

Joseph M. Spivey, IV

January 22, 2024

Mr. Thomas Watjen, President
V.M.I. Board of Visitors
Virginia Military Institute
P.O. Box 932
Lexington, VA 24450

Re: Board of Visitors meeting January 25-27, 2024

Dear Mr. Watjen,

Sir, five topics for your and the Board's consideration. I apologize for the length of this letter.

First topic: Follows up my November 30, 2023 correspondence concerning the Board's discussions about VMI's NCAA athletic program's financial challenges. In my cursory review of the athletic department's issues, options offered by the administration, and potential alternatives not unexplored, I neglected to cover two existential threats I think will inhibit long-term success. They are the NCAA's Name, Image, and Likeness (NIL) interim policy and the NCAA Transfer Portal. It is my opinion, these threats, over time, will manifest as both dangers to cadet-athletes and serious financial instability.

Briefly, the NCAA's NIL policy states colleges, college boosters, boosters' related corporations, and individuals cannot directly compensate student-athletes for athletic performances. However, colleges cannot preclude or prevent student-athletes from making money for NIL-related activities. Under NIL, NCAA student-athletes can earn income while in college from business ventures without losing their NCAA eligibility.

The Transfer Portal is an NCAA compliance tool to manage the inter-collegiate student-athlete transfer process. It makes the process transparent and empowers student-athlete deciding to join another university's athletic program. The transfer portal simplifies the management of issues related to financial aid or academic environment when students explore a new college relationship. Since 2018 players increasingly use the transfer portal to move to a school where they can see more playing time.

Let me pose a hypothetical situation for each threat to demonstrate the potential damage each could do to VMI. These hypothetical situations are plausible because each reflect similar events or conditions that have occurred at VMI.

NIL – The women's water polo team's players make a calendar. Because "Keydets" is the term VMI attributes to its student-athletes or NCAA teams and its use is restricted by VMI Athletics, the calendar is titled the "The Institute Water Polo Team". Photography is at a pool, not VMI's, players do not wear team suits, neither the word "Keydets" nor VMI logos are displayed. Photographs feature players in one and two-piece swimsuits. The swimsuit manufacturer pays production costs, sells the calendar, and the players. Team players use their personal social media accounts, accessed through VMI's network, to spread the word about the calendar increasing sales. VMI officials learn of the calendar. The Office of Communications and Marketing issues a cease-and-desist letter to stop sales of the calendar. The Commandant's office places the cadets on report citing violations of General Orders 42¹, 44², 46³ and 71⁴

¹ General Order Number 42 - Institute Marketing, Identity Standards, And Trademark Policy 26 September 2023

² General Order Number 44 – Solicitation Policy 22 May 2023

³ General Order Number 46 – Code of Ethics 19 May 2021

⁴ General Order Number 71 – Use of Social Media 3 October 2023

Joseph M. Spivey, IV

and penalizes them. As a result the players resign from the team. Other cadets are solicited to be on the water polo team but decline compelling VMI to forfeit the season. Additionally, each player files a Title IX complaint for sexual harassment. Lawsuits are considered exacerbating negative publicity. Players and parents note NIL allows student athletes to earn compensation from this type of activity. These events have a chilling effect on both VMI's NCAA teams and its club sports teams.

Transfer Portal – Consecutive losing seasons by the football team leads to two problems. First, within a five-year period, fifty percent or more of the football team's players leave VMI through the Transfer Portal before their 2nd Class year. This occurs because dynamic play among underclassmen against true college players enhances their market value among FCS and FBS programs. As a result, the football team's overall composition and its starting line-ups regress to being solely Rats and 3rd classmen. VMI's players' young age, smaller size, and collegiate inexperience represent a significant physical mismatch against opponents' 4-yr. and 5-year juniors and seniors. A second problem manifests as injuries increase, retention for the Corps drops, and home game attendance shrinks. The football team perennially records losing seasons, with losses by wide margins. VMI football becomes transactional, a program similar to Fork Union Military Academy's postgraduate program. A smaller Corps and poor home game attendance financially harm the Institute.

The Board of Visitors needs to undertake a comprehensive, whole-of-VMI, assessment of the athletic program. The administration's current sales pitch "we need more money" to be successful, to "compete to win," is short-sighted. The Board should not support petitions that additional money is the best or only answer necessary to produce more wins across VMI's 13 NCAA teams. Nor should the Board allow the administration to investigate itself attempting to identify areas where it "can do better." In my November 30 correspondence, I noted several universities in the Commonwealth have made major decisions regarding their athletic programs, principally involving football, within the past 5 years. Contacting these institutions will be a good first step to gaining information and insight into the multitude of factors affecting college athletics, because while resources are important it's about more than just money. The Board should enlist an independent, professional company with experience evaluating university athletic programs to perform the assessment of the athletic program.

Amusingly, the Board could place the Alumni Agencies' *Alumni Review* staff in charge of the athletic department. According to the most recent audited financial statements in spite of the global pandemic, supply chain insecurity, rising prices, market volatility, and material shortages the cost to produce the *Alumni Review* fell from \$312,342.00 (2017) to a miniscule \$8,701.00 (2022). An amazing level of cost reduction.

Second topic: It is time for the Board to publicly explain how VMI and the VMI Foundation are achieving the statutory requirements enacted in the 2021 "Enslaved Ancestors College Access Scholarship and Memorial Program." This legislation was signed into law March 30, 2021, with the 2022-2023 academic year as the required start date. Alumni, friends, and benefactors of the Institute deserve to know how VMI is fulfilling its obligations under the law. Proactively expressing how VMI is meeting its obligations should be a good news story on this subject.

Third topic: The Board should publish at the conclusion of its January 2024 meeting the Inspector General's investigative report into actions by VMI employees who questioned the integrity of cadets and/or Alumni about the 2023 Virginia Press Association awards won by *The Cadet* newspaper. Failure to make the IG's report public, damages the IG office's reputation as a thorough, objective, and impartial authority. The Board of Visitors fails the Corps of Cadets, Alumni, and citizens of the Commonwealth when it does not uphold "the integrity of the Institute"⁵ by permitting the administration to not hold staff

⁵ Virginia Military Institute Board of Visitors, By-Laws (revised & Adopted 28 January 2023) Article I, Section 3.4

Joseph M. Spivey, IV

accountable for improper conduct. Inaction on this matter sustains a cloud of opacity and an atmosphere of failure over the Superintendent and his office. It is a condition observable by Alumni, cadets, legislators, and Virginia's citizens.

Finally, two topics have previously been addressed by Board members during this academic year's meetings. Action is required to arrest their respective circular discussions.

The first topic is VMI's aching need for long-term investment and a commitment to a professional communication and marketing company. Ideally, the company will have a portfolio including crisis management experience. VMI leadership and the Board have suffered severe inertia on a variety of matters since autumn 2019. In other areas they have over-reacted, principally I think, because they did not have good, independent counsel on which to rely. Whether from policy or group think, matters have been handled on an ad hoc basis, silence continues on some issues, and an appearance of reticence addressing critics greatly harms the Corps, the Institute, and the Alumni. Change must occur.

The second topic is *The Cadet* newspaper and its Alumni supporters. For three years now the administration has fought *The Cadet's* writers and their supporters engaging in a running gunfight over who "controls" the content of the newspaper. At its core *The Cadet* is a college newspaper. Therefore, its content is protected by the First Amendment. Beyond this Constitutional principle, the newspaper now has a history. It has produced numerous online articles and multiple print editions. With one documented exception, a difference of opinion in my assessment, all remaining content has been above reproach by the administration. Unless the administration can demonstrate, from within this wealth of material, an ongoing, deliberate effort to write and distribute dishonest, unethical, or offensive information, the Board should instruct the administration to desist from its attempts to undermine *The Cadet's* independence. The Board should direct the administration to end the harassment of The Cadet Foundation and grant *The Cadet* staff, its writers, photographers, and cartoonists status (a permit) in line with (identical to) other recognized cadet clubs and associations.

Thank you.

Most Sincerely,



Joseph M. Spivey, IV
VMI Class of 1985

Enclosures:

- 1) November 30, 2023 letter
- 2) VMI Alumni Agencies Combining Statement of Activities, June 30, 2018 page 25
- 3) VMI Alumni Agencies Combining Statement of Activities, June 30, 2019 page 25
- 4) VMI Alumni Agencies Combining Statement of Activities, June 30, 2020 page 26
- 5) VMI Alumni Agencies Combining Statement of Activities, June 30, 2021 page 26
- 6) VMI Alumni Agencies Combining Statement of Activities, June 30, 2022 page 25