BARNES & THORNBURG LLP

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Commonwealth of Virginia
State Council of Higher Education for Virginia
Peter A. Blake, Director
Procurement Office – 10th floor
James Monroe Building
101 North 14th Street
Richmond, VA 23219

PROGRESS REPORT OF THE SPECIAL INVESTIGATION TEAM ON THE EQUITY AUDIT AND INVESTIGATION OF THE VIRGINIA MILITARY INSTITUTE

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I. Executive summary

The Special Investigation Team has begun its equity audit and investigation on behalf of the Commonwealth of Virginia concerning the Virginia Military Institute. So far, the Team has begun gathering information through several meetings with VMI senior leadership, interviewing alumni, and reviewing and assessing documents. The Team stands ready and has performed the preparatory work required to undertake the substantive steps that will form the heart of its review, such as: interviews of cadets, faculty, and administration; distribution of a survey to cadets, faculty, administration, and alumni; cadet focus groups; collection and examination of documents; and on-post visits. But factors beyond the Team's control have slowed our progress significantly. As a result, the substance of the Team's findings will come in future reports.

II. Commencement of work

The request for proposal for this audit originally anticipated that the contract would be awarded in mid-December 2020. But various issues relating to the bid delayed the final award, and the contract between the Commonwealth and Barnes & Thornburg could not be signed until January 7, 2021. Nevertheless, before the signing of the contract, the Special Investigation Team from Barnes & Thornburg began preparing for the audit. For example, the Team began developing a survey, preparing materials for interviewing cadets, alumni, and faculty, reviewing publicly available background information, and setting up a hotline for receiving information from the VMI community.

Since the contract's execution, the Team has met virtually with VMI's leadership several times, started conducting alumni interviews, submitted document requests to VMI, prepared a draft survey, and begun reviewing documents produced by VMI. The Team has also planned for on-post visits. But as detailed further below, the Team's work has been delayed by procedural issues, including issues relating to the Family Educational Rights and Privacy Act (FERPA), the surprise involvement of VMI counsel McGuireWoods LLP, the reassignment of that role to Eckert Seamans Cherin & Mellott LLC, and VMI's and Eckert's repeated requests that VMI's counsel participate in the Team's interviews. All of this has consumed valuable time that the Team could have spent on conducting substantive fact-finding work.

This preliminary report does not include findings or recommendations. While the Team has begun conducting interviews and developing a fact record, much more must be done before the Team can begin to draw conclusions and prepare recommendations. The Team will achieve this through various means, in particular survey results, a fuller set of interviews of diverse groups of VMI stakeholders, focus groups, and a fuller review of the document record.

III. Meetings with VMI's leadership

The Team had its first introductory meeting with VMI leadership on January 15, 2021. The purpose of this videoconference was for leadership from the Team to meet VMI's leadership and to begin coordinating for the audit. The VMI leadership team included Major General (U.S. Army Ret.) Cedric Wins (VMI '85), the interim superintendent; Brigadier General Dallas Clark (VMI '99), the deputy superintendent for finance, administration, and support; Colonel Jamie Inman (VMI '86), the chief of staff; and John "Bill" Boland (VMI '73), president of VMI's Board of Visitors. Richard Cullen, a senior partner at the law firm McGuireWoods, also attended and was presented as "VMI Counsel."

On January 21, the Team held the first of what will be weekly teleconferences with VMI leadership; the purpose of these meetings is to focus on coordinating the audit's logistics and on developing an open channel of communication between the Team and VMI. This meeting included MG Wins, BG Clark, COL Inman, Mr. Boland, and Mr. Cullen, as well as two additional members of VMI's staff: Lt Col (U.S. Air Force Ret.) Sean Harrington (VMI '94), who is the secretary to the Board of Visitors, and COL Lee Rakes, who is VMI's director of institute assessment and evaluation.

During this meeting, the Team and VMI's leadership discussed how to conduct interviews of current cadets in a way that encourages the cadets to speak candidly to members of the Team, particularly on sensitive issues relevant to this audit, such as instances of racially motivated conduct. Given the distinctive environment of a military college, the Team would like to take all possible steps to ensure that cadets are comfortable disclosing information about relevant conduct without fear that disciplinary action, including Honor Court proceedings, might result. VMI and the Team have agreed to collaborate on a joint statement to be provided to current cadets and the VMI community that will encourage the full and frank disclosure of information to the Team.

The Special Investigation Team also coordinated with VMI so that VMI's leadership could present an overview of VMI to the Team. This presentation was originally scheduled for January 22, but VMI cancelled the meeting that morning after the Team objected to the presence of VMI's counsel McGuireWoods at the briefing, which was announced to the Team's surprise around close of business the day before the meeting. Some discussion ensued about whether McGuireWoods could represent VMI in this investigation. The following week, VMI agreed to provide the presentation to the full Special Investigation Team on January 28, in the presence of members of the Office of the Attorney General. Led by MG Wins, VMI's leadership—this time also including BG Bob Moreschi, the dean; Gene Scott (VMI '80), a member of the Board of Visitors; and CPT Mary Schriver (VMI '14), the assistant director of admissions—gave a presentation about VMI. The presentation covered VMI's mission, the importance of its honor code, the structure of its military experience (including both its class system and its regimental

system), the success of its graduates, its success in various college rankings, and its history.

During the presentation, the VMI leadership team explained some VMI jargon, including terms such as "rat" (what a freshman is called before being recognized as a fourth class cadet), the "dyke system" (which refers to the relationship between a senior cadet and his or her rat/fourth class mentee), being "drummed out" (being dismissed from VMI for having violated the honor code), and "sweat parties" (intense physical training sessions for rats). They also explained some recent changes that VMI has made to focus less on the Institute's role in the Civil War and more on other armed conflicts that VMI graduates fought in. For example, the presenters noted VMI's recent removal of the statute of Lieutenant General Thomas "Stonewall" Jackson and that VMI was currently in the process of re-evaluating its Civil War-era iconography. The presentation also highlighted the heroism of graduate Jonathan Daniels (VMI '61), who was killed saving the life of an African-American teenager during a civil rights conflict in 1965. The presentation also acknowledged that over the years there has been tension between cadets who are NCAA athletes and the rest of the corps of cadets.

During the presentation, MG Wins explained that since he took the position of interim superintendent roughly two months prior, he had taken time to assess the current environment at VMI. For example, he had engaged in listening sessions with various segments of the corps of cadets, including a session with the Promaji Club, which is a club that supports minority groups within the corps of cadets. Based on this assessment period, MG Wins intends to focus during his tenure on five areas to shape VMI's strategy as an institution. The five areas he selected were (1) a commitment to honor, (2) the VMI brand, (3) diversity and inclusion, (4) a commitment to winning, and (5) an approach MG Wins referred to as "One VMI."

Following the formal presentation, members of the Special Investigation Team asked questions to help them understand the cadet environment, including how disciplinary actions and honor proceedings occur, how the class system and the regimental system work together, how VMI approaches recruiting, what the racial and gender makeup of the faculty is, and how the ROTC program integrates into VMI's military system.

IV. Interviews

The Special Investigation Team intends to interview three primary categories of individuals in the course of this audit: current cadets, members of the faculty and administration, and alumni. The Team has assigned certain of its members to focus on each of these three categories. The Team will track these interviews and the information obtained during these interviews, but the interviewees' identities will be kept confidential. Specifically, the Team's reports will not name individuals unless the individual expressly requests that his or her

name be included. Of the three sets of interviewees, the Team has begun interviewing members of the alumni community (including those who have reached out to the Team directly) but has not yet interviewed any VMI current cadets or personnel.

A. Current cadets and faculty and administration

While the Team is prepared and has requested to interview current VMI cadets and employees, the Team has not yet been able to proceed with interviews of cadets, of faculty and administration, or of members of the Board of Visitors. This delay has occurred because VMI has declined to permit the Team to have access to these individuals until VMI has secured (ultimate) outside counsel, worked out issues relating to privacy protections under federal law (specifically, FERPA), and settled the issue of who will be present in the interview room (discussed below). Similarly, while the Team has also attempted to schedule an in-person visit to VMI, VMI has declined to allow the Team access to post until these issues have been resolved. VMI otherwise has welcomed the Team to post and has committed work with the Team through related logistical issues (such as scheduling and COVID-19 protocols) once the issues above are resolved.

B. Alumni

The Team has begun virtual interviews of VMI alumni. Some of these interviews have been with alumni who have reached out to the Team and indicated a willingness to be interviewed, or whom others have suggested we contact (or both). The Team will continue interviewing alumni in an effort to hear from a larger percentage of and a diverse opinion base from the VMI community. As of the date of this report, the Alumni team has reached out to, interviewed, or scheduled interviews with approximately two dozen alumni.

C. The conduct of interviews

One major issue the Team is working through with VMI, the State Council of Higher Education for Virginia (SCHEV), and the Office of the Attorney General is whether representatives from VMI will be present during interviews. VMI has asked several times that it be allowed to have VMI representatives (including counsel for VMI) present during interviews of current cadets and employees. But the Team firmly believes that the presence of VMI representatives will undermine the independence and effectiveness of the investigation and may well deter the cadets and faculty being interviewed from being as forthcoming as they might otherwise be. This also violates fundamental investigative best practice, as it allows the subject of an investigation to "shadow" the progress of an investigation and potentially to steer its course and results. The Team makes this judgment based on its extensive history in conducting internal and external investigations of many different kinds of organizations. Further, the Team will be not able to guarantee confidentiality to the interviewees if others are present during the interviews, and the presence of VMI counsel will compromise the investigative

privilege that otherwise applies here. Accordingly, the Team has indicated to VMI and its counsel that neither VMI personnel nor its representatives are welcome during the Team's interviews (virtual or on-post) and that VMI's continued insistence otherwise or attempts to delay the Team's investigation efforts would be seen as uncooperative. VMI's counsel has responded with a proposal that all interviewees be "given the option" to have VMI's counsel present in interviews. The Team finds this solution just as problematic and undermining of the audit's objectives, if not more so, than having VMI counsel present for all interviews. The Team has asked Eckert why VMI wants its counsel in the room during interviews, but Eckert has not provided a clear answer and in doing so has cited matters of attorney-client privilege. VMI and the Team are still working through this issue.

Another issue is the prospect of VMI discipline of investigation participants. To encourage interviewees (especially cadets and faculty) to cooperate candidly with the audit, the Team has asked VMI's leadership to commit that it would not take disciplinary action against cadets, faculty, or administrators or otherwise take action against any member of the VMI community based on information revealed during the interviews. The Team and VMI are working through some initial disagreement on how to deal with this issue. As it stands now, VMI has given the Team its commitment not to pursue discipline for facts disclosed in interviews. VMI has also agreed to work with the Team to develop a joint statement that will, among other things, encourage cadets and other interviewees to be forthcoming and confirming that VMI will not attempt to discern the identity of individuals confidentially disclosing relevant data during the investigation.

V. Documents produced by VMI

After the January 15 meeting described above, VMI provided the Special Investigation Team with various background materials about VMI. Those documents are largely publicly available. A list of the categories of documents is included as Exhibit 1.

The Team has also submitted an initial list of document requests to VMI. These requests include priority document requests, including those that relate to the Honor Court and to other cadet disciplinary systems. At present, VMI has indicated that it is gathering documents responsive to these requests, but that VMI will not release the responsive documents until its counsel has approved the release and all ancillary legal issues have been resolved. The Team and VMI's counsel began discussing the document requests today (February 4). An index tracking the first round of document requests, current as of February 3, is attached as Exhibit 2.

VI. Survey

The Special Investigation Team has prepared a survey that it intends to send to current cadets, faculty and administration, and alumni. The Team had

planned to interview certain members of VMI's administration before launching the survey, to learn about past surveys the administration has disseminated. But given the events that have significantly delayed this investigation, and the importance to using survey results to guide further investigation work, the Team will likely be forced to forgo this step and speak to the relevant administrators after the survey is in the field.

VII. Focus groups

The Special Investigations Team has also developed a strategy for conducting focus groups on post at VMI. The implementation of this effort is also on hold pending VMI resolving the status of counsel and allowing the Team access to post.

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

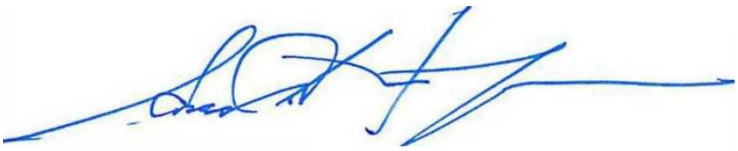
To provide avenues for members of the VMI community to reach out to the Team, the Team has created both a telephone hotline and an email address to enable any individual to contact the Team. These two avenues will allow individuals to contact the Team, and to do so anonymously if they wish. The telephone number is (202) 831-6777 and the email address is VMIReview@btlaw.com.

The Team is developing an informational graphic to share with the VMI community to explain who the Team is, to provide the hotline information, and to encourage individuals to reach out to the Team if they have any information relevant to this audit.

IX. Conclusion

The Special Investigation Team will continue with the audit and expects to make further progress once issues surrounding the status of VMI's counsel and the Team's ability to interview cadets and faculty are resolved. The next written progress report will be submitted on March 8, 2021.

Respectfully submitted,



Roscoe C. Howard, Jr.

Christopher J. Bayh

Kathleen L. Matsoukas

Meena T. Sinfelt

Special Investigation Team
BARNES & THORNBURG LLP

Exhibit 1

Exhibit 1: categories of documents initially provided by VMI

- VMI's mission and vision
- Briefs on VMI today
- Data on diversity-related enrollment and outcomes
- Data on NCAA athlete outcomes
- Leadership development model materials
- Strategic planning, budget, and facilities planning materials
- VMI calendar
- Five pillar plan for diversity, equity, and inclusion
- Minutes from Board of Visitors' meetings
- VMI regulations and policies, including general orders and employee handbooks
- Academic regulations and faculty handbook
- VMI academic catalog
- Cadet regulations (Blue Book)
- Cadet government procedures (White Book)
- Procedures for the Office of Student Affairs (Green Book)
- Honor Court procedures and charter
- NCAA regulations
- Title IX training
- Bystander intervention training
- Surveys and training concerning sexual assault

Exhibit 2

VMI Special Investigative Team
Master Document Request Tracker

Request Team	Team POC	Request Date	Document Request	VMI POC	Requested Response Date	VMI Proposed Production Date	Notes
Cadet	N. Brackett	1/26/2021	All documentation relating to Honor Court/Honor Code investigations, proceedings, and punishments for the time period from January 1, 2010 to present, including but not limited to lists of Honor Court members, investigation/case files, notes, findings and conclusions.	Col. Inman	2/2/2021	2/16/2021	11 years of documents is incredibly burdensome and time consuming given B&T's stated deadline. VMI can produce 5 years worth of these documents. In addition to being voluminous, they are currently only in hardcopy format and have to be individually scanned, which is an enormous
Cadet	N. Brackett	1/26/2021	All documents reflecting policies, procedures, and governance documents for VMI's Honor Court from January 1, 2010 to the present. This includes any documents related to VMI's review of the Honor Court system during this time period, and any changes in the Honor Court proceedings, rules, or procedures which have not already been provided.	Col. Inman	2/2/2021	2/15/2021	VMI will also produce 5 years worth of these documents, which also have to be scanned in by hand.
Cadet	N. Brackett	1/26/2021	Any other investigative, case or disciplinary records regarding inquiries or proceedings of any other disciplinary body, including without limitation the Cadet Equity Association, the Rat Disciplinary Committee, and the Student Executive Committee, for the timeframe January 1, 2010 to present.	Col. Inman	2/2/2021	2/16/2021	VMI is also willing to produce 5 years worth of these documents which are voluminous as every single cadet is generally subject to some form of discipline over their 4 years at VMI. As as result, we propose defining the term discipline for purposes of this production as actions resulting in expulsion, sanction, or one of the next three harshest forms of sanction in order to capture individuals who truly
Cadet	N. Brackett	1/26/2021	For the timeframe January 1, 2015 to present, membership lists for the Cadet Equity Association	Col. Inman	1/28/2021	2/8/2021	Can be produced in full
Cadet	N. Brackett	1/26/2021	Any investigative, case or disciplinary records regarding inquiries or proceedings of the Promaji Club, as well as governance documents	Col. Inman	2/2/2021	2/8/2021	Can be produced in full
Cadet	N. Brackett	1/26/2021	For the timeframe January 1, 2015 to present, membership lists for the Promaji Club	Col. Inman	1/28/2021	2/8/2021	Can be produced in full
Cadet	N. Brackett	1/26/2021	Records relating to the Cadet-Superintendent's Advisory Board, including membership lists and governance documents, for the timeframe January 1, 2015 to present.	Col. Inman	2/2/2021	2/8/2021	Can be produced in full

VMI Special Investigative Team
Master Document Request Tracker

Request Team	Team POC	Request Date	Document Request	VMI POC	Requested Response Date	VMI Proposed Production Date	Notes
Cadet	N. Brackett	1/26/2021	Records relating to the Cadet Experiential Leadership Program, including membership lists and governance documents, for the timeframe January 1, 2015 to present.	Col. Inman	1/28/2021	2/8/2021	Can be produced in full
Cadet	N. Brackett	1/26/2021	Records relating to the "Rat Disciplinary Committee," including membership lists and governance documents, how members are selected, and procedural protocols for the timeframe January 1, 2015 to present.	Col. Inman	2/2/2021	2/8/2021	Can be produced in full
Core	K. Matsoukas	1/26/2021	The assessment authored by General Wins and presented to the Board of Visitors on January 29, 2021.	Col. Inman	2/2/2021	AS	Waiting on transcription of the minutes and will then produce immediately
Cadet	N. Brackett	1/26/2021	Listing of all cadets, and associated documents (not previously produced), who have been disciplined, suspended or expelled since January 1, 2015.	Col. Inman	2/2/2021	2/16/2021	Because these records are voluminous and it will be an extremely burdensome task to produce, we propose that we define discipline as those who have been expelled, suspended, or given one of the three next harshest sanctions within the discplinary system since every single cadet has been disciplined in some form or another ranging from the smallest uniform issue and it would thus be a list of every
Core	K. Matsoukas	1/26/2021	Documents relating to actions taken by VMI to respond to allegations of racial inequality, including those that led to this Investigation, to the extent not already provided. This includes, for example, recordings of town halls, listening sessions and memoranda or assessments prepared by the Superintendent or his staff.	Col. Inman	2/8/2021	2/8/2021	The Superintendent's assessments and memoranda are working papers that are not subject to disclosure under FOIA, but will be provided to Barnes and Thornburg if it too agrees that they will hold such documents as exempt from FOIA.
Core	K. Matsoukas	1/26/2021	Correspondence from received by the school relating to issues of racial injustice and/or requests for new policies or procedures relating to diversity, equity, and inclusion	Col. Inman	2/8/2021	2/15/2021	Can be provided in full

VMI Special Investigative Team
Master Document Request Tracker

Request Team	Team POC	Request Date	Document Request	VMI POC	Requested Response Date	VMI Proposed Production Date	Notes
Core	K. Matsoukas	1/26/2021	Documents (including email correspondence)/information relating to monuments or statues on campus, including those that have been removed or the subject of controversy or requests for removal, and the work of the Monuments Committee.	Col. Inman	2/8/2021	2/15/2021	Can be provided in full
Alumni	J. Lindemann	1/26/2021	Alumni association membership records/listings for 2020 and 2021	Col. Inman	2/2/2021		These records are not in the possession of VMI. We will direct this request to the counsel for the VMI Alumni Foundation.
Core	K. Matsoukas	1/26/2021	Demographic and contact information for current students (with race/ethnicity, if known).	Col. Inman	2/2/2021	2/8/2021	These records can be provided in full once we clarify any FERPA issues with SCHEV.
Core	K. Matsoukas	1/26/2021	Listing of current faculty and administration (including, title, contactin information, hire date, and race/ethnicity, if known).	Col. Inman	2/2/2021	2/8/2(	Can be provided in full