

May 18, 2021

Honorable Ralph S. Northam
Governor Commonwealth of Virginia
P.O. Box 1475
Richmond, VA 23218

Dear Governor Northam,

It is with regret that I hereby submit my resignation from the State Council of Higher Education (SCHEV) on which I have served since July 2016. Until recently, it was my belief and hope that SCHEV could serve an important role in insuring that the ongoing audit and investigation of Virginia Military Institute (VMI) by the Barnes & Thornburg (B&T) law firm would be conducted in a fair and equitable manner.

Towards this end, on March 22, 2021 General Wins Superintendent of VMI and Bill Boland, President of the Board of Visitors wrote to SCHEV requesting a meeting to discuss a process that would guarantee that the final report is accurate and correct (letter attached). Specifically, VMI requested SCHEV to adopt a process whereby VMI representatives would be allowed to meet with representatives of SCHEV and B&T for the purpose of reviewing and commenting on a final draft of the investigation report before it is released publically. This is a well established process that has been

followed consistently in prior investigations and audits of Virginia's public colleges and universities, by JLARC on financial matters and SACS on accreditation matters. The obvious reason for such a process is to insure the accuracy and correctness of the findings and recommendations. If the final B&T report is to have any value and legitimacy one would think that the process outlined above as requested by VMI would be followed.

On April 13, 2021 I wrote to the SCHEV council members requesting a meeting to discuss VMI's letter of March 22, 2021 (letter attached). Based on several phone calls after my letter of April 13, I was given assurances by the Executive Director of SCHEV that VMI's request would be put on the agenda for discussion at the council's May 18 meeting.

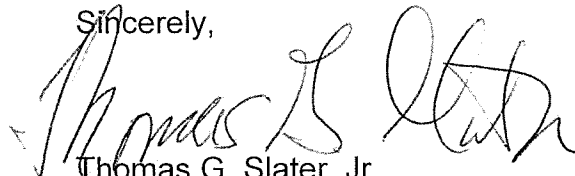
Despite these assurances, last week I received a copy of the current SCHEV Chair's letter of May 13 to VMI advising that:

"I have reviewed this letter (May 5 letter from General Wins to SCHEV) with Executive Director Blake and with our counsel from the Attorney General's office and are respectfully declining your request to have SCHEV convene a meeting with you, representatives of B&T and SCHEV to review the final report prior to release. This is based on Counsel's view that SCHEV does not have the authority to require such an interaction without an explicit request from the initiator of the investigation and our belief that doing so could have a negative

impact on the independence or appearance of independence of the final report.” (General Wins May 5 letter to SCHEV attached).

Apparently, the current Chair and Executive Director decided to take matters into their own hands and forego any discussion by all members of council regarding VMI’s request. I can only conclude that the current Chair and Executive Director have decided to bow to political pressure from your office and the attorney general’s office to insure that the final report by B&T supports the unfounded charges in your letter of October 19, 2020 accusing VMI of systemic racism. In view of this, I cannot in good conscience continue to serve on SCHEV.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas G. Slater, Jr.", written in a cursive style.

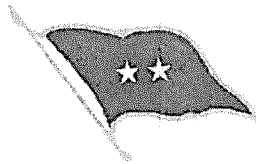
Thomas G. Slater, Jr.
Vice Chair of SCHEV

TGS/ejr

cc: Members of State Council of Higher Education
Peter A. Blake, Executive Director SCHEV

Attachments:

General Wins letter of March 22
TGS letter of April 13 to SCHEV Council Members
General Wins letter of May 5
Marge Connelly’s letter of May 13



INTERIM SUPERINTENDENT
VIRGINIA MILITARY INSTITUTE

22 March 2021

Ms. Marge Connelly, Chair
Mr. Thomas G. Slater, Jr., Esq., Vice Chair
Commonwealth of Virginia
State Council on Higher Education for Virginia
101 North Fourteenth Street
Richmond, VA 23210

RE: VMI Equity Audit and Investigation

Dear Ms. Connelly and Mr. Slater:

We are writing with regard to the ongoing investigation and audit of the Virginia Military Institute (VMI). As you know, the State Council of Higher Education for Virginia (SCHEV) contracted with the Barnes & Thornburg (B&T) law firm to conduct this inquiry. This appointment followed a request from Governor Ralph Northam to the VMI Board of Visitors dated October 19, 2020. Gov. Northam ordered “an independent, third-party review of VMI’s culture, policies, practices, and equity in disciplinary procedures.” However, the Governor acknowledged that VMI’s Board “bear[s] the ultimate authority for immediately addressing these concerns” In particular, Section 3, Paragraph 4 of the VMI Board By-Laws states “[t]he Board is ultimately responsible for the academic quality and integrity of the Institute.” In that spirit, on October 20, 2020, VMI’s Board responded to Governor Northam that the Institute welcomes the independent inquiry and is “confident that the reviewers will find that the Institute has acted according to the values that we aim to instill in our cadets — with honor, integrity, respect, and civility.” We share the Board’s sentiment.

Before any involvement by B&T, VMI has undertaken significant measures in the areas of diversity, equity and inclusion (DEI). For example:

- Released the “Five Pillars” plan for addressing and improving DEI issues.
- Formed a DEI Committee to oversee and monitor all matters race and gender related.
- Created a Diversity Dashboard to monitor admissions, graduation rates and hiring at all levels.
- Formed a Ceremonies and Memorials Naming and Review Committee to review and make recommendations to the Board regarding all confederate iconography and make recommendations going forward for naming.
- Hiring a Chief Diversity Officer reporting directly to the Superintendent.
- Relocated the Stonewall Jackson statue.
- Modified the New Market ceremony to a memorial commemorating all fallen VMI alumni.
- Relocated the new cadet oath ceremony from New Market battlefield to the VMI Post.

- Discontinued the re-enactment charge on the New Market battlefield by new cadets.
- Centering the Parade Ground flag polls on New Barracks (Marshall Arch).
- Refurbishing the Jonathan Daniel courtyard, in honor of an alumnus killed while protecting two black teenagers during a Civil Rights protest in 1965.
- Enhanced racial sensitivity training for cadets, faculty and staff.
- Including the U.S. civil rights movement as part of new core curriculum course required of all cadets.
- Reviewed and improved the Human Resources Diversity Hiring Program
- General adoption of Del. Carroll Foy's seven guiding principles on DEI.

On November 5, 2020, when SCHEV issued the Request for Proposals (RFP) to conduct the VMI investigation, the Council specified "all findings and recommendations" from the investigation "will be publicly available." SCHEV also required that the third-party investigators "provide progress reports at least monthly to the Contract Administrator regarding the completion dates for all deliverables." B&T signed a contract with SCHEV on January 7, 2021.

VMI is committed to full cooperation with B&T's ongoing investigation. Accordingly, VMI has produced over 45,000 pages of documents to B&T (with thousands more pages slated for upcoming productions); the Institute has distributed B&T's survey to thousands of individuals in the VMI community; VMI has facilitated dozens of cadet interviews and encouraged hundreds more interviews of administration, faculty, staff and employees by B&T investigators; and the Institute has offered extensive informational and logistical assistance to the B&T team over the course of its inquiry.

As you know, SCHEV's duties set forth in Va. Code § 23.1-203(27) include, "insofar as practicable, preserv[ing] the individuality, traditions, and sense of responsibility of each public institution of higher education in carrying out its duties." Based on what VMI has seen over the last few months from B&T, the Institute believes strongly that SCHEV should provide additional oversight of the investigation to ensure its integrity and compliance with the RFP terms. Moreover, VMI should be permitted an opportunity to review and comment on each of the B&T reports (*i.e.*, interim and final) before any official or unofficial public release.

VMI also believes it would be a mistake for B&T unilaterally to make recommendations about the Institute's educational methods going forward. While B&T should certainly have a seat at the table, we would strongly urge that professionals from SCHEV be closely involved along with the VMI administration and representation from its Board of Visitors in crafting recommendations. We respectfully submit that lawyers, no matter how well intentioned, should be not making education policy for Virginia's institutions of higher education. Certainly not lawyers lacking experience and training in the nuances of the Commonwealth's state-supported military institution. Rather, trained and experienced educators should make whatever new policy may be warranted for VMI that has not already been initiated.

Let us provide further context regarding the concerns that underlie these requests and suggestions.

B&T's first progress report dated February 4, 2021 contained little substantive information and lots of purported explanation for the outside investigators' failure to make significant progress. B&T cited the recent appointment of outside counsel to represent the Institute, VMI's concerns regarding B&T's failure to address federal privacy law, VMI's refusal to grant honor code amnesty to cadets participating in the investigation, and finally, the requests by VMI to have its newly appointed counsel participate in the (then) upcoming interviews. Although the federal privacy concerns of FERPA, HIPAA, ADA and Title IX had not been fully addressed in the SCHEV-B&T contract or the subsequent addendum, B&T downplayed these actual concerns and sought to cast VMI in a negative light for supposedly impeding the progress of the investigation.

Prior and subsequent to the first progress report, VMI and B&T collaborated on numerous aspects of the investigation and developed what we thought was a strong working relationship. VMI was hopeful that these positive trends would be reflected in the next progress report. On March 8, B&T issued its second progress report spanning 102 pages. To VMI's great disappointment, the latest report is full of misleading and sensationalized observations.

First, B&T claimed, incorrectly, that VMI has not cooperated with cadet interviews or document production. Both assertions are false. VMI has repeatedly encouraged cadets to be interviewed, and the documents cited by B&T in fact had been delivered by VMI to B&T the previous week. Like the claim that B&T did not request suspension of the Honor Code, such mischaracterizations of the record create a false narrative of uncooperativeness by VMI that is both factually wrong and patently unfair.

Second, B&T claimed it was a "common experience to hear racial slurs among VMI cadets" yet the eight cited episodes occurred over a twenty-five year time span. Nor is it clear whether any of these eight claims overlap with the seventeen incidents reported to and investigated by VMI itself. VMI recognizes that a single incident of racism is too many, but calling this a "common experience" is dangerous and wrong. Moreover, as it made clear in the documents produced by VMI to B&T, VMI did substantiate thirteen of the seventeen claims with a racial component between 2015 and 2020, and punished the wrongdoers accordingly. Despite that, B&T doubled down on its reporting of unsubstantiated, *ad hoc* claims elsewhere in the second report. For example, B&T claims that VMI's consistent record of responsiveness to cadet complaints is eclipsed by a "culture of silence" that "sweep[s] negative instances under the rug," fails to act on "serious issues," and "look[s] away."

Third, B&T devoted substantial text to disturbing incidents of alleged sexual assault and misconduct. But B&T made no effort to filter out third-hand hearsay and speculation from sources who admittedly are only passing along rumor. Moreover, B&T did not make any effort to determine the outcome of VMI's investigation of any instances

that were reported. While VMI cannot investigate unreported incidents of which it has no knowledge, to be sure, the Institute immediately investigates all reported allegations of racism and sexual improprieties. If found to be substantiated, action is taken, without exception. VMI will continue to foster a culture where all members of its community are treated with dignity and respect.

Fourth, B&T summarizes its online survey and wide distribution to the VMI community, but the investigators did not report on the overall results. A copy of the survey is attached to this letter.¹ The B&T survey is significantly flawed in both substance and form, and seems designed more to generate newspaper soundbites than to serve as a legitimate exploratory tool in an independent inquiry. The most troubling aspect of the B&T survey is its repeated use of loaded questions with the apparent goal of bolstering a pre-determined narrative, without proper survey designs and development. Rather than seek information in a neutral manner, these questions advance subjective, highly negative propositions about VMI and solicit agreement. Unsupported assertions contained in such questions include, for example, “VMI’s culture is more racially intolerant than that of other colleges...,” “People of color have to do more than others to prove they belong at VMI,” “It is harder for people of color to succeed at VMI than it is for white people,” “White cadets receive more encouragement than cadets of color to run for positions of leadership,” and on and on. While the claimed purpose of the survey is to allow B&T “to better understand the environment and culture of VMI as an institution” (see survey “Welcome” section), the use of such plainly biased questions suggests that it is, in reality, a results-driven exercise purposely prejudicial to VMI.

A week after the release of its second progress report, B&T claimed to state officials that VMI was impeding the scheduling of an interview of the Interim Superintendent with the B&T investigation team. This, too, is false. In fact, VMI’s counsel had been attempting to schedule this interview with B&T since March 4, and it was B&T that failed to respond until March 17. This interview date is now set for later this month.

For all of these reasons (and many others), VMI requests that SCHEV provide regular oversight of the investigation to guarantee that the process remains focused on its stated goals and scope. Further, based on the tone and tenor of the two interim reports, it is essential that VMI be permitted an opportunity to review and comment on each of the remaining B&T reports before public release. The first two interim reports contained erroneous information or failed to include information in the possession of B&T that would have given a more complete picture of the Institute and its culture. Most concerning – if the final report is to have any legitimacy or lasting value to VMI and the broader academic community – such distortions and incomplete reporting cannot be allowed to exist in the final volume to be delivered by the B&T team in June 2021. Regardless, VMI should be granted an opportunity to review and comment on *each* of these B&T reports, before they are delivered and then released publicly. B&T had committed to this approach during early discussions with VMI, and then the investigation team revoked this crucial commitment without any explanation. Finally,

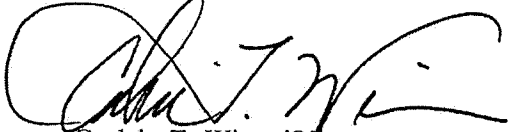
¹ The Washington Post has already obtained (and quoted from) a copy of the B&T survey, according to Ian Shapira’s article dated 9 March 2021.

Ms. Marge Connelly, Chair, SCHEV
Mr. Thomas G. Slater, Jr., Esq., Vice Chair, SCHEV
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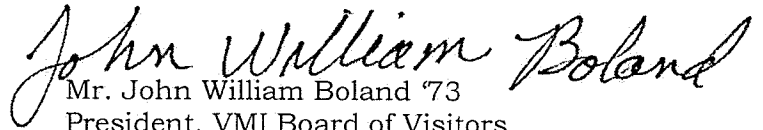
as noted above, we welcome the involvement of experienced educators at SCHEV and VMI in establishing whatever new policy may be warranted for VMI beyond the current, substantive DEI initiatives.

We are available to discuss these issues with you at your earliest opportunity. Again, thank you for your consideration.

Sincerely,



Cedric T. Wins '85
Major General, U.S. Army (Retired)
Interim Superintendent, VMI



Mr. John William Boland '73
President, VMI Board of Visitors

Cf: Mr. Peter A. Blake, Director, State Council of Higher Education for Virginia (SCHEV)

CONFIDENTIAL

April 13, 2021

THOMAS G. SLATER, JR.
DIRECT DIAL: 804 • 788 • 8475
EMAIL: tslater@HuntonAK.com

VIA E-mail & UPS

Dear SCHEV Council Members:

Pursuant to Section Six, Paragraph II of the SCHEV bylaws, I am writing to respectfully request that a majority of the Council call a meeting to discuss the requests laid out in the attached letter from Major General Cedric Wins, the Interim Superintendent of the Virginia Military Institute ("VMI"), and Bill Boland, the President of the VMI Board of Visitors. *State Council of Higher Education for Virginia Bylaws – Section Six – Council Meetings*, at 6 (Jan. 14, 2019) available at <https://www.schev.edu/docs/default-source/about-section/council-files/2019-council-meetings/schev-bylaws.pdf> ("The Council shall meet at least quarterly or on the call of the chair. A majority of the Council may also call a meeting."). As you know, earlier this year, SCHEV contracted the law firm Barnes & Thornburg ("B&T") to conduct an independent, third-party review of VMI's culture, policies, practices, and equity in disciplinary procedures. See *Barnes & Thornburg, Response to RFP 245-110420 - Marching Toward Inclusive Excellence: An Equity Audit and Investigation of Virginia Military Institute*, at 3 (Nov. 20, 2020) (hereinafter the "B&T proposal").

Based on discussions over the past two weeks among Marge, Peter, Deputy Secretary of Education Fran Bradford, Ramona Taylor of the Attorney General's office, and myself, I thought that we had reached an agreement to meet with Major General Wins and Mr. Boland, so that they could explain their views and we could develop a process to address their concerns. I regret that we were unable to achieve agreement, which has prompted this letter to each of you. I ask that you please keep this letter confidential so we can avoid unwarranted publicity.

It is my understanding—and my expectation—that VMI is not asking that any person or entity interfere in B&T's fact-finding activities. Rather, they have asked for an opportunity to meet with SCHEV and B&T to discuss and understand B&T's findings and recommendations before their report is finalized and made public. In my view, this is a fair and reasonable request, and is consistent with our common practice of holding similar meetings for Virginia's colleges and universities in connection with state or NCAA audits, or reviews by the Southern Association of Colleges and Schools ("SACS"). Holding such a meeting would also be consistent with B&T's contract and proposal for this review, which specified that B&T would:

- "take the time to consult with [SCHEV] and VMI leadership to fully understand SCHEV's and VMI's goals" (B&T proposal p. 3);

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- “collect feedback from SCHEV” on its preliminary and interim reports, including soliciting “additional tasks/questions to address” (B&T proposal p. 34-35);
- complete various final review tasks “in consultation with SCHEV” (B&T proposal p. 35); and
- “shar[e] the findings [and] prioritiz[e] changes” laid out in its reports via communications with SCHEV and VMI leadership. (B&T proposal p. 36)

B&T’s final report will include many recommendations that directly implicate SCHEV’s mission and public policy responsibilities, and will, I anticipate, inform a substantial portion of our work in the coming year. In my view, as the entity charged by Governor Northam with supervising B&T’s work, SCHEV has a responsibility to engage meaningfully with the B&T team to understand their findings, and to ensure that our investment in their services leads to sound educational policy and reform.

I hope you will agree that, at minimum, Major General Wins’ and Mr. Boland’s request to meet with SCHEV and discuss a process to address their concerns is worthy of discussion among, and serious consideration by, the Council. I look forward to speaking with you, and continuing to work with you in support of SCHEV’s mission.

Sincerely,



Thomas G. Slater, Jr.

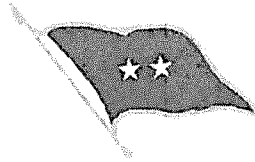
TGS/ejr
Attachments

cc: Marge Connelly (Chair)
Katharine M. Webb (Secretary)
Peter Blake
Fran Bradford
Ken Ampy
Rosa Atkins
Alex Arriaga
W. Heywood Fralin
Victoria D. Harker
Thaddeus B. Holloman, Sr.
Henry Light
Stephen Moret

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Marianna M. Radcliff
Carlyle Ramsey
Major General Cedric T. Wins
John William Boland

P.S. A copy of the Interim Report referred to in General Win's letter will be sent to each cc via overnight mail.



SUPERINTENDENT
VIRGINIA MILITARY INSTITUTE

5 May 2021

Ms. Marge Connelly, Chair
Commonwealth of Virginia
State Council on Higher Education for Virginia
101 North Fourteenth Street
Richmond, VA 23210

RE: VMI Equity Audit and Investigation

Dear Ms. Connelly:

We are responding to your letter of April 13 regarding the ongoing “equity audit” of the Virginia Military Institute (VMI). We respect your view that the current activities of Barnes & Thornburg (B&T) are aligned with the contract. We appreciate your willingness to convene a meeting with VMI on this subject. Please note that VMI’s request is not only to have input regarding any recommendations contained in B&T’s final report, but also to ensure that any recommendations are fact-based and aligned with overall Virginia educational policy goals. VMI looks forward to any and all constructive suggestions from B&T, as, we are sure, do the other institutions of higher education that will be contextualized and compared in the findings. Moreover, it should be clear, based on the Institute’s prior letters to SCHEV, that VMI is already implementing (and will continue to expand on) an aggressive slate of DEI initiatives for the Institute’s community. Nonetheless, for the upcoming B&T recommendations to have long-lasting value as well a common understanding of adoption and implementation, the auditor’s findings must be derived from accurate factual bases. Thus, 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.

VMI makes this request on professional, moral, and contractual grounds. The SCHEV-B&T contract text anticipates and expressly references this direct dialogue. B&T itself said this dialogue would occur, recognizing, as a common sense measure, that they wanted to be sure of accuracy in the final product. Other audit processes administered by the Auditor of Public Accounts, the Joint Legislative Audit Review Committee, and others in the Commonwealth (and throughout higher education in America) routinely use this approach. Similarly, the accrediting processes of SACSCOC provide this approach consistently to thousands of educational institutions across eleven states in the southeastern United States inclusive of higher educational institutions (public and private) in Virginia. Last but not least, the serious nature of the allegations against VMI, and the far-reaching implications for all institutions under SCHEV’s umbrella, warrant a meeting to discuss B&T’s recommendations in advance of public discourse. For SCHEV to adopt (and then ask VMI to implement) a broad slate

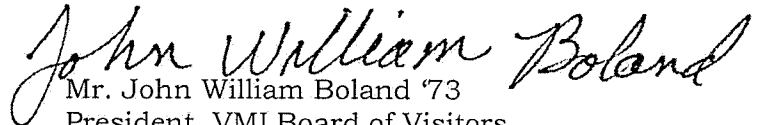
of suggestions for change – without a candid dialogue to confirm the recommendations are well founded and aligned with changes that are already being implemented or under consideration by VMI – is a recipe for failure. This conversation should not start at the conclusion of the audit – it is a fundamental and essential part of an audit.

We thus look forward to scheduling a constructive meeting in the next two weeks with key representatives of SCHEV, B&T and VMI. Thank you for your continued courtesy and respectful treatment of these matters.

Sincerely,



Cedric T. Wins '85
Major General, U.S. Army (Retired)
Superintendent, VMI



Mr. John William Boland '73
President, VMI Board of Visitors

cc: Ramona Taylor, Assistant Attorney General, Office of the Attorney General
Peter Blake, Director, SCHEV
Thomas G. Slater, Jr., Esq., Vice Chair, SCHEV

May 13, 2021

General Cedric Wins, Superintendent
Mr John Boland, President of Board of Visitors
Virginia Military Institute
319 Letcher Avenue
Lexington, Virginia 24450

Dear General Wins and Mr. Boland,

I am writing in response to your latest letter dated May 5, 2021.

I have reviewed this letter with Executive Director Blake and with our Counsel from the Attorney General's office and am respectfully declining your request to have SCHEV convene a meeting with you, representatives of B&T and SCHEV to review the final report prior to release. This is based on Counsel's view that SCHEV does not have the authority to require such an interaction without an explicit request from the initiator of the investigation and our belief that doing so could have a negative impact on the independence or appearance of independence of the final report.

I do, however, want to reiterate my and SCHEV's commitment to schedule a meeting with VMI leadership to discuss the report findings and general concerns following the release of the final report, due June 1, 2021, from B&T.

While this response may not be what you wanted, please be reassured that SCHEV is dedicated to its mission and our obligations to the Commonwealth's educational institutions. Additionally, I believe that this course of action is in the best interest of the Commonwealth and its citizens.

Again, thank you for your service to VMI and the Commonwealth.

Respectfully yours,

Marge Connelly
Chair, State Council of Higher Education for Virginia

Cc: Peter Blake, Executive Director, State Council of Higher Education for Virginia