewee 9.

Alumni described different experiences with access to the Honor Court. Some viewed the Honor Court as having an “open door policy” to explain things.³⁰⁰ Others emphasized the education the Honor Court provided to rats about the process.³⁰¹ According to one alumnus, the Honor Court “bent over backwards” to make sure cadets had due process and went to “great lengths” to educate cadets.³⁰² Many other alumni described fear of the Honor Court and scoffed at the notion that they would consider consulting the Honor Court how to handle a situation.

Many alumni believed that athletes were drummed out more frequently than other cadets. They varied in their explanations as to why this was the case and whether they believed it related to race or other factors.

2018–2021

- A recent graduate described situations where money or other temptations would be left around during the week the football team arrived on post in an effort to catch someone in an Honor Code violation. The same alumnus described a situation where test answers were left within a test booklet, presumably to induce him to cheat.³⁰³ (Note this approach appears to conflict with the rule that instigation—“[t]hat the accused attempted to influence another cadet to violate his or her honor”—is itself considered an honor violation.³⁰⁴)
- An African American graduate reported that when falsely accused of a General Committee complaint, no action was taken against the cadet’s Caucasian accuser, under the Honor Code or otherwise, despite proof the General Committee complaint had been false.³⁰⁵

2010–2013

- An African American graduate described a situation (which was noted above) where he was set up by his coach on a cheating charge but acquitted by the Honor Court.³⁰⁶
- A graduate who was a cadet captain estimated that 30 drum outs occurred during the graduate’s time, that about one-third were cadets of color, and that at least 50% to 60% were athletes. This graduate

³⁰⁰ Interviewee 40.

³⁰¹ Interviewee 1980.

³⁰² Interviewee 2455.

³⁰³ Interviewee 9.

³⁰⁴ Honor Court SOP (Aug. 2017) at 128.

³⁰⁵ Interviewee 22.

³⁰⁶ Interviewee 49, Interviewee 2011.

also believed that women were drummed out at disproportionate rate. These cadets might be subject to higher scrutiny, so were “caught” more. This graduate also noted that the baseball team, which was 80 to 90% Caucasian, had a number drummed out, including a member of the Honor Court.³⁰⁷

2006–2009

- One Caucasian graduate stated that it was not surprising more athletes are drummed out, as they have “more opportunities to cheat” and miss the Honor Code indoctrination in the Rat Line.³⁰⁸
- An African American graduate reported that fellow cadets of color thought they were being targeted unfairly, but this cadet opined that members of a minority group often feel this way if something happens to one of their members.³⁰⁹

1998–2001

- An African American football player described an experience where he was drummed out based on false charges of cheating. Ultimately the conviction was overturned when he was exonerated by another witness, but the cadet who made the false report was never charged with an Honor Code violation.³¹⁰ The cadet reported that he felt and heard that VMI personnel were targeting him for prosecution and expulsion long before the alleged cheating event that led to his prosecution.

1994–1997

- Two graduates expressed support for the Honor Code generally, but believed it disproportionately sanctioned African American cadets.³¹¹

³⁰⁷ Interviewee 33.

³⁰⁸ Interviewee 541.

³⁰⁹ Interviewee 46.

³¹⁰ Interviewee 22.

³¹¹ Interviewee 18, Interviewee 12.

1993–1996

- According to an African American graduate, Honor Court setups of African American athletes were “common,” and the whole Honor Court was a “gotcha” system.³¹²
- An alumnus from the class of 1995 thought it was suspicious that three or four African American athletes were drummed out, and his dyke was drummed out under suspicious circumstances. He believed the Honor Court should be more transparent.³¹³
- A former cadet who left the Institute was troubled by the drumming out of two African American student athletes on charges that were later reversed.³¹⁴
- One interviewee’s concern at an honor court proceeding in which an athlete’s case was tried to a jury containing his teammates was compounded when, following his acquittal, one of the cadet prosecutors assured the interviewee that he need not worry, “we’ll get him next time.”³¹⁵

Several alumni stated that they did not observe minority cadets being drummed out or disciplined at higher rates or, if they were, they did not believe they were targeted.³¹⁶

More generally, opinions concerning the extent to which the Honor Court targeted certain cadets were likewise varied. Many viewed the process as entirely fair and impartial. Others thought the system was important to the institution but was used as a weapon.³¹⁷ Multiple alumni described situations where they were asked to observe other cadets for the Honor Court.³¹⁸ A member of the OGA informed a female alumna from the class of 2009 that, when VMI began accepting women, they automatically created files for them.³¹⁹ The Honor Court also had files on women and would attempt to gather information about them. This was described to her as a “targeted campaign” to find ways to kick women out of school.

³¹² Interviewee 53.

³¹³ Interviewee 47; *see also* Interviewee 518.

³¹⁴ Interviewee 11.

³¹⁵ Interviewee 2468.

³¹⁶ Interviewee 1698.

³¹⁷ Interviewee 28.

³¹⁸ *E.g.*, Interviewee 165, Interviewee 112.

³¹⁹ Interviewee 10.

Perceptions of oversight over the process also varied among alumni. Some believed there were adequate checks and balances in place.³²⁰ For example, one past Honor Court President expressed the opinion that faculty supervisors would make sure there was enough evidence to proceed.³²¹ Another past Honor Court President—a person of color—observed that the Honor Court is “conceptually” fair, but not in practice. In his opinion, it is not a system that 21 and 22 year olds should be running without oversight.³²² That opinion was shared by others.³²³ Another alumnus, who described himself as a “strong proponent” of the single sanction system, did not have any objection to more adult involvement if necessary to make the system more fair.³²⁴ Some described the current procedures as a system where, while the Superintendent technically had to sign off on results, it was essentially a rubber stamp with little review at the Superintendent level following a trial.

An African American alumnus observed that his experience serving on the Board of Visitors led him to believe there were issues with the Honor Court.³²⁵ Appeals from the Honor Court go to the Board of Visitors. He did not perceive targeting based on race, but if the Honor Court decided they no longer wanted a cadet at the school, they could get rid of them. He perceived more targeting of athletes. Given the “heavy decisions” the Honor Court is making, he thought more adult supervision and involvement would be prudent.

Some alumni expressed concerns about transparency of the process,³²⁶ while others emphasized the importance of secrecy so that cadets who were not convicted would not have a cloud over them.³²⁷ Reports varied as to the extent to which “everyone knows” about ongoing Honor Court proceedings. Some suggested it was an open secret, while others claimed never to know what was going on unless or until a drum out. Either way, the goals of transparency and secrecy are not necessarily mutually exclusive. It would be possible to provide reports tracking basic demographic information about investigations and prosecutions without disclosing the specific identities of the cadets involved.

Finally, the alumni interviews provided a mixed picture of the actual amount of administrative oversight of VMI’s class system. Several alumni expressed concern that the administration did not actually exercise oversight, or

³²⁰ Interviewee 121.

³²¹ Interviewee 239.

³²² Interviewee 63.

³²³ *E.g.*, Interviewee 69.

³²⁴ Interviewee 227.

³²⁵ Interviewee 137.

³²⁶ *E.g.*, Interviewee 47.

³²⁷ Interviewee 282, Interviewee 158.

was hesitant to overturn cadet decisions and gave the cadets an excessive amount of power to punish their peers. These alumni felt that because cadets are ultimately young adults, they do not always have all the answers and could use more guidance from “adults in the room.”³²⁸ But other alumni seemed satisfied with the amount of administrative oversight, especially with regard to the Honor Court. Alumni who were members of the Honor Court generally said they felt that there was sufficient administrative oversight.³²⁹

f. Recommendations relating to the Honor Court

In recent remarks to alumni, MG Wins noted that VMI is already in the process of evaluating Honor Court policies and procedures. This assessment is an important step. The following are some points to consider as part of that evaluation.

- The investigation did not find anything to support a conclusion that specific policies or procedures of the Honor Court cause African American or other minority cadets to be drummed out at a disproportionate rate. The fact remains that in comparison to the student body at VMI, African American cadets are drummed out at a disproportionate rate. VMI should conduct an internal analysis of what might be causing this result.³³⁰ VMI should also track and analyze, with regard to cadets reported to the Honor Court by other cadets or faculty members, whether African American or minority cadets are accused of violations at a higher rate.³³¹ Similarly, VMI should look at whether investigations against African American cadets are “dropped” at a lower rate than Caucasian cadets and how those numbers compare to the overall numbers of investigations “dropped.”³³² Again, the investigation did not reach findings on these questions due to lack of information. VMI should ensure that records are kept so as to monitor these matters in the future.³³³
- VMI should ensure that its cadets fully understand the Honor Code and the workings of the Honor Court. Accordingly, VMI should advise cadets of what will be required of them with respect to the Honor Code (and other key VMI

³²⁸ See, e.g., Interviewee 17, class of 2019; Interviewee 159, class of 2004; Interviewee 137, class of 1974.

³²⁹ See, e.g., Interviewee 239, class of 1984, Interviewee 43, class of 1979, Interviewee 539, class of 1976; Interviewee 263, class of 1990.

³³⁰ See Recommendation 3(a).

³³¹ See Recommendation 3(b).

³³² *Id.*

³³³ *Id.*

traditions) even before attending VMI.³³⁴ VMI and the Honor Court should also enhance education to incoming and current cadets on what constitutes an actionable violation of the Honor Code as opposed to other rule violations and what penalty will be applied.³³⁵

- VMI should critically study the Honor Court’s “education” policy and assess whether and how this practice is consistent with VMI’s “single sanction” concept.³³⁶ VMI should also examine whether this practice can be applied reliably and consistently, and whether it produces disparate outcomes on race and gender lines. If VMI retains the “education” option, it should consider preparing clearer and better-defined criteria for when a cadet should be prosecuted and when he or she should be educated.
- VMI should also reconsider the decision to prohibit Honor Court defendants from having counsel assist at trials.³³⁷ The presence of counsel promotes fairness and would provide support for a cadet in a time of incredible stress and need. Denying counsel provides no benefit other than putting the prosecution’s “thumb on the scale.” VMI’s own insistence on having counsel present during this investigation further supports reconsideration of this policy. VMI should also provide enhanced training to faculty advisors to ensure that they understand and are familiar with all aspects of the Honor Court system and can capably assist cadets.³³⁸
- Given the importance of the outcome for the students affected, VMI should reconsider its policy permitting non-unanimous verdicts in Honor Court cases.³³⁹ There appears to be no or minimal benefit to the current non-unanimity policy (other than making Honor Court cases easy to win) and there is an openness among cadets and alumni to make this change. It would also ensure that, for example, an African American cadet could not be expelled by a verdict of only Caucasian votes. VMI should also consider whether to involve faculty in the jury pool and should prohibit strikes based on the basis of race or gender.³⁴⁰ VMI should also track the makeup of its juries to determine whether they represent a fair cross-section of the VMI community and make appropriate adjustments.³⁴¹

³³⁴ See Recommendation 3(i).

³³⁵ See Recommendation 3(c).

³³⁶ See Recommendation 3(e).

³³⁷ See Recommendation 3(g).

³³⁸ See Recommendation 3(h).

³³⁹ See Recommendation 3(f).

³⁴⁰ *Batson v. Kentucky*, 476 U.S. 79 (1986).

³⁴¹ See Recommendation 3(f).

- Many respondents noted that the Honor Court produces a harsh penalty for what cadets would consider a relatively minor offense (lying to a fellow cadet about off-post activities), and light penalties under other systems for what they would consider a major offense (such as sexual misconduct and use of racial slurs). VMI should examine data related to punishments imposed by the Honor Court, the Cadet Equity Association, and other disciplinary organizations to ensure that they are applied equitably and evaluate whether VMI's disciplinary practices produce inequitable results.³⁴²

F. Responsiveness to complaints versus a culture of silence

A number of alumni interviewees who complained about instances of racial or gender discrimination or harassment did not feel that VMI's administration took them seriously or adequately addressed them. For example, some alumni and a number of faculty said that there was a culture of silence and lack of consistency around disciplinary proceedings at VMI.

Current faculty or staff

- A current faculty member said that VMI tries to sweep negative instances under the rug.³⁴³
- A current faculty member stated that even though the annual climate survey identifies serious issues, the administration does not take responsive actions.³⁴⁴
- Another current faculty member said that the faculty is run like a dictatorship and has a culture of retribution.³⁴⁵
- A current faculty member explained that while there is a faculty working group on diversity, equity, and inclusion, efforts to put together a forum for talking to cadets about those issues keep getting put on hold.³⁴⁶

2018–2021

- A graduate observed many instances of racism that went unaddressed. For example, a rat was brought before the General Committee on a charge of disrespect based on using the n-word; the

³⁴² See Recommendation 3(d).

³⁴³ Interviewee 23.

³⁴⁴ Interviewee 37.

³⁴⁵ Interviewee 31.

³⁴⁶ Interviewee 48.

General Committee transferred the case to the Cadet Equity Association, which held a private proceeding to avoid having the rat labeled as racist. The rat received one demerit, the lowest available penalty.³⁴⁷

- An African American graduate asserted that faculty and staff knew that stuff was wrong but looked away.³⁴⁸

1994–1997

- A graduate reported an anecdote about an African American fourth class cadet being assaulted by four people and said that no one was punished.³⁴⁹

There were a few common themes in alumni explanations for these perceptions. First, the alumni interviews showed an overall inconsistent understanding and use of the various systems and forums for bringing racial and gender-related complaints. VMI's class system includes four primary subcommittees, all of which deal with cadet behavior and discipline in one capacity or another. Some interviewees, particularly women, recall being unsure of whether to report complaints to these committees, the commandant's staff, or directly to the Title IX coordinator, the Inspector General, or the Superintendent.³⁵⁰ One alumnus reported that while he silently endured what he considered to be racist acts, there was never a straight line in the administration at VMI for him to be able to make a report to specifically for these instances and that's why he opted to keep quiet.³⁵¹ Others noted that it was clear that they were to report complaints to the General Committee or Cadet Equity Association, and the cadets who were in charge of those organizations had the discretion to escalate complaints to the appropriate administrative party (and more often than not, declined to do so).³⁵² From the perspective of alumni interviewees, the number of different routes a cadet can take to make a complaint, coupled with the discretion by cadets who run the class system committees to escalate complaints, often resulted in their complaints not reaching the appropriate person or not being addressed.

There were also some minority and women alumni who could have chosen to bring complaints, but ultimately decided not to because they believed the

³⁴⁷ Interviewee 17.

³⁴⁸ Interview 302.

³⁴⁹ Interviewee 12.

³⁵⁰ *See, e.g.*, Interviewee 19, class of 2012.

³⁵¹ Interviewee 53.

³⁵² *See, e.g.*, Interviewee 46, class of 2006 (described as a member of the OGA being able to escalate complaints or not); Interviewee 17, class of 2019.

complaints would fall on deaf ears. One of these alumna noted that she never went to any of the committees or administration for help because there were no minorities or women there who would understand her.³⁵³ Additionally, some minority alumni stated that because VMI is a tough school to graduate from under the best of circumstances (due to the intense rigor of the academic and military obligations), it was more important to “lie low” and graduate than it was to potentially call attention to themselves in a negative light.³⁵⁴ One alumnus explained that, as the first person in his family to go to college, he didn’t have other options and couldn’t risk calling negative attention to himself.³⁵⁵ Some alumni over the years raised issues with saluting Stonewall Jackson or marching in the Battle of New Market. They were penalized for refusing to participate in these activities.³⁵⁶

That said, there were other alumni who pointed to some notable exceptions to a perception of ignoring issues. First, African American alumni from the first post-integration classes in the early 1970s lodged a complaint with the administration regarding the playing of “Dixie” and the flying of the confederate flag at VMI football games, and these practices stopped shortly afterward. Most of the alumni interviewed about the situation noted that they faced no retaliation or backlash from the administration after making the complaint.³⁵⁷ But one Caucasian alumnus from the class of 1974 said that he still keeps in touch with a few African American classmates who transferred after they felt that they were unable to get a “fair shake” with the administration regarding their issues with Dixie and the confederate flag.³⁵⁸ In addition, one African American alumnus from the class of 2015³⁵⁹ wrote a capstone thesis on racial issues, and included concrete suggestions for improving certain elements at VMI from that perspective. General Peay invited the cadet to have a discussion with him to hear more about his perspective, and this discussion contributed to the decision to stop requiring cadets to salute the Stonewall Jackson statue. Others expressed the view that the administration would not have tolerated any discrimination, and some described situations where misbehavior resulted in loss of rank or, in more extreme cases, suspension. Finally, several cadets thought the instance of a cadet threatening to lynch another cadet showed that the administration did respond: one noted that the rat reported it, and the system listened to the rat,³⁶⁰ and another asserted that

³⁵³ Interviewee 17, class of 2019.

³⁵⁴ Interviewee 20, class of 2020 and Interviewee 49, class of 2011.

³⁵⁵ Interviewee 21.

³⁵⁶ Interviewee 16, 322.

³⁵⁷ *See, e.g.*, Interviewee 135, class of 1974; Interviewee 137, class of 1974.

³⁵⁸ Interviewee 2470, class of 1975.

³⁵⁹ Interviewee 2435.

³⁶⁰ Interviewee 229, '89.

“the biggest thing the news got wrong [about that incident] is VMI suspended the cadet, but that was during the investigation,” and that “[o]nce investigated, [VMI] said get the hell out.”³⁶¹

A number of alumni provided examples where VMI responded to complaints or comments from the community. For example:

2010–2013

- A graduate said that the administration ran a Leadership Focus Group, which consisted of 16 cadets and a faculty member, to receive focus-group like feedback from cadets, including on issues about the class system and the honor system.³⁶²
- A female graduate said that VMI had available systems for making reports about instances of sexism, including to the General Committee, to the Cadet Equity Association, and to commandant staff, which would escalate to Superintendent or Title IX investigator.³⁶³

2006–2009

- An African American graduate observed that a couple of incidents were reported to the Officer of the Guard Association and escalated where warranted.³⁶⁴

1994–1997

- An African American graduate recounted an incident where another cadet received a letter containing racist slurs; when the administration was notified, it investigated and then called the police.

Overall, more female interviewees discussed actually making complaints that were ignored or mishandled than racial minorities making complaints about racist treatment (this could be due to the feeling discussed above that it is best to “lie low” rather than call attention to yourself). For example:

³⁶¹ Interviewee 97, '21.

³⁶² Interviewee 33, class of 2013.

³⁶³ Interviewee 35, class of 2010.

³⁶⁴ Interviewee 46, class of 2006

2018–2021

- One alumna said over her time at VMI she lodged more than one complaint (regarding both issues of sexual harassment and racial intolerance) and General Peay never spoke to her about any of them, even though she had been a guest in his home. “How could complaints go through the faculty to the dean and to the IG and he doesn’t know?” She was also discouraged from reporting an incident by threatening a delay in graduation, on the grounds that cadets cannot graduate if they are involved in a pending investigation.³⁶⁵

2010–2013

- Another alumna reported an incident of sexual harassment to the Cadet Equity Association and was subsequently “publicly shamed” for reporting it by other cadets (including members of the CEA). She later reported a separate instance of sexual assault that was not acted on for at least 10 months afterward, while she continued to live near her assaulter in barracks.³⁶⁶
- Another alumna reported more than one incident of sexual harassment to VMI’s administration, but there was no follow up. In one instance, she believes it was because the harasser was the son of a prominent alumnus. She also said she would not have wanted to report the incidents to the commandant’s staff in barracks, because they could see what was going on and chose to do nothing about it.³⁶⁷

To alleviate the confusion, there should be a clear path to report incidents of racial and gender discrimination and clear consequences for those actions. In both the interviews and the surveys, some alumni suggested that issues of discrimination should be treated with the same “zero tolerance” approach as the Honor Code.³⁶⁸ As one alumnus noted, VMI administrators like to say that “ignorance is no excuse,” but when it comes to race they take the position that “ignorance apparently is an excuse” because some cadets don’t know any better.³⁶⁹ This individual noted that these concerns were brought to the Commandant but

³⁶⁵ Interviewee 17, class of 2019.

³⁶⁶ Interviewee 19, class of 2012.

³⁶⁷ Interviewee 1768, class of 2010.

³⁶⁸ See Honor Court SOP 2017 page 44 “Neither ignorance nor professed confusion about the correct interpretation of these policies is an excuse.”)

³⁶⁹ Interviewee 9.

nothing was done and no education or other action has been taken there to address the ignorance among some who come to VMI.

G. Leadership, official policies, and training

1. Command climate with respect to diversity, equity, and inclusion

In official statements, VMI's leadership has recently emphasized a desire "to erase any hint of racism at VMI, in our communities, and in our country" and "to challenge the Corps through the class and regimental systems to address unbecoming conduct and racism."³⁷⁰ VMI has created a diversity, equity, and inclusion committee, is currently searching for a Chief Diversity Officer, and is addressing race and gender issues through its *Vision 2039: Focus on Leadership* plan. MG Wins has also been focusing on addressing racial issues at VMI; he often repeats the phrase "One VMI." A number of members of the Board of Visitors expressed the view that this investigation is redundant, because the Board and VMI are already addressing the issues that led to this investigation, via the above-referenced changes and other changes relating to Civil War iconography discussed below. This ignores the obvious; that VMI only began to engage in these efforts after the investigation was announced. The majority of steps that VMI highlights either occurred within the last year or are still in progress (*e.g.*, the Five Pillars Plan, the new DEI committee on Board of Visitors, the new DEI committee at the Alumni Agencies, the appointment of chief diversity office, the appointment of a new Superintendent, the appointment of a female regimental commander, the adoption of DEI principles, the creation of a diversity dashboard, the creation of a committee on ceremonies and memorials, the moving of the Stonewall Jackson statue, the changes to the Memorial Parade, the plan to move flag poles, and plans to improve recruiting and training programs). Before these steps, no administrator interviewed could identify any plan or program to increase female or minority enrollment in the corps or employment in the faculty.

VMI has provided an overview of its diversity, equity, and inclusion initiatives.³⁷¹ In addition to the measures just mentioned, VMI highlights additional examples, including:

- the confirmation of MG Wins as the new VMI Superintendent;
- the appointment of VMI's first female regimental commander;
- the addition of a diversity, equity, and inclusion committee for the Board of Visitors, the adoption of seven guiding principles for diversity, equity, and inclusion;

³⁷⁰ Peay Letter, at 1, 2.

³⁷¹ May 14, 2021 letter from VMI to the Special Investigation Team (attached as Exhibit 6).

- the creation of a diversity dashboard to monitor admissions, graduation rates, and hiring;
- the creation of a Board of Visitors committee to evaluate ceremonies and memorials;
- the creation of a diversity, equity, and inclusion committee for the Alumni Agencies;
- ongoing development of an enhanced racial sensitivity training for cadets, faculty, and staff;
- adding a new core curriculum course called the American Civic Experience, which will include discussion of civil rights issues;
- ongoing review to improve VMI's diversity hiring program; and
- expansion of recruiting efforts directed at minority and female cadets.

See Exhibit 6 for VMI's own description of these programs.

Notable omissions from VMI's written plans include any establishment of a DEI office or website promotion of DEI efforts at VMI. This is another arena in which VMI is significantly behind its peers. Unlike its peer schools,³⁷² VMI does not have a DEI office or any significant or sophisticated DEI operation, nor does it address or promote any DEI efforts on its website. Washington & Lee, also located in Lexington, has an Office of Inclusion & Engagement, a significant DEI presence on its website, and offers a DEI "virtual visit" program as part of its recruiting efforts.³⁷³

While the overview that VMI provided included corps-wide training relating to Title IX and gender issues, the only training VMI's overview identified as addressing race was training within VMI's ROTC program.³⁷⁴ According to VMI's website, about 800 members of the corps of cadets are in the ROTC program, out of the roughly 1,700 cadets. As a result, VMI has not identified any training relating to racial issues that is corps-wide. Further, the ROTC program falls under the Department of Defense, so the training curriculum is controlled by DOD, not VMI.

On the issue of faculty diversity and leadership in the classroom, VMI also has a hard time recruiting and retaining diverse faculty. Interviewee 343 participated in the hiring of twenty faculty members. Of those twenty hires, two

³⁷² See <https://dei.virginia.edu/> (University of Virginia); <https://my.wlu.edu/office-of-inclusion-and-engagement> (Washington & Lee); <https://www.citadel.edu/root/diversity-council> (The Citadel); <https://www.inclusive.vt.edu/> (Virginia Tech).

³⁷³ See <https://my.wlu.edu/office-of-inclusion-and-engagement>; <https://www.wlu.edu/admissions/virtual-visit/dive/>.

³⁷⁴ Exhibit 6 (VMI's letter, which includes as its Exhibit A, a memorandum on the ROTC training curriculum).

were female and one was African American. Many faculty interviewees have reported that VMI is not the most attractive place to teach, noting the relatively low salary, the small town where VMI is located, and the lack of a graduate or research program, among other reasons. Interviewee 37 mentioned that a department recently had an opening for a professor position and that every single applicant was a Caucasian male. Other interviewees mentioned that VMI is a tough place to teach because professors are in a constant battle with the commandant's staff for cadets' time, and professors cannot schedule anything outside of class time. Further, one of the criteria professors are evaluated on is "cadet development," which is an extra component of evaluation not present at other institutions. Some interviewees indicated that they would spend nights and weekends at VMI in order to meet with and accommodate cadet's schedules, but that faculty do not get compensated appropriately for all of the extra work that is required to teach at VMI. Interviewee 378 stated that he is aware of some people not even applying to VMI because of the uniform requirement.

As to the command climate historically, multiple alumni interviewees noted that the Commandant sets the tone, which means that the emphasis on and tone relating to issues of race and gender may change over time. For example, alumni from the 1970s observed that the Commandant during their cadetships would not tolerate racism of any kind and was adamant about racial equality. Similarly, a graduate from the 2013 class reported that the Commandant at the time made it clear he cared about minority groups at VMI. Others have indicated that the Commandant during their time at VMI was not as adamant or focused on these issues.

2. Treatment of Civil War history

a. Iconography and traditions

Another obvious and important aspect of VMI's culture is that it has long focused on events and individuals related to the Civil War. For example, after a graduate donated a statue of LTG Thomas "Stonewall" Jackson to VMI in 1912, at some point a practice arose of requiring fourth class cadets to salute the statue. According to various alumni, while this tradition was in force African American cadets who refused to salute the statue were given penalty tours. VMI ended this tradition in 2015, and in December 2020 VMI removed Jackson's statue from in front of the barracks, with the intent of moving it to the Virginia Museum of the Civil War.

During the Civil War, VMI cadets fought in the Battle of New Market to fill a gap in Confederate lines. VMI emphasizes to new cadets that "[t]he Battle of New Market marks the only occasion in the history of the nation where an entire

student body—the Corps of Cadets—fought in armed conflict.”³⁷⁵ While cadets used to take the Cadet Oath at the New Market Battlefield State Historical Park, GEN Peay announced on July 29, 2020, that he was moving the location for the Cadet Oath to an on-post location at VMI.³⁷⁶ He also announced that the celebration of New Market Day on May 15 would be broadened to honor all VMI alumni who have died for their country and that the parade would be retitled as the VMI Memorial Day Parade and held on the parade ground, not on the battlefield.

There was a wide range of responses among current cadets to the treatment of Civil War history on post. Among survey participants, 45% of current cadets rated the extent to which Confederate symbols on post promote racial intolerance and/or discrimination as “none,” 38% rated the extent as “a little,” and 17% rated the extent as “a lot.”³⁷⁷ But African American current cadets were much more likely to feel that the symbols promote racial intolerance and/or discrimination, with 50% rating the extent as “a lot” as compared with 18% of Caucasian current cadets.³⁷⁸ Similarly, 33% of African American cadets rated the extent to which celebrating VMI’s Southern heritage promotes racial intolerance and/or discrimination as “a lot,” as compared to only 8% of Caucasian current cadets.³⁷⁹ On the free-form survey results, a Caucasian male cadet stated: “I think the attachment to New Market, the confederacy and Jackson lets racism seep into our culture and unconsciously affect us.”³⁸⁰

In regard to the removal of the Stonewall Jackson statue, most cadets agreed with or were not upset by the removal of the Stonewall Jackson statue.³⁸¹ Some of the cadets were disappointed by the removal, with one saying that he felt that it was a symbol of VMI’s history as opposed to a symbol of racism.³⁸² Among Caucasian current cadets who participated in the survey, 59% rated the extent to which the statue of Stonewall Jackson promotes racial intolerance and/or discrimination as “none,” 29% rated the extent as “a little,” and 12% rated the extent as “a lot.”³⁸³ By comparison, among African American current cadets who participated in the survey, 25% rated the extent to which the statue of Stonewall Jackson promotes racial intolerance and/or discrimination as “none,” 25% rated the extent as “a little,” and 50% rated the extent as “a lot.”³⁸⁴ Among all current cadets

³⁷⁵ New Cadet Handbook 2020–2021 at 13.

³⁷⁶ Peay Letter at 5 (attached as Exhibit 5).

³⁷⁷ Appendix A at 53.

³⁷⁸ Appendix A at 128.

³⁷⁹ *Id.* at 129.

³⁸⁰ Survey results, row 33 (Caucasian, male).

³⁸¹ *See, e.g.*, Interviewee 188, Interviewee 2451, Interviewee 2461, Interviewee 267.

³⁸² Interviewee 2445, Interviewee 170.

³⁸³ Appendix A at 128.

³⁸⁴ *Id.*

who participated in the survey, 62% rated the extent to which the statue of Stonewall Jackson promotes racial intolerance and/or discrimination as “none.”³⁸⁵

In regard to the Battle of New Market, feelings among current cadets were slightly less uniform. Some African American cadets felt like participation in the New Market traditions made them feel uncomfortable and shameful.³⁸⁶ One African American cadet concluded that the New Market tradition made him feel uncomfortable and weird because he had to wear the clothes of someone who “did not want me to be on this Earth.”³⁸⁷ But many cadets felt that the New Market traditions should remain. Even cadets who thought that other Confederacy-related traditions could be eliminated felt that memorizing the names of the cadets who died at New Market should continue.³⁸⁸ There was at least one non-Caucasian cadet who agreed with this, viewing the New Market march and the memorization of the New Market cadets as important to building camaraderie during the Rat Line.³⁸⁹ Another African American cadet said that while he strongly disagreed with New Market charge, he could see the perspective of some that the traditions were more about the character of the cadets than the cause they fought for.³⁹⁰ Of those who participated in the survey, 76% of Caucasian cadets rated the extent to which honoring VMI’s role in the Battle of New Market promotes racial intolerance and/or discrimination as “none,” 18% rated the extent as “a little,” and 5% rated the extent as “a lot.”³⁹¹ In contrast, 50% of African American cadets rated the extent to which honoring VMI’s role in the Battle of New Market promotes racial intolerance and/or discrimination as “none,” 17% rated the extent as “a little,” and 33% rated the extent as “a lot.”³⁹² Among all current cadets who participated in the survey, 78% rated the extent to which honoring VMI’s role in the Battle of New Market promotes racial intolerance and/or discrimination as “none.”³⁹³

Many cadets felt strongly that the traditions of VMI generally should remain unaltered. These feelings were especially evident in the free-form survey responses:

³⁸⁵ *Id.* at 53.

³⁸⁶ Interviewee 219.

³⁸⁷ Interviewee 198.

³⁸⁸ Interviewee 187.

³⁸⁹ Interviewee 195.

³⁹⁰ Interviewee 204.

³⁹¹ Appendix A at 129.

³⁹² *Id.*

³⁹³ *Id.* at 54.

- “Our culture and history are a major part of VMI and taking down a statue of a professor from the Institute does nothing but piss the corps off and creates resentment of the highest end of leadership.”³⁹⁴
- “Instead of trying to erase our history and act like it didn’t exist, we can learn from it to make better decisions for the future of all people. Our brother rats blood, my dyke lines blood was spilled on those fields and that should not be forgotten. This Institution fought against the union because our state Virginia, the same political leaders who hold office today (democrats, John Letcher (34th Governor of VA during the Civil war), called us to action. We are part of the Virginia Militia and were called to action and that does not make us racists. If you forget your history you are doomed to repeat it.”³⁹⁵
- “When Stonewall Jackson is celebrated, he is celebrated for his military genius and fighting for his home. He’s also celebrated for breaking the law by teaching slaves to read so they could read the bible. When the Cadets at New Market are celebrated, they are celebrated for being teenagers who stood up and defended their home when they were called on. When we celebrate Southern Heritage, we celebrate the good parts of our past. Any racial/ethnic group has terrible moments in history if you look hard enough. I have never once heard a Cadet, faculty member, or any member of leadership celebrate slavery or oppression.”³⁹⁶
- “VMI’s past association with the confederacy does not affect our culture today.”³⁹⁷
- “Bring back Jackson statue. Jackson statue’s rightful home is in front of Jackson arch, and relocating it elsewhere was nothing but an attempt to appease a small minority of the VMI community which happens to be supported by the radical leftists in the State government.”³⁹⁸
- “Doing away with statues and renaming buildings, while trivial and do not pose any immediate threat to the integrity of the Institute, are

³⁹⁴ Survey results, row 216 (male).

³⁹⁵ Survey results, row 216 (male).

³⁹⁶ Survey results, row 219.

³⁹⁷ Survey results, row 273 (Caucasian, male).

³⁹⁸ Survey results, row 21.

a meager, pitiful attempt at erasing history only to appease the public.”³⁹⁹

- “We celebrate the New Market battle not because of the confederacy, but because cadets our age and younger [were] ordered to risk their lives and they won the battle. In today’s society many American teens don’t honor or respect the sacrifices made, but VMI instills respect, honor, and duty.”⁴⁰⁰
- “There is nothing wrong with the confederate history. It is a part of vmi and cannot be taken away. If we erase our history we are more liable to repeat it in the future. Vmi stands as a beacon of the south and a permanent reminder of what happened in the civil war. It should be looked upon as a place of pride and a place of fighting for what people believed in.”⁴⁰¹

In May 2021, VMI’s Board of Visitors voted to erase Jackson’s name as the author of a quotation mounted in bronze in the student barracks. Jackson’s name will also be removed from the post memorial hall and one of the arches leading to the barracks. They also voted to have “Virginia Mourning Her Dead” honor all former cadets who have died in wars, and to preserve, contextualize, and possibly relocate the New Market Battle mural.⁴⁰² Because this occurred during the writing of this report, the investigation did not specifically address these decisions with interviewees.

Alumni are quite divided on the importance of Confederate iconography and practices. Many did not have a strong understanding of the meaning behind the iconography when they were cadets and just did what they were told.⁴⁰³ Some cadets of color objected to saluting Stonewall Jackson or marching in the Battle of New Market and were disciplined in the past, although VMI has now made changes to accommodate those views.⁴⁰⁴ Some alumni were vocal when the committee established to address iconography and memorials announced plans to address three of the 400 Civil War-related items on post. Alumni views varied from

³⁹⁹ Survey results, row 22 (Hispanic, female).

⁴⁰⁰ Survey results, row 25.

⁴⁰¹ Survey results, row 36 (Caucasian male).

⁴⁰² See Exhibit 6 at 6.

⁴⁰³ See, e.g., Interviewee 46, class of 2006; Interviewee 121, class of 2009.

⁴⁰⁴ See, e.g., Interviewee 29, class of 1976; Interviewee 16, class of 2001; Interviewee 140, class of 1975.

believing the Confederacy played almost no role at VMI to viewing it as central to the institution.⁴⁰⁵

Overall, many of the alumni who participated in the investigation either supported or did not object to the removal of the Stonewall Jackson statue. The survey results show more division, with 68% of alumni respondents “strongly” or “somewhat” opposing the removal.⁴⁰⁶ Based on the Team’s interviews, many Caucasian alumni did not think about the meaning of the statues and traditions while at VMI but understood now, reflecting back, how those symbols could be oppressive.⁴⁰⁷ Several expressed the view that if the symbols bothered their Brother Rats, they should be removed.⁴⁰⁸ There was a significant group of alumni, on the other hand, who believed the statue was part of history and should have remained there.⁴⁰⁹ Of those who objected, some were concerned with substance, and others were concerned with process. The latter believed there should have been a more rigorous process with input from all stakeholders before removing the statue.⁴¹⁰

Alumni likewise have varying views on the remaining statues. In the interviews, fewer alumni stated that the iconography was something that absolutely should not be changed about VMI. Most highlighted the Honor Code and the Rat Line as the aspects of cadet life that should be protected. Several suggested that the statue “Virginia Mourning Her Dead” (which commemorates the VMI soldiers killed at New Market) should commemorate all VMI soldiers lost in battle, not merely the Confederate ones.

There is a divide between how alumni view the Civil War and its representations in today’s VMI culture. Recent graduates of color discussed how they found the iconography and traditions to be degrading. For many of the cadets of color, celebrating aspects of the Civil War celebrates those who would have kept them enslaved.⁴¹¹ For some of the other alumni, they viewed the Confederate soldiers as simply fighting for where they were from and thought they should not

⁴⁰⁵ See, e.g., Interviewee 2434; Interviewee 323, class of 1985; Interviewee 65, class of 1969 (Confederacy played almost no role); Interviewee 159, class of 2002; Interviewee 121, class of 2009; Interviewee 69, class of 1995 (Confederate history is a huge part of VMI).

⁴⁰⁶ Appendix A at 49.

⁴⁰⁷ See e.g. Interviewee 39, class of 1997; Interviewee 370, class of 2014; Interviewee 531, class of 2012.

⁴⁰⁸ See e.g. Interviewee 2456, class of 2018; Interviewee 292, class of 1969; Interviewee 150, class of 2004.

⁴⁰⁹ See e.g. Interviewee 66, class of 1973; Interviewee 120, class of 2013; Interviewee 153, class of 2010;

⁴¹⁰ Interviewee 112.

⁴¹¹ See, e.g., Interviewee 135, class of 1974; Interviewee 140, class of 1975.

be villainized.⁴¹² They expressed concerns about “erasing history.”⁴¹³ As to New Market, they view it as honoring those who answer the call as opposed to honoring those who stand on the wrong side of history.⁴¹⁴

Emphasis on Confederate symbols and support for the Confederacy will likely present a barrier to recruiting cadets of color, making VMI appear as a non-inclusive environment particularly those not from the South who are not used to seeing Confederate symbols. VMI appears to understand this, as the Board of Visitors has established the Ceremonial and Memorials Naming and Review Committee of the Board to continue the work of examining imagery and traditions on post.⁴¹⁵ Other recommended actions for the Committee include:

- Deemphasizing the accomplishments of those associated with the Confederacy and re-focusing on other prominent VMI alumni (including women and people of color);
- Providing more education and diverse perspectives on the Civil War and broadening general knowledge one has to memorize in the Rat Line to be more inclusive. One VMI employee⁴¹⁶ suggested that the area from which the Jackson statue was removed should be redesigned with two statues of Marshall, one in his military uniform from WW II and one in civilian clothes as he wore while implementing his eponymous plan. That employee believed that a display would more faithfully represent the mission of the Institute, which serves to develop both military and civilian leaders.
- Engaging current cadets and cadet organizations, including the Promaji Club, in discussions about future actions related to iconography and traditions as well as actions to commemorate minority groups.⁴¹⁷ In addition to providing cadets a voice in these decisions, this will help avoid “blind spots” as the Committee works through these issues.

⁴¹² See, e.g., Interviewee 38, class of 1961; Interviewee 36, class of 1997; Interviewee 2286, class of 2013.

⁴¹³ See, e.g., Interviewee 291, class of 1981; Interviewee 2284, class of 2006.

⁴¹⁴ See, e.g., Interviewee 292, class of 1969; Interviewee 228, class of 1970; Interviewee 2385, class of 1988.

⁴¹⁵ See Exhibit 6 at 6.

⁴¹⁶ Interviewee 327.

⁴¹⁷ See Recommendation 4(b).

b. Lee-Jackson parade and Martin Luther King Day

As explained in the interim report, Lee-Jackson Day, honoring Confederate Generals Robert E. Lee and Stonewall Jackson, was a state holiday in Virginia until 2020, when it was replaced by Election Day. Lee-Jackson Day traditionally occurred on the Friday immediately before the Monday federal holiday of Martin Luther King Jr. Day. An African American cadet ('01) explained that while some cadets perceived Lee-Jackson Day as about culture, duty, and honor, others see it as celebrating the fight to preserve slavery.⁴¹⁸

At least two recent graduates reported that there were inconsistencies in the way VMI treated the Lee-Jackson Day parade and the parade in honor of Dr. Martin Luther King, Jr. They reported that marchers in the Lee-Jackson Day parade were allowed on post and that cadets were permitted to participate in related activities. But when cadets sought to attend the parade in honor of Dr. King, they were turned down.⁴¹⁹ Similarly, a former faculty member recounted that a few years ago the Promaji Club (a VMI club that supports minority cadets) received a permit to host or attend a Martin Luther King parade on the same day as Lee-Jackson Day.⁴²⁰ After being awarded the permit, though, VMI leadership informed that club that its members would not be allowed to wear uniforms while marching in the Martin Luther King Jr. parade, but could wear VMI clothing such as sweatshirts. As the date for the parade approached, members of the Promaji Club received anonymous death threats. Then, VMI told the club members that they would not be allowed to stay on post before the parade and that they would not be allowed to wear any school clothing. Further, African American cadets were told to remain in their rooms on Lee-Jackson Day because of the marchers in the Lee-Jackson Day parade allowed on post that day.⁴²¹

c. Instruction about the Civil War

Some alumni and faculty expressed concern over how cadets are taught about the Civil War. Several alumni (from '01 to '12) reported that VMI teaches only one perspective on the Civil War—that it was not about slavery.⁴²² Another graduate ('13) described a history class as Confederate apologetics.⁴²³ A current VMI faculty member stated that African American cadets are regularly subjected to the “Lost Cause” reading of the Civil War.

⁴¹⁸ Interviewee 16, class of 2002.

⁴¹⁹ See e.g. Interviewee 9, class of 2020; Interviewee 20, class of 2020.

⁴²⁰ Interviewee 37; see also Interviewee 302.

⁴²¹ *Id.*

⁴²² See e.g. Interviewee 16, class of 2001; Interviewee 22, class of 2001

⁴²³ Interviewee 33, class of 2013

In interviews, the Team asked current cadets how they would feel about implementing a required Civil War class at VMI and received mixed feedback. Overall, current cadets did not support the proposition. One cadet thought that if there was an obligatory course on the Civil War, everyone was going to “sleep through it or joke about it.”⁴²⁴ She thought that the material would be best implemented as part of the Rat Line, and she emphasized that the “negatives behind [VMI’s] tradition[s]” would have to be highlighted as well.⁴²⁵ Another cadet said he would support having a class on the Civil War, but not making it mandatory.⁴²⁶ In regard to VMI’s contribution to the Civil War, he said that “our history is ugly ... just embrace it and move on.”⁴²⁷ Finally, the Team was also told in an interview with a cadet that a VMI professor had a confederate sticker on his car.⁴²⁸

As noted above, MG Wins’ May 2021 letter states that VMI will be introducing a new course, the “American Civic Experience,” which will be part of the core curriculum and which will include coverage of the U.S. civil rights movement, of key Supreme Court cases from the Civil Rights era, and of constitutional principles. He also indicated that VMI will review elective history courses, including “The Civil War and Reconstruction,” “History of the South from 1865,” “19th Century South Africa,” “Africa in Pre and Modern Times,” “The Old South,” and “The African-American Experience.”

It is too soon to tell if or how these course changes will be implemented, or whether there will be any mandatory participation by cadets in these courses or connection between the classes and other aspects of the cadet experience. But they may address some of the observations by alumni suggesting additional education and perspectives on the Civil War. Some cadets offered the opinion that Civil War topics were taught with an inappropriate degree of sympathy for the South.⁴²⁹ This relates, more generally, to a lack of diverse perspectives, which some alumni pointed to as problematic.⁴³⁰

Relatedly, several alumni of color questioned why the “general knowledge” that rats have to learn focuses so heavily on Confederate history.⁴³¹ They saw no

⁴²⁴ Interviewee 2461.

⁴²⁵ *Id.*

⁴²⁶ Interviewee 97.

⁴²⁷ Interviewee 97.

⁴²⁸ Interviewee 171.

⁴²⁹ Interviewee 1704, 53.

⁴³⁰ Interviewee 16.

⁴³¹ Interviewee 53.

reason that it could not be expanded to include the accomplishments of notable women and people of color.

d. Confederate memorabilia in cadet rooms

Views on this topic, unsurprisingly, varied over time. For current cadets, only one survey respondent mentioned Confederate flags in the free-response section, and it was to note that “[e]very once in a while there will be a few people that show up here with confederate flags, and cadets really don’t have any tolerance for it.”⁴³²

According to alumni, confederate imagery on post was more common in decades past. These issues are discussed on page 35 of the March 8 interim report.

3. Policies and training

VMI’s policies and training have evolved over time. Some of the alumni interviewed attended VMI before women were admitted. They report that there was significant sensitivity training around the admission of women, and that VMI continues to offer at least some training on gender issues. The cadre receives some equity training.⁴³³

Several alumni noted a lack of adequate training on diversity. As noted above, MG Wins has policies against discrimination⁴³⁴ and is developing programs to remedy this, as well as expressing a clear “tone from the top” about discrimination. However, policies without training and reinforcement will not bring about change. Two alumni pointed out that they received such training only when they joined the military, and it would have been helpful earlier.⁴³⁵ For example, one alumnus stated that he was not prepared to lead diverse troops upon graduation because he came from a small town in rural Virginia and never learned how to appropriately interact with people of color at VMI.⁴³⁶ He emphasized the importance of getting cadets to buy into the “why” of the training—that it would make them better leaders. Another “check the box” exercise would be ineffective. It may be motivating to have military officers and other “real world” speakers to share the importance of communicating effectively with people from different backgrounds.

⁴³² Survey results, row 280.

⁴³³ Interviewee 2460.

⁴³⁴ General Orders 13, 16, and 90.

⁴³⁵ Interviewee 159; Interviewee 34.

⁴³⁶ Interviewee 34

H. Gender issues

Some cadets consider gender issues at VMI to be of greater concern than those of race and ethnicity. By way of illustration, one Caucasian male cadet stated (in a free-form survey response), “Personally, I feel that discrimination against women is much more common than my brother rats of color.”⁴³⁷ Similarly, in an interview, another cadet stated that it is harder to be a woman at VMI than a minority student.⁴³⁸ The Team examined these issues in each of its investigation methods.

1. Sexual Assault

Sexual assault is a problem at VMI. Before proceeding to discuss the findings, it bears mentioning that this report leaves out considerable detail about female cadets’ experiences with assault, negative ensuing treatment from fellow cadets, specific frustrations with their attempts to report the incident, requests for help and accommodations that were declined or left unaddressed, and how their assault affected them mentally, physically, and academically. This report endeavors to provide sufficient detail to explain the substance of the investigation’s findings, while omitting potentially identifying detail so as to protect the anonymity of those cadets who chose to participate and share their experiences.

Many women chose not to share their experiences. The Team heard from numerous female cadets and alumni, and/or their representatives and family members, that they were assaulted and harassed at VMI, but that they did not wish to participate in the investigation out of fear of VMI and its alumni.

Sexual assault was a common topic in interviews of female cadets and alumni. A number of female cadet interviewees reported that they were sexually assaulted on post or that they know of other female cadets who were. One current female cadet described an experience during her rat year in which a male cadet entered her room and groped her breasts. She said that she reported it through the CEA reporting channel, but no action was ever taken.⁴³⁹ This same interviewee said that she told her cousin not to come to VMI because she is terrified her cousin would be raped since it happens so often.⁴⁴⁰ Many female cadets indicated that the policies requiring that cadets keep doors unlocked and window shades open (unless actively changing) increase fears of sexual assaults.⁴⁴¹ One female cadet described these policies as having the effect that women on post “feel unable to be out of the

⁴³⁷ Survey results, row 10.

⁴³⁸ Interviewee 171.

⁴³⁹ Interviewee 205.

⁴⁴⁰ *Id.*

⁴⁴¹ Interviewee 202, Interviewee 2461.

sight of men.”⁴⁴² Survey responses align with the interviews: of the current female cadets who participated in the survey, 14% reported being sexually assaulted at VMI, and 63% reported being told directly by others they had been sexually assaulted.⁴⁴³ Among current male cadets, 3% reported being sexually assaulted at VMI, and 22% reported being told directly by others that they had been sexually assaulted or harassed at VMI.⁴⁴⁴

A theme of distrust toward VMI’s ability to effectively investigate sexual assaults emerged during this Team’s investigation. One current female cadet felt that if she were to be a victim of a sexual assault, the Commandant staff would sweep it under the rug, so she would go straight to the police instead.⁴⁴⁵ She also expressed concern that *she* might get in trouble if she reported it to commandant staff. Likewise, another current female cadet reported that another female cadet was recently raped on post, and that she and her friends were still trying to decide what to do about it—they are not sure whether the friend should report it since the friend was drunk at the time and therefore might get in trouble herself.⁴⁴⁶ She said that alcohol use is a serious violation and that this creates a barrier to reporting assaults that involve alcohol.

One current female cadet said she was sexually assaulted on post, and reported it through the proper channels, but the VMI investigator taking her report cautioned her that the report would ruin the commission and career of her assailant.⁴⁴⁷ The offender was punished with only 10 demerits, 6 weeks of confinement, and 30 penalty tours.

Another cadet (the one expressing the retaliation fear, above) recounted an instance in which a friend spoke to commandant staff about experiencing a sexual assault. The commandant staff member told her, if you cannot handle sexual assaults, you should not be at VMI.⁴⁴⁸ The commandant staff member declined the Team’s request for an interview.

⁴⁴² Interviewee 2461.

⁴⁴³ Appendix A at 407, 409.

⁴⁴⁴ *Id.*

⁴⁴⁵ Interviewee 2461 (first interview).

⁴⁴⁶ Interviewee 210.

⁴⁴⁷ Interviewee 143.

⁴⁴⁸ Interviewee 2461. The investigation received information that this member of the commandant’s staff made similar, appalling, comments to another sexual assault victim, telling her that maybe VMI was not the place for her and that she was ruining a good cadet’s life (in reference to her insistence that the male cadet had sexually assaulted her). The female cadet did not want to share her full experiences with the investigation out of fear of retribution.

Among those who participated in the survey, 61% of current male cadets strongly or somewhat agree that VMI's method of addressing and adjudicating reports of sexual harassment and assault is appropriate, while 12% strongly or somewhat disagree (28% have insufficient information to respond or neither agreed nor disagreed). Among female cadets, by contrast, 47% somewhat or strongly agree that the method is appropriate, and 32% somewhat or strongly disagree (21% not enough information or neither agree nor disagree).⁴⁴⁹

Cadets made similar comments in responses to the free-form survey questions:

- “1. Being able to lock our doors at night would reduce the number of sexual assaults and let women feel safer. 2. Fixing the cameras around barracks would allow people who are assaulted have evidence of the perpetrator entering their room.”⁴⁵⁰
- “I would like to see less guilt tripping when people report sexual assault and harassment here. When I reported mine, I was told several times that ‘he may lose his commission or may not graduate on time’ because of this, and I felt so bad the entire time.”⁴⁵¹
- “I know of women at this school who have been sexually assaulted or even raped by male cadets. The harshest punishment I have heard of is a suspension for that literal crime. But, if a cadet is caught cheating on a quiz that is worth 5 points they can be permanently expelled and shunned from the school.”⁴⁵²

In addition, two other concerns related to sexual assault on post were commonly discussed. First, interviewees raised concerns over the efficacy of the sexual assault training provided to cadets. Documentary evidence shows that VMI conducts a number of assault-related trainings. But discussions with cadets reveal a feeling that these are ineffective or even counterproductive. One female cadet said that the bystander training was a joke, and that the corps does not take it seriously⁴⁵³; another female cadet also said that bystander training was deficient and that the trauma of her assault was exacerbated by counter-productive efforts of well-intentioned fellow cadets after the fact.⁴⁵⁴ Likewise, a female cadet said that the male cadets act childishly and offensively during the Title IX training, and

⁴⁴⁹ Appendix A at 410

⁴⁵⁰ Survey results, row 19 (Caucasian female).

⁴⁵¹ Survey results, row 35 (Caucasian, female).

⁴⁵² Survey results, row 41.

⁴⁵³ Interviewee 143.

⁴⁵⁴ Interviewee 2444.

also do not take it seriously, and there is no consequence for this behavior.⁴⁵⁵ Further, some members of the faculty or administration sought to draw a distinction between “touching someone’s butt” and “real sexual assault.” And, some interviewees felt that the support services offered to cadets on post—like academic accommodations, physical health services, and especially mental health services—were insufficient.⁴⁵⁶

As to alumni, over half of the alumni interviewees attended VMI before gender integration, and the Team was able to interview only a small sample of alumni women. Likewise, a few alumni came forward to report instances of sexual assault or harassment, but the relatively small number of female-alumni survey responses and interviews limit the ability to draw conclusions or impressions from that information about the overall prevalence of sexual assault on post in years past. Still, some alumni described some troubling instances that occurred at VMI, as described in the March 8 interim report, pages 35-36.

2. Sexual harassment, stalking, and other threats

Among current female cadets who responded to the survey, 27% reported that they had been sexually harassed at VMI.⁴⁵⁷ Consistent with this, a current male cadet stated that sexual harassment is a part of the culture at VMI and that women are regularly harassed.⁴⁵⁸ As for alumni, 46% of female alumni who responded to the survey (17 of 37) reported that they were sexually harassed at VMI.⁴⁵⁹

As noted in the interim report, several recent alumni (2018–2021) alleged that a member of commandant staff had repeatedly walked into women’s rooms when they had their shades down, which is a sign that they are in the process of changing clothes.⁴⁶⁰ One said that this staff member walked in on her when she was in her underwear and that he also did this to several other female cadets.⁴⁶¹ It appears that staff member was reported and assigned a different position, but not terminated.

A female graduate (2010–2013) explained that she reported instances of harassment to the Inspector General more than once, but that there was never any follow up. For example, a particular cadet threatened multiple times to kill her and

⁴⁵⁵ Interviewee 363.

⁴⁵⁶ Interviewee 2444; Interviewee 205; Interviewee 143.

⁴⁵⁷ Appendix A at 408.

⁴⁵⁸ Interviewee 2440.

⁴⁵⁹ Appendix A at 712.

⁴⁶⁰ Interviewee 20.

⁴⁶¹ Interviewee 17.

engaged in behavior that suggested the threat was legitimate. She also woke up in the night several times to find him sitting in her room. She believes no action was taken because he was the son of a prominent graduate.⁴⁶²

A female graduate ('02, the second class to include females) reported that the second year after the integration for women was awful and that male cadets were committed to driving female cadets to quit, because the press stopped watching after the first year. She recounted that a male cadet peed on a female cadet when she was sleeping, that males in her company defecated in bags and threw the bags into the female cadets' rooms, and that male cadets would go to the rooms of female cadets and pee on their towels. She was pulled out of her bed at night and taken to a dark room where she was questioned about her dating and sexual activity by a member of the Honor Court, who was later found to have exploited his position to harass female cadets. This alumna was not assaulted during her time at VMI. Still, her VMI experience was so traumatic that she does not speak about it.⁴⁶³

Sexual harassment also exists in some measure among faculty and staff as well: 14% (5 of 30) of female faculty, 22% (2 of 9) of female administrators, and 6% (4 of 59) of other female staff reported being sexually harassed at VMI.⁴⁶⁴ A current female faculty member recounted going to a convention and being assigned to a suite with a male colleague; when the colleague tried to enter her room at night while drunk, she had to put a chair against the door to keep him out. When she reported this incident, it was laughed off.⁴⁶⁵

3. Other harassment and social status

Some female cadets said there is an environment of intolerance toward female cadets on post. One interviewee said that on Jodel, which is an anonymous geo-based social media site, there are daily degrading comments about women, sometimes specific women.⁴⁶⁶ This interviewee also felt that the men do not seem to want women at VMI.⁴⁶⁷ Another female cadet echoed this sentiment, stating that there continue to be people at VMI who do not want women to be there at all.⁴⁶⁸ One female cadet described the environment as a "boys' club," and another female cadet described seeing a sticker on a water bottle that said "Keep VMI for the boys."⁴⁶⁹

⁴⁶² Interviewee 1768.

⁴⁶³ Interviewee 303.

⁴⁶⁴ Appendix A at 469, 530, 590.

⁴⁶⁵ Interviewee 82.

⁴⁶⁶ Interviewee 163.

⁴⁶⁷ Interviewee 163.

⁴⁶⁸ Interviewee 2437.

⁴⁶⁹ Interviewee 143, Interviewee 2437.

There is a double standard, a cadet told us, in which the female cadets have to work harder to be accepted and noticed, and they are subject to a high level of scrutiny, particularly concerning social behavior.⁴⁷⁰ The reputation of women on post, she told us, is much more fragile than that of men.⁴⁷¹ Of those who participated in the survey, 28% of current female cadets rated the extent to which women are discriminated against at VMI as “a lot,” as compared to only 7% of male cadets.⁴⁷² In survey comments, female cadets indicated that “the treatment of women and the discrimination against women are horrible”⁴⁷³ and that “[t]his school is extremely sexist but no one is willing to address it or take it seriously.”⁴⁷⁴

During discussions with cadets about gender dynamics on post, the term “sheed” was often brought up. “Sheed,” which is considered to be shortened version of the term “she-det,” is used to describe female cadets at VMI. Whether there is a derogatory connotation associated with the term varied widely among interviewees. Some female cadets were not personally offended by the word,⁴⁷⁵ and some use it to describe themselves and their female friends.⁴⁷⁶ Other people thought the word was offensive though, especially depending on the use and tone.⁴⁷⁷

As already recounted in earlier sections, multiple male cadets saw things differently, feeling that female cadets were given unfair advantages on the basis of gender, including being treated better in the Rat Line,⁴⁷⁸ being given more leeway to get in trouble before serious consequences result,⁴⁷⁹ and in competing for leadership positions. Similarly, a male cadet reported that the lower standard for physical tests for women causes a grudge among some of the male cadets.⁴⁸⁰

Many of the women who attended VMI reported feeling some targeting based on their gender.

⁴⁷⁰ Interviewee 2439.

⁴⁷¹ *Id.*

⁴⁷² Appendix A at 412.

⁴⁷³ Survey results, row 236.

⁴⁷⁴ Survey results, row 285.

⁴⁷⁵ Interviewee 2439.

⁴⁷⁶ Interviewee 341, Interviewee 2415.

⁴⁷⁷ Interviewee 118.

⁴⁷⁸ Interviewee 211.

⁴⁷⁹ Interviewee 181.

⁴⁸⁰ Interviewee 209.

2010–2013

- A female graduate thought male alumni perpetuate sexism, such as by wearing t-shirts that say “Save the Males.”⁴⁸¹

2006–2009

- An alumna reported that while she felt that all women were to officially serve in all of the roles VMI had to offer, very few actually did, and it was rare for women to hold any regimental leadership positions at all.⁴⁸²
- A female graduate said that male cadets expressed hatred and made derogatory remarks; there was even a group called the “Black Hand Society” that was trying to find a way to remove female cadets.⁴⁸³
- Another female cadet reported being told she did not belong because she was a woman.⁴⁸⁴

2002–2005

- An alumna reported never being placed on guard duty with certain male cadets just because those males did not want to be associated with the women.⁴⁸⁵

Again, other alumni reported better experiences. A female graduate (2010–2013) said she did not experience any sexism at VMI.⁴⁸⁶ And several current cadets reported positive experiences, including pride in how VMI treats women and how male cadets (on balance) treat them:

- “VMI is not sexist. I am a female and have never once felt like I was being judged for being a female. No one cares that you’re a female, you’re a BR [Brother Rat].”⁴⁸⁷
- “As a Hispanic female at VMI I can confidently say that I have never experienced any racism nor felt at a disadvantage for being a female.

⁴⁸¹ Interviewee 1768.

⁴⁸² Interviewee 10.

⁴⁸³ Interview 10.

⁴⁸⁴ Interview 24.

⁴⁸⁵ Interviewee 2476.

⁴⁸⁶ Interviewee 35.

⁴⁸⁷ Survey results, row 103.

At VMI you are judged by your character and honor, not by your race or the color of your skin.”⁴⁸⁸

- “While I have encountered men who made it loud and clear that they don’t think women should be here, I can tell you for far more hours about the good men and women who remind me on a daily basis that I DO have a place here, and that I earned it.”⁴⁸⁹

Other female cadets say that gender disparity and sexism exist at VMI but adopt a “that’s just the way it is” approach to it.⁴⁹⁰

As a final note on this subject, the historical experience of women at VMI is important. Women were first admitted to VMI in 1997. VMI did not decide to admit women, it was forced to, after it lost a protracted legal battle and was compelled to gender-integrate following the Supreme Court’s 7–1 decision in *United States v. Virginia*, 518 U.S. 515 (1996). This Supreme Court case is symbolic of VMI’s staunch views on preserving tradition in the face of change, and is a reminder that only 25 years ago it felt that women had no place at the institution. It appears that this feeling remains among important members of the VMI community. Indeed, VMI Board of Visitors Chair Bill Boland—the person with perhaps the greatest power and influence in the VMI community—apparently led VMI’s legal efforts to resist gender integration throughout the early and mid-1990s.⁴⁹¹ (Again, Mr. Boland has managed VMI’s efforts and decisions with respect to this investigation.)

As noted above, VMI had problems with the treatment of women from the start, including a male Honor Court member who used his position to sexually harass women. To VMI’s credit, it expelled that cadet in 1999. But it denied that this misconduct reflected on the VMI culture—the Institute said that it did “not indicate a larger problem of sexual misconduct at VMI,” and was simply “an isolated incident involving a single cadet.” The Institute said that this problem had “happened everywhere. It’s just our turn now.”⁴⁹²

That phrasing from 1999 matches VMI’s phrasing today on the subject of race. As Mr. Boland stated last fall, “Virtually all colleges in the 50 states can point to inappropriate behavior by their students or faculty members. VMI is not immune.” This fits VMI’s pattern—noted by many interview participants—of minimizing and avoiding problems instead of confronting and fixing them.

⁴⁸⁸ Survey results, row 137.

⁴⁸⁹ Survey results, row 35.

⁴⁹⁰ Appendix B at 9.

⁴⁹¹ His name appears as counsel of record in multiple reported decisions from the lower federal courts between 1991 and 1996, representing VMI in the same gender-integration dispute.

⁴⁹² <https://www.washingtonpost.com/archive/local/1999/06/27/top-cadet-expelled-from-vmi/10d8b3ff-a8f3-4f39-b829-1e750ab1d7f9/>.

Issues of gender inequity and sexual assault may not be unique to VMI. But the character, quantity, and severity of the issues described above do not exist everywhere. These issues are worse at VMI and they need to be addressed immediately.

I. VMI's Title IX process

In light of the above concerns, and consistent with the parameters of this investigation, the Team examined VMI's Title IX process closely.

1. Overview of Title IX

As noted earlier, Title IX of the Education Amendments of 1972 provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” 20 U.S.C. § 1681. Title IX is enforced by the Department of Education's Office of Civil Rights (OCR). Since its enactment, court rulings and guidance issued by OCR have made it clear that Title IX's prohibition against sex discrimination includes discrimination on the basis of sexual orientation and gender identity. Additionally, sex discrimination includes sexual harassment and sexual violence.

Before August 2020, the requirements for addressing alleged Title IX violations were set forth in guidance documents issued by OCR, including its “Dear Colleague” letters. In general, OCR required schools to have a notice of non-discrimination policy, appoint a Title IX Coordinator, and establish grievance procedures for investigating and responding to Title IX complaints. Additionally, guidance required institutions to provide training to their Title IX Coordinators, investigators, and hearing officers, and recommended that schools train students, faculty, and staff regarding Title IX and the school's process for addressing complaints.

OCR implemented regulations effective August 14, 2020, making several significant changes from OCR's prior guidance, including changes that limit the range of conduct requiring institutional action under Title IX and that impose a number of new procedural requirements.

The vast majority of the reports received (through surveys and interviews) and the records obtained involve pre-2020-amendments incidents.

2. Relevant VMI policies

VMI has three policies that address equity, including gender equity: the Superintendent's Statement on Equity at VMI, General Order Number 13 (GO 13); VMI's Discrimination, Harassment and Sexual Misconduct policy, General Order Number 16 (GO 16); and its Retaliation policy, General Order Number 90 (GO 90).

General Order 13 was issued in January 2021 by the Superintendent, MG Wins. It delineates MG Wins' expectation that VMI "maintain a culture of civility and mutual respect" and that all activities "be conducted in a manner that meets the highest standards for equitable treatment of every individual." It likewise relays MG Wins' intent that questions of "impermissible discrimination, including harassment, based on race, sex, color, national origin, religion, age, veteran status, sexual orientation, pregnancy, genetic information, or against otherwise qualified individuals based on disability or based on any other status protected by law" be addressed "with impartial process, efficiency and energy." General Order 13 instructs employees to report incidences of sexual violence to the Inspector General, as mandated by Virginia Code §23.1-806, and directs staff, faculty, and cadets to report conduct that may potentially violate General Order 16 or General Order 90 (or both) to the IG as well.

General Order 16 is central to addressing all forms of discrimination and harassment, including sexual harassment and sexual violence. It was revised in August 2020 to comport with the new Title IX regulations mentioned above. Before August 2020, VMI relied on General Order 16, issued in 2015, which was approved by OCR as a result of a Voluntary Resolution Agreement between OCR and VMI. General Order 16 (both its current and former iterations) includes VMI's grievance procedures, which set forth the process by which complaints of harassment and discrimination are addressed. As stated in the policy, General Order 16's purpose is "to establish clearly and unequivocally that VMI prohibits discrimination, harassment, and sexual misconduct by individuals subject to its control or supervision and to set forth procedures by which such allegations will be filed, investigated, and adjudicated." The policy requires that employees and visitors report possible violations of General Order 16 to the IG. Cadets are allowed to report to the IG or a member of the IG's staff, the Commandant, or the assistant commandant for cadet government, or the Cadet Equity Association (CEA). In the event a matter is reported to any member of the CEA, that person may report it to the assistant commandant for cadet government, who must then notify the IG.

Regardless of to whom a report is made, no person may undertake independent efforts to determine whether a complaint has merit or can be substantiated without first reporting it to the IG.

General Order 90, also implemented in August 2020, prohibits retaliation against persons who have filed complaints of violations of a VMI policy or regulation or who have participated in any way in the investigation into such a complaint, including as a complainant, respondent, witness, investigator, decision maker, advisor, or appeals officer. Complaints of retaliation must be reported to the IG and are addressed via VMI's grievance procedures.

As noted above, non-Title IX disciplinary concerns can have a chilling effect on the reporting of sexual assault. Specifically, if an incident involved drugs or alcohol, as is often the case, a cadet might get themselves in trouble, or get

witnesses in trouble, for reporting the assault. Virginia law recognizes that this can have a chilling effect on any college campus, and thus makes it unlawful for any school to discipline a drugs or alcohol violation made in conjunction with a sexual assault report, and requires each school to establish immunity for these situations. But the law specifically exempts VMI, and only VMI, from the rule:

The governing board of each nonprofit private institution of higher education and each public institution of higher education *except the Virginia Military Institute* shall include as part of its policy, code, rules, or set of standards governing sexual violence a provision for immunity from disciplinary action based on personal consumption of drugs or alcohol where such disclosure is made in conjunction with a good faith report of an act of sexual violence.

Va. Code § 23.1-808 (emphasis added).

General Order 16 and General Order 90 comply with the 2020 Title IX amendments. They were prepared with the advice of counsel and approved by OCR. The policies are well written and easy to understand, clearly describing VMI's policies prohibiting discrimination, harassment, sexual misconduct, and retaliation, the vehicles through which a complainant may report alleged violations, and the process followed once a report is received, including the investigation, hearing and appeals processes.

3. VMI's implementation of General Order 16

Among other duties (including the investigation of fraud and abuse), VMI's Inspector General serves as the institution's Title IX Coordinator. The IG reports directly to the Superintendent. COL Jeffrey Boobar served as the IG from 2015 until March 2021, when he became the interim chief of staff. Susan LeMert has been the interim IG since that time. SFC Christopher Bean serves a part-time assistant Title IX coordinator. The Team interviewed COL Boobar and Ms. LeMert; SFC Bean first accepted and then declined the interview request.

The IG is the only full-time staff member in the IG's office. While others serve as assistant IGs, they do so on an as-needed basis, having other full-time jobs within the Institute. Assistant IGs are selected by the Superintendent based upon recommendations from the IG and are provided extensive investigator training.

VMI provided the Team with Title IX investigation files beginning with the 2014–2015 academic school year through 2020. The Team's review of those files and interviews of relevant administrators indicates that the IG's office is in compliance with Title IX and OCR guidance and regulations since that time, in terms of its handling of reports of sexual harassment and assault that make it into the Title IX investigation and adjudication process. However, based on the information collected throughout this investigation, the Team cannot tell how reliable the initiation and implementation of the process is—that is, how often it is that sexual misconduct, including reported sexual misconduct, *makes it into* this

well-functioning investigation and adjudication process. The report discusses this further below.

a. Training

The IG's office is responsible for providing training to faculty, staff, and cadets to prevent the occurrence of discrimination and harassment, including that in violation of Title IX. To that end, the IG provides multiple kinds of training to all cadets throughout their time at VMI. Each rat is mandated to complete "Not Anymore Training," an online training tool provided by Vector Solutions that presents twenty scenarios, in August. Rats are required to get an 80% score to pass. All rats also receive StepUp bystander training taught by the CEA along with faculty advisors. Training is provided to all cadets at least annually by both internal and external resources and the training is designed to build upon what is learned in prior sessions. As noted above, however, certain trainings can be unhelpful or counterproductive in practice, given the content of the trainings, the limited scope of the trainings, and the behavior of male cadets during training sessions.

VMI takes clear and meaningful measures to ensure cadets are fully aware of its Title IX policies and practices, including how to report an alleged violation. VMI publishes such information on its website, on flyers and notices posted throughout the Institute, and on laminated cards provided to all cadets each year which they may put in their covers (hats).

b. The Title IX process

i. Pre-August 2020

Per information gathered from records and interviewees, before August 2020 when the new Title IX regulations were implemented, upon receipt of a report of sexual harassment, the IG would provide the complainant with support services including counseling (both within and outside VMI), chaplain assistance, no-contact orders if warranted, or other supportive measures. (Note that all employees of VMI are mandatory reporters who must inform the IG if they become aware of a possible Title IX violation.) Once the complaint was signed, indicating that the complainant wanted to proceed with the investigation, the IG notified the respondent of the complaint and their rights, and offered any necessary support services. The IG then began the investigation.

The IG investigated every Title IX case, along with an assistant IG. The two of them conducted all interviews and gathered evidence together. On completion of the investigation, the parties were allowed an opportunity to review the evidence. Thereafter, the IG and the assistant IG would work together to draft a report. That report included a timeline of events, a description of the evidence gathered including facts that would substantiate the allegations and those that would not, an analysis of the evidence, and a recommendation as to whether the complaint

was substantiated based on a preponderance of the evidence and, if so, proposed sanctions. Sanctions could include anything from Blue Book penalties (such as confinement, penalty tours, and demerits) to suspension or dismissal. Absent dismissal, the IG always recommended corrective action such as counseling, training, or community service (or some combination of the three). The parties were provided an opportunity to review the report and could submit written comments.

The report and all evidence gathered were then provided to the Superintendent who could approve, deny, or modify the IG's recommendations. Either party could appeal the Superintendent's decision to an appeals committee comprised of nine faculty and staff trained by the IG's office on Title IX and their role. After a hearing, the committee would draft a report including their decision as to whether there were grounds for the appeal. That decision would then be presented to the Superintendent who would make the final decision on the appeal.

ii. Post-August 2020

The process for addressing Title IX complaints since August 2020 has changed so as to comply with the new regulations. As before, on receipt of a Title IX complaint, the IG notifies the parties of their rights and provides supportive resources and the IG and an assistant IG investigate the complaint together, draft a report, and allow the parties to review the report and the evidence. While advisors were permitted before August 2020, the new regulations now require that both parties must have advisors throughout the process, either selected by the party or appointed by the Institute. Additionally, the investigation report is limited to a timeline and a description of the evidence. It no longer includes an analysis of the evidence, a determination of substantiation or non-substantiation, or recommended penalties.

The report is provided to the decision-maker, one of 12 trained decision-makers consisting of faculty and staff. The decision-maker is responsible for holding a hearing, including allowing for cross-examination, after which the decision-maker renders a decision. Either party may appeal. If they do so, a new decision-maker is selected to hear the appeal and render a decision. The decision-maker is the final adjudicator. The Superintendent is no longer involved in the process.

iii. Assessment of the IG's performance in addressing Title IX concerns

It is clear from the interviews and records that the IG's office has robust procedures for dealing with Title IX complaints. It takes necessary steps to ensure cadets, faculty, and staff are aware of their rights and responsibilities with respect to Title IX, as discussed above. Additionally, the IG, assistant IGs, and all others involved in the process, including members of the appeals committee under the

former rules and the decision-maker under the current regulations, receive extensive training on how to perform their jobs.

The Title IX files likewise reflect the IG's strict adherence to Title IX's mandates in the adjudication of formal, initiated complaints. The files include detailed timelines describing each and every step taken during the investigation process as well as reports describing all of the evidence gathered and careful and well-reasoned analyses of that evidence. Records reflect sanctions decisions that are proportionate to the violation. Notably, according to one administrator interviewee, the IG's office has only investigated and heard one Title IX complaint since the new regulations were implemented. Based on cadet interviews and VMI records, however, there is at least one and perhaps multiple investigations in process (i.e. not yet completed) post-August 2020. In any event, the Title IX files overwhelmingly address Title IX allegations made before August 2020.

iv. Structural concerns

VMI's records and VMI's administrator interviews convey an institution committed to ensuring that its cadets, faculty, and staff are free from discrimination and harassment and to responding appropriately when they are not. Notwithstanding, two areas of concern should be considered and addressed.

The first concern is the involvement of the CEA as a potential recipient of reported harassment, discrimination, sexual misconduct, or retaliation. The CEA's involvement may have a chilling effect on the reporting of Title IX complaints. Granted, cadets are not required to report to the CEA and may go directly to the IG or any employee of the institution and avoid going to the CEA altogether. Offering the option of reporting to the CEA also allows for more avenues of reporting, including avenues for those who are uncomfortable talking with a member of the faculty or staff. But based on its experience in this area, the Team has concerns that the following factors outweigh the benefits of the CEA's involvement:

- Sexual harassment and misconduct are serious matters. Title IX and its regulations make clear that it is the institution's obligation to address and remedy it. With the CEA's involvement, VMI adds another gatekeeper to the process, thereby risking that reports of harassment and misconduct will never make their way to it. This concern aligns with the responses heard several times in the investigations that assaulted cadets reported their assault but nothing happened, or that assaulted cadets are unsure whether and how best to report an assault. At least two cadets also indicated that they understood the CEA to be the only avenue of reporting.⁴⁹³
- While CEA members are provided training on their duties as recipients of alleged Title IX violations, the Team questions whether fellow cadets will

⁴⁹³ Interviewee 2444; Interviewee 205.

always forward reports of alleged discrimination or harassment, especially where, for instance, the alleged respondent is a brother rat or friend of the CEA member.

- Consistently, there is a risk of retaliation if the alleged respondent is a brother rat or friend of the CEA member who receives or learns of a report of sexual misconduct.
- Many cadets are uncomfortable sharing that they have been the victim of sexual harassment or misconduct with anyone, much less other cadets. While, as mentioned above, cadets are not required to report Title IX matters to the CEA, the Team learned of an incident in which a cadet other than the victim reported the alleged misconduct to a member of the CEA without the victim's knowledge or consent. Victims who do not want their fellow cadets to know about the matter may be traumatized.
- Similarly, the Title IX regulations stress that institutions must maintain complainant confidentiality in the reporting process.⁴⁹⁴ The CEA reporting mechanism may undermine that principle. There is a risk that once one member of the CEA becomes aware of a reported Title IX violation, the information will be spread throughout the CEA and among other cadets, thereby compromising the victim's confidentiality. This is especially problematic at VMI given the tendency of women to be shamed or given reputations for interactions with men.

The second concern is General Order 16's Cadet Amnesty provision. The Cadet Amnesty provision in General Order 16 (§ 14) provides that, to facilitate reporting, VMI generally will provide amnesty to a cadet who reports a violation of General Order 16 for "minor disciplinary infractions, such as underage drinking or fraternization, at the time of the incident." But that amnesty is qualified. Cadets receive no amnesty "if (1) the minor disciplinary infraction places or placed the health or safety of any other person at risk or (2) the cadet who committed the disciplinary infraction previously had been found to have committed the same disciplinary infraction." So, if a victim of or witness to an assault has a past drinking infraction, and an assault report would reveal they were drinking again, amnesty would not apply, and the report of sexual assault would result in discipline for the drinking infraction. As discussed above, this concern is not theoretical, and cadets say they are or have been deterred from reporting an assault for this reason.

Amnesty for minor disciplinary infractions may also be offered to "cadets who are witnesses in an investigation under this policy, who intervene to help others before a violation of this policy occurs, or who receive assistance or

⁴⁹⁴ 34 C.F.R. § 106.71.

intervention.” But “abuse” of amnesty requests may result in a refusal by VMI to extend amnesty to the same cadet repeatedly.

It is also not apparent to what extent these limited amnesty provisions may be communicated to or known throughout the corps. The value of an amnesty policy, even if limited, is to remove the chilling effect of alcohol and drug infractions, and to give comfort to cadets that they and others will not suffer disciplinary infractions if they report; if the cadets do not know that the amnesty policy exists, the policy cannot have its intended effect.

While the Team understands that disciplinary rules (like those for drinking and drugs) matter, the failure to offer complete amnesty in these circumstances undermines VMI’s efforts to ensure that all sexual harassment and misconduct is reported. It likewise relays a message that punishing cadets for infractions matters more to VMI than protecting those who are victimized by sexual harassment, including sexual assault.

v. Practical concerns

As noted above, on the subject of Title IX sexual misconduct, VMI’s structural mechanisms for educating cadets and addressing and adjudicating reports of misconduct are robust. VMI’s procedures, investigation and adjudication records, and administrator interviews convey this. Cadet interviews and survey responses, however, raise concerns about how this works in practice at VMI, as noted above

These experiences do not appear to be reflected in the VMI Title IX documentary records, which show a thorough and diligent process for those formalized complaints *that lead to the initiation of* disciplinary proceedings. Therefore, there appears to be significant risk that future victims of sexual misconduct will feel deterred from reporting, that sexual misconduct will be reported with no action, or will be reported and met with attempts to dissuade the reporter from following through. VMI should address this concern. If done well, VMI will achieve significant improvement in this area, since the formal process works well once it is initiated.

4. Title IX compliance

Again, the objectives of this investigation include the identification of civil rights violations. Title IX—part of amendments to the Civil Rights Act and enforced by the Department of Education’s Office of Civil Rights (OCR)—is a civil rights law. While the Team could not individually investigate each troubling report above, these incidents do implicate Title IX compliance, such as:

- If an institute receives reports of sexual misconduct and takes no action, that violates at least Title IX regulation 34 C.F.R. § 106.44, “Recipient’s response to sexual harassment.”

- VMI personnel’s actions in response to reports (“you don’t belong at VMI” and concern for respondents’ careers) could also implicate 34 C.F.R. § 106.44 (in receiving a report, an institution “must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.”).
- If VMI relies on a reporting mechanism that cannot reliably maintain confidentiality, as the Team is concerned is the case with the CEA, this might implicate 34 C.F.R. § 106.44(a), which requires that the reporting and responding parties’ names be kept confidential.

As noted above, the Team found that VMI’s investigation and adjudication procedures, once initiated, were robust and compliant with Title IX, specifically 34 C.F.R. § 106.45.

As for other gender-based conduct, like sexual harassment, the investigation did reveal instances of this, and cadets and staff alike reported experiencing it. Whether any specific instance of sexual harassment rises to a Title IX violation requires a particularized analysis, and an adjudication process conducted by the institution. *See* 34 C.F.R. §§ 106.30 & 106.45. The Team did not and could not individually investigate each such report, especially for the anonymous survey responses. Based on VMI’s employee discipline records and its Title IX adjudication records, it is clear that many instances of sexual harassment go unreported, and/or that the Institute does not pursue such reports. Just as VMI should improve its reporting and initiation processes for assault reports, it should do so for harassment reports as well.

J. LGBTQ issues

The investigation revealed perceptions of inequity in the LGBTQ community that were largely consistent with the perceptions around race and gender. Not all cadets who identify as gay feel unwelcome or discriminated against, but some do.

For example, a cadet who identifies as gay stated that he feels relatively comfortable at VMI.⁴⁹⁵ Although someone on Jodel once called him a “f*g,” he thinks this type of comment is not specific to VMI’s culture, and that it could have been made at any school.⁴⁹⁶

⁴⁹⁵Interviewee 267.

⁴⁹⁶*Id.*

However another cadet⁴⁹⁷ stated that a professor often alluded to her family's intolerance of gay people, and one cadet⁴⁹⁸ reported that homophobic jokes are frequently made. Another cadet noted, "it's so messed up the number of times you hear homo, gay [derogatorily], f*****t," at VMI.⁴⁹⁹ In response to the survey, one cadet stated: "The negative attitude towards being openly LGBTQ at this place needs to be addressed. I know several people who are/were afraid to be themselves. And once they did come out, they were shunned and made fun of."⁵⁰⁰

Survey responses on this subject are also noteworthy. Forty-six percent of current cadets agreed "a little" or "a lot" that LGBTQ individuals "have a difficult time fitting in or feeling like they belong" (though only 14% said "a lot"); 29% percent said they believed LGBTQ individuals were discriminated against.⁵⁰¹ Cadet answers varied on the use of homophobic slurs, with most cadets' having heard such slurs at VMI but in varying degrees of frequency—40% reported that they never heard them, 25% once or twice, 17% a few times, and 19% more than a few times. Faculty and administration heard this language less frequently, but still heard them: 49% of faculty heard them, 10% (13 people) more than a few times; 44% of administrators heard them, 4% (one person) more than a few times.⁵⁰²

VMI does not appear to have any LGBTQ-specific clubs or groups, and does not appear to have implemented measures specifically directed toward LGBTQ tolerance. In MG Wins' May 14 letter, he noted that the VMI Alumni Agencies' Board of Directors recently created a DEI Subcommittee, which "represents racial diversity, gender diversity, religious diversity, and LGBTQ considerations."⁵⁰³ Intuitively, the subcommittee appears to engage only with alumni—the letter notes that the subcommittee meets weekly and has sent an engagement survey to minority alumni.

Accordingly, any plan to address inequities at VMI should take into account LGBTQ cadets as a minority group and include education and training.

K. Issues related to religion

The same is true for cadets in minority religious groups. A few cadets described instances of religious intolerance.

⁴⁹⁷ Interviewee 197.

⁴⁹⁸ Interviewee 374, follow-up interview.

⁴⁹⁹ Interviewee 369.

⁵⁰⁰ Survey results, row 34 (male).

⁵⁰¹ Appendix A at 36, 84.

⁵⁰² *Id.* at 75.

⁵⁰³ Exhibit 6 at 13.

A Muslim cadet said that she felt that Muslims are painted in a negative light. She told the Team that during Halloween, two students dressed in burkas and pretended to be terrorists. When commandant staff witnessed this, they did nothing to address it.⁵⁰⁴ Although VMI makes some accommodations for Muslim students during Ramadan, this student felt that VMI unfairly denied her request to leave post to celebrate Eid.⁵⁰⁵

Another cadet stated that, as an atheist, he finds it difficult to talk about his beliefs on post.⁵⁰⁶

As was the case with respect to other minority groups, there were also cadets in a religious minority who had not experienced any religious intolerance. In a free-form survey response, one cadet stated: “I’m Jewish and . . . I have experience[d] nothing but tolerance.”⁵⁰⁷

The investigation revealed little evidence of religious intolerance at VMI. There is, however, a lack of religious diversity, or at least there was in the participation this investigation. For example, of the 1,626 survey respondents, 1,504 identified as Christian (94%), 16 as Jewish, 11 as Buddhist, 1 as Hindu, and 1 as Muslim. (Twenty-one answered “other,” and 72 preferred not to respond.) Because of this, VMI should address potential religious inequities and underrepresentation at the Institute in its DEI initiatives.

L. Financial information relating to diversity, equity, and inclusion

The investigation also examined whether VMI’s “internal funding decisions and distribution of state funds [are] equitably dispersed across departments, divisions, campus organizations, and other institutional entities[.]”⁵⁰⁸ Based on the limited information VMI and related entities provided and a review of the limited available metrics through which to measure VMI’s allocations, it is not possible to determine whether VMI’s internal funding decisions and distribution of state funds are “equitably dispersed.” Those decisions and distributions appear to be kept confidential.

1. VMI’s available budgetary funds

VMI has three primary funding sources: cadet tuition and fees (which are considered state funds), restricted and unrestricted private donor funds, and state general funds. For at least the past six years, cadet tuition and fees have provided

⁵⁰⁴ Interviewee 374, initial interview.

⁵⁰⁵ Interviewee 374, follow-up interview.

⁵⁰⁶ Interviewee 197.

⁵⁰⁷ Survey responses, row 266.

⁵⁰⁸ RFP 245-110420 at 3.

the largest sum of budgetary funds, followed by the private donations and then state general funds.

VMI's donor funds come in large part from alumni. The "VMI Alumni Agencies" is the consolidating entity that captures VMI's four alumni organizations: the VMI Alumni Association, VMI Foundation, Inc., VMI Development Board, Inc. and VMI Keydet Club, Inc. Although each of these component entities reports as a separate 501(c)(3) nonprofit corporation, they present their financial statements collectively because the corporations serve the common purpose of raising alumni funds and acting on behalf of alumni to support VMI.

The VMI Alumni Agencies' private donations include both restricted and unrestricted funds. Over the past six budget cycles, the vast majority (86–89%) of the private donations provided to VMI are restricted funds—that is, they may be spent only for certain purposes. The restrictions on the private donations are listed in individual memoranda of understanding for each donation. The Alumni Agencies declined the Team's request to produce the memoranda of understanding or the full list of the donations' restriction, and VMI stated that it does not maintain a full list of the restrictions or a copy of the MOUs. Instead, VMI provided the following examples of private donation restriction categories:

- Restricted to *discretionary use by a specific department* (e.g., chemistry or civil engineering). Restrictions may allow or prohibit certain classes of expenditures such as salaries, travel, etc.
- Restriction to *specific use* (such as cadet financial aid) and based on financial need, academic major, GPA, state or locality of residence, or other donor imposed restrictions.
- Restriction to *support/accomplish a specific purpose* (such as funding a speaker series, providing an emergency assistance fund for cadets, or funding cadet travel). The administering VMI department may be specified or assigned by VMI leadership.
- Restriction to *provide financial support for faculty positions and for chairs/professorships* in various academic departments.
- Restrictions to *support for other purposes from which State funds are excluded* from authorization.

The only restriction mentioned during interviews with representatives of VMI and the VMI Alumni Agencies that could be categorized as targeting gender or race was potentially a donation restricted to fund a specific sport scholarship of which only females participate (such as water polo).

The Team also noted that VMI's current donor landscape appears to allow a very small group of donors to have an outsized influence on VMI. Based on VMI's

2015–2019 financials and a presentation provided to the Team by the Alumni Agencies, only five donors comprise 33% to 48% of the Alumni Agencies’ donor receipts. When the Team asked, the Alumni Agencies declined to disclose who these five donors are. The Team thus cannot determine how these donations might impact funding priorities or other decisions at VMI, or whether these are the same five donors year over year.

Given the critical role that the Alumni Agencies play in funding and dictating VMI’s priorities, and given the overwhelming resistance among the VMI alumni community to DEI progress initiatives and Confederate disassociation, this report recommends greater transparency in the Alumni Agencies’ fundraising sources and funding decisions.

2. VMI’s budgetary process

VMI’s annual budget process begins in November when the governor’s office issues the budget. After any requests for additional funding by VMI are resolved, VMI receives an updated budget. In January or February, the VMI Alumni Agencies, based upon formulas and projected annual fundraising over the past 12 quarters (six years), provides VMI with the private (restricted and unrestricted) donor funds available for the budgetary fiscal year. Then, around February, VMI’s departments and divisions are provided the prior budget with the five-year average. The departments and divisions then turn their annual budget requests into the VMI treasurer’s office.

Once received, four to six VMI personnel review the budget requests. They then rank the budget requests in priority order based on VMI’s and the reviewers’ priorities and goals for the fiscal year. The reviewers hold a meeting and, generally speaking, it was reported that each reviewer walks away with something they wanted to accomplish and prioritize for the budget cycle. In the 2021–2022 budget process, priorities included office construction for its DEI office, 5% salary increases, and funds to have a full-time representative at the Office of the Attorney General assigned to VMI. At the end of the legislative session, when VMI knows what the tuition and fees will be, the Superintendent and the Board of Visitors approve the budget.

VMI financials are audited each fiscal year (July 1 to June 30). In January, VMI meets with the state auditing body for a kick off meeting. The auditors are reportedly provided with a copy of the VMI Alumni Agencies’ audit, rather than being provided access to the VMI Alumni Agencies’ books and records.

3. VMI’s distribution of state funds

When determining how to distribute the available state funds, VMI reports that it takes into account the amount of private restricted donations available for each department or division before distributing the state funds. In other words, VMI does not distribute state funds to a department if the department has private

restricted donations sufficient to meet its budgetary needs. VMI does this to ensure that each department is allocated the same amount of state funds. VMI then distributes the state general funds and fills any gaps with cadet tuition and fees.

Despite multiple requests from this investigation, VMI did not provide detailed general accounting ledgers until May 20, 2021. Although the Team attempted to analyze the distribution and allocation of funds to the different departments, divisions, campus organizations, and other institutional entities, this delayed disclosure (and apparent discrepancies in certain accounts and cost centers over the years) prevented the Team from completing a full and fair analysis of the state fund distribution.

VMI does not have a formal policy or procedure indicating how it factors race or gender equity into its budgeting or distribution processes. The investigation did not identify any historical regulation or statute formally requiring such a policy. Although no formal policy or procedure existed, VMI reports that it has taken into account equity, including race or gender, with “soft factors” during these processes. VMI provided the following as examples of initiatives it undertook before 2021 that it believes reflect an equitable allocation of resources.

- revised the Miller Academic Center’s mission to facilitate cadets’ academic success and timely progress toward a degree;
- developed a comprehensive compensation model for teaching and research faculty;
- established the Math Education Resource Center and the Open Math Lab to support cadets in both STEM and non-STEM majors to have success and thrive in mathematics;
- created the Writing Center to assist all cadets in the development of writing skills;
- engaged internal staff and external experts for disability services to assist cadets with disabilities;
- implemented a strategic plan for the VMI Police to facilitate growth and professionalism, and added a full time investigator to the VMI police, which will support the Institute’s Title IX coordinator;
- reorganized and expanded counseling services for the mental health needs of the cadets;
- expanded class offerings and services for the Institute’s wellness program to benefit faculty and staff;
- supporting purchases from small, women-owned and minority-owned businesses;

- striving to meet 100% of the demonstrated need of in-state cadets with grants and loans—for cadets who graduate with debt, the average is less than \$20,000;
- mitigating the impact of tuition and fee increases on low and middle income cadets;
- hosting an annual college orientation workshop for at-risk youth;
- waiving access fees for all services, support, clubs, and activities to use laboratories, facilities, or printing;
- providing standard housing to all cadets on post and a comprehensive food service program that is open and available for 13 hours a day;
- established the VMI Center for Undergraduate Research to more fully integrate student scholarly inquiry into the VMI experience;
- helped found the Shepherd Higher Education Consortium on Poverty, a national consortium to develop a curriculum and internship experiences that allow students to understand issues related to poverty in the United States; and
- created opportunities through “open enrollment” for both VMI summer semesters to serve the educational interests of Rockbridge County and surrounding area residents, as well as cadets.

Beyond that, VMI’s operating budget for fiscal year 2015–2016 indicates a footnote reflecting that its cadet counseling program added a budget component (under the title “Unique Military Activities”) “when new State funding was appropriated due to the assimilation of female cadets.”

VMI notes that there is no historical statutory or regulatory requirement to implement a formal equity policy and procedure for the budget process, but it believes that its funds are equitably dispersed. VMI notes that SCHEV’s “Virginia Plan” (approved in January 2021) encourages the types of measures described above: the Virginia Plan encourages all institutions of higher education to remove barriers to access and attainment by diverse students, students from economically disadvantaged backgrounds, and students with disabilities; to strengthen student support services (including mental health, mentoring, careers services, and student basic needs); to focus on affordability for both traditional and non-traditional students; and to support experiences that improve students’ employment outcomes, income, and community engagements.

4. Comparison with the DEI initiatives of other senior military colleges and Virginia institutions

In an effort to compare VMI to comparable institutions with respect to DEI planning, the investigation also included a review of the publicly available diversity, equity and inclusion initiatives at five senior military colleges. In reviewing the publicly available data, the Team reviewed whether the institution had a Diversity, Equity and Inclusion plan.

Table 13: Analysis of sample institutions’ DEI plans

	Institution	Type of institution	DEI plan
1	Texas A&M University	senior military college	Yes
2	University of North Georgia	senior military college	Yes
3	The Citadel	senior military college	Yes
4	Norwich University	senior military college	No
5	Virginia Tech	senior military college and Virginia public institution	Yes

The Team found that four of the five senior military colleges have written DEI plans. In comparison, VMI does not have a DEI plan, just a statement of diversity. The only reference to a plan in the reviewed materials was that in the 2015 six-year plan, VMI listed its *Vision 2039* goal of achieving a “Corps of 1500 that is diverse and includes at least 10% Female Cadets,” including a “goal of 150–200 in female cadet enrollment.”

Of the above institutions, Texas A&M’s diversity and inclusion report was the only plan that appeared to provide tangible metrics and goals that could be used to measure progress year-over-year. Including similar metrics in a DEI plan would allow VMI to measure its progress in the same way.

M. Alumni Agencies and access to success after graduation

One of the objectives the investigation evaluated is whether “alumni from underrepresented groups report perceptions of student achievement access to success after graduation.”⁵⁰⁹ The investigation examined the resources available to VMI alumni, including minority alumni, and compared them with the resources

⁵⁰⁹ RFP 245-110420 at 4.

available at other comparable colleges and universities and their alumni organizations. The evidence showed that, unlike its peers, the VMI Alumni Agencies do not have any organizational structure, support, resources, or scholarships specifically for the benefit of minority groups.

In terms of access to success after graduation, minority and women alumni interviewees generally did not indicate that they were denied access to VMI's powerful alumni network or hindered in any way in obtaining successful positions in the military, graduate school, or other jobs after graduation.⁵¹⁰ To the contrary, several minority and women alumni interviewees experienced support from the VMI alumni network in obtaining successful positions in the military, graduate school, or other jobs after graduation.⁵¹¹ However, other alumni said they ultimately chose not to attend alumni networking and other events because they felt uncomfortable at being the only woman or minority in the room, and were sometimes subjected to uncomfortable racial jokes that were not said in malice, but likely in a misguided attempt to make them feel more comfortable.⁵¹² One woman did report that, despite many efforts to engage with the alumni network, she was never accepted.⁵¹³

These inconsistent experiences may be attributable to the fact that, unlike comparable schools, the VMI Alumni Agencies do not have an organizational structure that includes affinity groups like an African American alumni association or a women's alumni group. This impedes the ability of African American or other minority alumni to connect, plan events, interact with current cadets or provide DEI or other input to VMI as a group. Other comparable institutions—including the Citadel, Washington & Lee, Virginia Tech, and the University of Virginia—have established minority alumni groups and/or offered regular events specifically for minority alumni. For example, the Citadel African American Alumni Association (or “CA4”) organizes activities for African American alumni including mentoring African American cadets.⁵¹⁴ UVA, Virginia Tech and Washington & Lee host Black Alumni Reunions for their graduates.⁵¹⁵ UVA, and Virginia Tech alumni support and fund alumni scholarships often earmarked specifically for African American and other minority students.⁵¹⁶

⁵¹⁰ See *e.g.* Interviewee 350; Interviewee 2473.

⁵¹¹ Interviewee 140.

⁵¹² Interviewee 137.

⁵¹³ Interviewee 1768.

⁵¹⁴ See <https://today.citadel.edu/tag/african-american-alumni-association/>.

⁵¹⁵ See <https://www.alumni.vt.edu/events/2018/04/bar2018.html> (Virginia Tech); <https://my.wlu.edu/alumni-engagement/campus-events/affinity-reunions/black-alumni-weekend-2019> (Washington & Lee); <https://alumni.virginia.edu/reunions/black-alumni-weekend/> (University of Virginia).

⁵¹⁶ See <https://aig.alumni.virginia.edu/ridley/> (University of Virginia); <https://www.inclusive.vt.edu/alumni/aab/bar/scholarship.html> (Virginia Tech).

The only documentation provided by the Agencies was the PowerPoint presentation used in a March 2021 meeting. Despite multiple requests, no other documents were received. Accordingly, the investigation considered information provided at this meeting and a review of publicly available information, and concluded that the VMI Alumni Agencies are far behind their peers in Virginia and at other military colleges in terms of alumni DEI efforts. The Agencies do not fund any scholarships for minority cadets (other than athletic scholarships), support affinity groups, or plan events for minority alumni.

The Alumni Agencies are aware that they have fallen short when it comes to diversity and provided some information to the Team on steps they have taken to respond. According to the Alumni Agencies, in approximately 2012–2013, the Agencies began actively pursuing minority involvement in its Board after realizing that the Agencies’ leadership was no longer fully representative of the corps and alumni base. Currently, the Agencies have three African American members and one female member on a 27-member Board. In April 2018, the Agencies established a director-at-large position for training and diversity.

Most of the concrete DEI efforts highlighted by the Alumni Agencies occurred beginning in the summer of 2020 and focused primarily on improving diversity in leadership, efforts to engage alumni in discussions, and a partnership with the Citadel:

- In June 2020, the Agencies initiated a series of “Diversity Discussions” for alumni focusing on their experiences with, and feelings about, diversity and inclusion. These discussions have been held in June, July, August, September, and November of 2020, with one planned for April 2021. Alumni from the classes of 1972 to 2020 have participated in the discussions. The discussions have included feedback from minority cadets about things they may have experienced at VMI that were not handled correctly, and whether they thought procedurally things could have been done better. The Agencies noted that during these discussions, several minority alumni voiced a desire to be more engaged with the alumni community.
- In July 2020, they formed the Agencies’ Diversity and Inclusion Subcommittee (the “D & I Subcommittee”), which is chaired by Grant Harris, an African American alumnus from VMI’s class of 2006. According to the Alumni Agencies, the D & I Subcommittee operates under a charter that includes the objective of increasing minority leadership through measurable goals.⁵¹⁷ D & I Subcommittee includes 11 members from the classes of 1980 through 2019, and the Agencies noted that it is diverse in terms of religion, gender, sexual orientation, and race, although it did not provide specific details and the Team could not validate them. The D & I Subcommittee’s

⁵¹⁷ The Team requested, but did not receive, a copy of the charter.

focus is primarily on increasing participation and representation in leadership of the Agencies, and educating the alumni base of their efforts.

- The feedback from the Diversity Discussions led to the dissemination of a Minority Alumni Engagement Survey in November 2020. This is a two-part survey, and the second part was planned to have been sent out in April 2021 as of the date of the presentation to the Special Investigative Team. According to the Alumni Agencies, the first part of the survey is more generic and intended to establish the landscape of overall alumni engagement. The second part is intended to lead to actionable results to improve overall alumni engagement, and particularly minority alumni engagement.
- Beginning in November 2020, the Agencies formed a partnership with the Citadel, and specifically its Chief Diversity Officer Shawn Edwards. Ms. Edwards has guided VMI with respect to diversity strategies, and a VMI alumnus located in Charleston, South Carolina audits meetings at the Citadel to learn from the school's diversity and inclusion efforts. The Citadel alumni association also has a diversity and inclusion committee whose chairman is included in VMI discussions.
- The Agencies have an alumni engagement conference planned for July 2021, which will include breakout sessions and presentations focused on diversity and inclusion.

The VMI Alumni Agencies have taken positive steps in the last year to begin to address how they can promote diversity in the alumni community. However, they are far behind their peers and need to evaluate and implement efforts to connect with minority alumni and provide assistance for non-athlete minority cadets.⁵¹⁸

N. Faculty matters

The investigation revealed some issues raised by faculty that may relate to race or gender, but less directly than many of the issue highlighted already. These issues should also be reviewed as VMI moves forward with any evaluation or remediation of the current climate.

For example, many faculty referenced VMI as a “three-legged stool,” with the three legs being the military, academics, and athletics and expressed frustration that the academic leg is not given as much emphasis as it ought to be, given that VMI is first and foremost a college.⁵¹⁹ In light of the fact that it is a liberal arts college and that only about half of its cadets take a military commission upon graduation, some members of the faculty perceive the heavy emphasis on the

⁵¹⁸ See Recommendation 3(j).

⁵¹⁹ See, e.g., Interviewee 2414.

military instead of on academics as serving the long range plans of only half of the cadets. For example, Interviewee 2464 noted that the emphasis on academics shifts based on who is the Dean of Faculty and whether the Dean comes from an academic or military background. The same interviewee indicated that the current Dean of Faculty has made a concerted effort to place greater emphasis on and prioritize academics. Interviewee 84 stated that the administration under GEN Peay, many of whom are still at VMI, view the faculty as “whiners” and do not value their contributions to the Institute as much as those with military backgrounds or experience. Some faculty members noted their perception that cadets do not respect non-uniformed or lower-ranking staff or faculty as much as uniformed faculty and administrators.⁵²⁰

A number of faculty also questioned whether VMI’s top-down approach to decision-making actually reflects an appropriate military structure. For example, a recurring complaint was that VMI has no faculty senate, even though the U.S. Military Academy and the U.S. Naval Academy have faculty senates, which suggests there is a way to include faculty input even in a military setting.⁵²¹ Some faculty noted that the U.S. military welcomes input from junior leaders and so is a more deliberative body than VMI, and that in any event a top-down, authoritarian structure is a poor fit for an academic setting.⁵²²

V. Conclusion

The VMI cadets, employees, and alumni that came forward as part of the investigation are generally committed to VMI and its success. They are proud of their experiences at VMI and grateful for the friends and mentors they met there. The vast majority were thoughtful, respectful, and cognizant of the challenges facing VMI. Most were willing to adopt some form of change at VMI, provided the core elements (the Rat Line, the Honor Court) were maintained. Few believed that the Confederate history of VMI was a “core” element that must be maintained.

⁵²⁰ See, e.g., Interviewee 146.

⁵²¹ See, e.g., <https://www.usna.edu/Senate/index.php>; <https://www.westpoint.edu/sites/default/files/pdfs/ABOUT/USMA%20Governance%20Structure.pdf>.

⁵²² Interviewee 30, Interviewee 31, Interviewee 37, Interviewee 84, Interviewee 87.

Should it choose to do so, VMI can embrace change while still retaining its core values. An honest and open examination of the race and gender issues at VMI, coupled with a commitment to progress and change is required to allow the VMI experience to be a challenging but safe and welcoming experience for a more diverse population of young people. To say the least, VMI has never undertaken that examination.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Roscoe C. Howard, Jr.', with a long horizontal flourish extending to the right.

Roscoe C. Howard, Jr.

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