

Report to
Eastern Virginia Medical School

McGuireWoods LLP

May 21, 2019

Introduction and Executive Summary of Findings

On February 1, 2019, an online media outlet published a photograph of an individual in blackface and another individual in Ku Klux Klan robes and hood. This photograph appeared on the personal page of Governor Ralph S. Northam's 1984 Eastern Virginia Medical School ("EVMS") yearbook ("the Photograph"). EVMS responded quickly. Dr. Richard Homan, President and Provost of EVMS, announced an external investigation on February 2, 2019. EVMS engaged McGuireWoods LLP ("McGuireWoods") to conduct this investigation.

McGuireWoods' mandate was to conduct an independent factual investigation into EVMS yearbooks, including the 1984 yearbook, and examine diversity and inclusion at the school from its inception to present day. Dr. Homan directed McGuireWoods to review all the past yearbooks, determine the processes for publishing the yearbooks, discover what, if any, administrative oversight was exercised, examine the campus culture, and provide recommendations for future actions.

The McGuireWoods investigation was independent. While EVMS assisted and facilitated our efforts, McGuireWoods determined what documents to review and what witnesses to interview. We would like to thank EVMS for its cooperation and responsiveness during the investigation. EVMS provided McGuireWoods with unfettered access to EVMS documents and members of the EVMS community. At no time did EVMS restrict our inquiry and the findings and conclusions contained herein are our own.

This report contains a detailed account of our investigative scope and process. Also, this report details the information we collected and our assessments of that information. Again, our investigation focused on EVMS's culture historically with respect to diversity and inclusion. That investigation included examination of the EVMS yearbooks, including the 1984 yearbook and Governor Northam's personal page in that yearbook. Because Governor Northam claimed publicly that he did not have knowledge of the Photograph that appears on his personal yearbook page, we also sought to collect information, if possible, on the identities of the individuals in the Photograph and to determine whether the Photograph was placed on Governor Northam's personal page in error or by any other means not at his direction. Our conclusions, in summary fashion, are as follows:

- The culture of EVMS has always been focused on efforts to serve the local community. Consistent with this, EVMS sought to create a diverse and inclusive environment almost from its inception. There was no evidence to indicate EVMS excluded students, but, as reflected in some witness interviews, it appears there was often not enough infrastructure or funding to fully support past diversity efforts. Witnesses reported, however, that this infrastructure and funding support significantly improved in the past five to ten years.
- During the past five to ten years, EVMS has taken meaningful steps to improve and provide consistent support for diversity and inclusion at the school. These steps are reflected in, among other things, improved diversity within the EVMS student body, implementation of diversity focused initiatives, the addition of a Vice President for Diversity & Inclusion, and inclusion training.

- Nine former and current students reported to us that they experienced what in their minds were instances of racial insensitivity from other classmates, faculty, or during clinical rotations. Several of these individuals expressed that those experiences were not indicative of EVMS culture as a whole, or were not unique compared to what they had experienced elsewhere.
- From 1976 to 2013, the EVMS yearbooks were published as an almost entirely student-run program, with little to no oversight exercised by the EVMS administration. While there was an administration liaison in certain years, we have identified no information that indicates that any faculty or administrators edited or censored student photographs or the general contents of the yearbooks.
- We reviewed the contents of the yearbooks in detail. We have identified a number of photographs depicting blackface in the yearbooks, including the Photograph depicting blackface and an individual in KKK robes in the 1984 yearbook. The yearbooks repeatedly contained other content that could be offensive to women, minorities, certain ethnic groups, and others. These issues or themes recurred over much of the time period in which the yearbooks were published, although with less frequency in the later years of the yearbooks' publication.
- With respect to the Photograph on Governor Northam's personal page, we could not conclusively determine the identity of either individual depicted in the Photograph. The Governor himself has made inconsistent public statements in this regard. No individual that we interviewed has told us from personal knowledge that the Governor is in the Photograph, and no individual with knowledge has come forward to us to report that the Governor is in the Photograph. In light of the Governor's statements on February 2, 2019 that he had not seen the Photograph before, we sought to determine whether there is information that the Photograph was placed on his personal page in error or by any other means not at his direction. Our inquiry in this regard was restricted by the passage of time and the dearth of contemporaneous documentation. While we have identified no information that the Photograph was placed on Governor Northam's personal page in error or by any other means not at his direction, we could not conclusively determine the origin of the Photograph.¹

Finally, we note that Dr. Homan also announced the creation of an external Community Advisory Board to examine the school's present culture and make recommendations. In light of the mandate given to the Community Advisory Board, McGuireWoods focused primarily on diversity and inclusion at EVMS historically. Because the Community Advisory Board is specifically tasked with making recommendations, McGuireWoods does not make any recommendations here. During the course of our investigation, those we interviewed occasionally made suggestions or recommendations, and, if so directed by EVMS, we will provide the suggestions and recommendations we have received to the Community Advisory Board.

¹ We acknowledge there is scant information on this subject thirty-five years after the fact. Memories fade over such a lengthy time period and we were unable to contact some individuals who may have relevant knowledge.

OUTLINE

I.	The Investigative Process	4
A.	Overview	4
B.	Scope of Documents Reviewed for Report	4
C.	Witness Interviews	5
II.	Information Obtained During the Investigation.....	6
A.	The Yearbooks	6
1.	Content.....	6
2.	Process	9
B.	The Photograph on Ralph S. Northam’s Personal Yearbook Page	12
1.	Relevant News Articles and Public Statements.....	13
2.	Interviews with Governor Northam.....	14
3.	Interviews Related to Governor Northam’s Initial Reactions Upon Viewing the Photograph on February 1	17
4.	Information Collected Regarding the Identities of the Persons in the Photograph	18
5.	Was the Photograph Placed in Error?.....	19
6.	EVMS’s Prior Knowledge of Yearbook Content	20
C.	EVMS Culture.....	21
1.	Statistics and Policies on Diversity and Inclusion.....	21
2.	Diversity and Inclusion at EVMS – Personal Experiences	28
III.	Conclusion	35

I. The Investigative Process

A. Overview

McGuireWoods worked with EVMS’s administration and staff to gather documents and conduct interviews of individuals with knowledge of the yearbooks, and, more generally, the school’s culture and sensitivity with respect to diversity and inclusion. EVMS provided McGuireWoods with copies of every yearbook from 1976–2013, various policy and procedure documents, and provided McGuireWoods with access to relevant data and statistics. Also, EVMS provided contact information for faculty, staff, and alumni witnesses. In addition, Dr. Homan sent a letter to the alumni, asking them to contact McGuireWoods directly if they had any information relevant to the investigation. And, as discussed further below, McGuireWoods contacted various current students and alumni to inform the investigation. Our work was very much dependent on these community members, their willingness to speak with us about their experiences, and their memory of events from twenty or thirty years ago.

In total, we attempted to contact over eighty former and current students from EVMS classes of 1983 through 2021, and of those, we interviewed thirty individuals. Our investigation also resulted in interviews of fifteen current and former faculty, administration, and staff.

As a general matter, we do not view it as necessary or important to our work to identify alumni or current students by name herein. However, some alumni have spoken publicly about the matters within the scope of our investigation and we may identify those alumni by name where important to understand this report. We have included the names of EVMS faculty, staff, and administrators, where pertinent, who have relevant knowledge of the yearbooks and culture at the school.

B. Scope of Documents Reviewed for Report

EVMS provided McGuireWoods with a copy of each yearbook from 1976 through 2013. We thoroughly reviewed each yearbook to identify images or statements that, in our assessment, may be relevant to a culture of diversity and inclusion or lack thereof.

EVMS also provided McGuireWoods with additional documents including, but not limited to, school policies on diversity and inclusion, student matriculation data from 1973–2018, current faculty demographics, diversity statistics, student handbooks, the student complaint procedure, and reports of faculty and student complaints. McGuireWoods also looked into litigation involving EVMS, in which a claim of discrimination against the school was alleged. We reviewed school policies on alcohol and student events, and student publications, including a number of “TRASH” (The Real Authentic Student Handbook) guides from the 1980s and 1990s. Administrators from EVMS told us that some early documents may be difficult or hard to obtain, as the school did not maintain a lot of records.

Relevant to issues within the yearbooks, we received Governor Ralph Northam’s student file, the Student Progress Committee minutes related to photographs published in the 2013 yearbook, and emails EVMS received from alumni about the yearbooks in the wake of the

February 1, 2019, Photograph release. McGuireWoods compiled news articles referencing Governor Northam and the 1984 yearbook, Governor Northam's public statements and interviews on this topic, as well as the EVMS response to the issue.

C. Witness Interviews

To acquire a more complete picture of EVMS's culture over the years, we sought to interview individuals who could provide insight into diversity and inclusion at the school. We understood that it would not be practical to speak with every current or former member of the faculty or the administration, nor would it be feasible to interview every current or former student. During the course of our investigation, we interviewed a range of alumni, current students, faculty, administrators, and former faculty and administrators.

In our efforts to reach alumni, McGuireWoods contacted the individuals who communicated with EVMS or McGuireWoods directly in response to Dr. Homan's letter. Also, we identified potential witnesses in the following ways: (1) alumni listed as yearbook staff, (2) students or alumni who are underrepresented in medicine, (3) students or alumni who served as class leaders (i.e., class presidents, service on Pan Student Council or Student Government Association), and (4) students or alumni recommended to us by other witnesses as those who may have relevant information. In identifying possible interviewees, we focused on class years in which blackface appeared in the EVMS yearbooks. In total, we attempted to contact over eighty current and former students. Of that number, we were able to interview thirty current or former students.

We identified fourteen alumni from the EVMS Class of 1984, who the yearbook named as a member of the 1984 yearbook staff, and who are still alive. We were able to interview five of members of the yearbook staff, although only three were able to provide us with any substantive information. We also spoke to five additional members of the class of 1984, who were not on the yearbook staff. As it is not necessary to identify individuals by name, and to preserve the anonymity of those who requested it, we will refer to them using an identifier such as "1984-1."

Our interviews also included five other alumni from the 1980s, identified as 1980s-1 through 1980s-5. We interviewed three alumni from the early 1990s, identified as 1990s-1 through 1990s-3; three alumni from the early 2000s, identified as 2000s-1 through 2000s-3; four alumni from the late 2010s, identified as 2010s-1 through 2010s-3; and four current students, identified as Student-1 through Student-4. We also reviewed emails sent to EVMS and directly to McGuireWoods from alumni, recounting their experiences, and we reviewed statements made in news articles from various alumni.

We conducted interviews of the current faculty and administration, including but not limited to, President and Provost, and Dean of the School of Medicine Richard Homan, as well as Vice Dean of Academic Affairs, Ronald Flenner, who graduated from EVMS in 1989. We interviewed many current administrators, including the Associate Dean of Admissions; the Vice President, Diversity and Inclusion; the Assistant Dean for Diversity in Educational Programs and Diversity in Education; and professors who have taught at EVMS for over twenty-five years. In addition, we interviewed retired faculty and members of the administration, including Robert

McCombs, a retired Associate Dean of Student Affairs; Richard Michael Oliver, a retired Associate Dean of Student Affairs; and Melissa Lang, a former Executive Director of Alumni Relations.

McGuireWoods interviewed Governor Northam on March 27, 2019. During this interview, Governor Northam named five individuals who may have information relevant to the 1984 yearbook. McGuireWoods spoke with several of these individuals thereafter. We were also able to interview four individuals who spoke with Governor Northam on Friday, February 1, including two members of his staff, in an effort to gauge the Governor's contemporaneous response to the Photograph on February 1 and 2, 2019. We conducted a follow up interview of Governor Northam, a follow up interview with Chief of Staff Clark Mercer, and an interview of the First Lady of Virginia, Pam Northam.

Finally, McGuireWoods also attempted to contact the publisher of the EVMS yearbook. We learned Hunter Publishing Company (later acquired by Jostens, Inc.), in Winston-Salem, North Carolina, closed in 2009. We were unable to locate any former employees with information about the EVMS yearbooks or yearbook process.

II. Information Obtained During the Investigation

Based on the issues identified for investigation by EVMS, we have organized our following discussion as follows: (1) the yearbooks and the processes related to publication, as well as any administrative oversight of the yearbooks, (2) the Photograph, including information related to its contents and circumstances of its placement in the 1984 yearbook, and (3) information and assessments related to the culture of diversity and inclusion at EVMS historically. We note that information and assessments related to the Yearbooks and the Photograph are also relevant to and have been considered in our ultimate assessments with respect to the culture of EVMS for diversity and inclusion.

A. The Yearbooks

1. Content

Our review of the yearbooks focused on material that would be relevant to assessing the culture with respect to diversity and inclusion at EVMS.² Based on EVMS's current statement on diversity and inclusion, the school emphasizes "the recruitment of women, traditionally underrepresented minorities in medicine and the health professions (African Americans, Latinos, American Indians and Native Alaskans, and Native Hawaiians and Pacific Islanders), veterans and individuals who come from a socio-economically disadvantaged backgrounds." Our focus on yearbook content related to any photographs or material which does not support a diverse and inclusive environment.

² The yearbooks with some frequency display photographs and content containing sexual innuendo, depictions of students drinking alcohol, and other conduct that may not be considered professional and which could be perceived as offensive. We have not generally attempted to summarize this content here.

Photographs depicting individuals in blackface are not isolated to the 1984 yearbook. In our review of the yearbooks spanning from 1976 through 2013, there are at least ten photographs³ depicting individuals in blackface.⁴ There were three such photographs in the 1984 yearbook (including the Photograph depicting one person in blackface and another in KKK robes), one in 1985, two in 1992, two in 1993, one in 1996, and the last instance appears to be in the 2004 yearbook. For those individuals who could be conclusively identified, we determined that those individuals are not current EVMS faculty. In addition to these photographs, there are the images of three students in Confederate uniforms in front of a Confederate flag in the 2013 yearbook.

The content of many yearbooks demonstrates the publication was student-run, and had little to no content-based supervision by EVMS administration. It appears the administration was involved only for production purposes, such as sending the final product to the publisher. While the yearbooks thanked several members of the faculty or administration, the nature of the attribution indicates they had little to do with the publication. Rather, students had considerable leeway and freedom with the publication.

a) 1970s

From 1976 through 1979, there were no blackface photographs found in the yearbooks. There are photographs of individuals in costumes (fake afros and mustaches with serapes). In the 1977 yearbook, there is a photograph of an Asian man with the caption “Yellow Peril,” and a photograph of a woman of color with the caption “God’s gift to minorities.”

b) 1980s

Yearbooks from the 1980s feature several blackface photographs, which are most prevalent in the 1984 and 1985 yearbooks. This includes the Photograph on Governor Northam’s page in the 1984 yearbook of the person in blackface wearing a hat, sunglasses, plaid pants and jacket, and another person in a Ku Klux Klan hood and robes. Other photographs include the photograph of a student in blackface, dressed as Diana Ross, which was included in both the 1984 and 1985 yearbooks. A group photograph on another personal page in the 1984 yearbook shows three men in blackface dressed and performing as The Supremes.

³ The majority of the yearbooks feature black-and-white photographs, and it is difficult to ascertain whether a photograph of an individual in face paint and a costume is necessarily an individual in blackface. Therefore, we have attempted to identify photographs that appear to clearly be blackface, and have not included in this list photographs where we are unable to determine whether the person is in blackface or another costume that includes dark makeup, e.g., a photograph of an individual in a scarecrow costume, with white around the eyes and a dark painted face, or an individual who may be dressed as a clown, with dark face paint.

⁴ The term “blackface” is defined as “dark makeup worn (as by a performer in a minstrel show) in a caricature of the appearance of a black person,” as well as “a performer wearing such makeup.” *Blackface*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/blackface>. This definition notes, “The wearing of blackface by white performers was, from the early 19th through the mid-20th centuries, a prominent feature of minstrel shows and similar forms of entertainment featuring exaggerated and inaccurate caricatures of black people. Its modern occurrence in imitation of such performers is considered deeply offensive.”

Other photographs and content in the 1980s yearbooks includes a headshot of a professor wearing dark glasses with the caption “Ray Charles,” and students dressed as Native Americans with the caption “Ugh, firewater causes Bells’ palsy” in 1981. There is a photograph of a faculty member⁵ holding a mug that says “We can’t get FIRED! Slaves have to be sold” in the 1984 and 1985 yearbooks, and a quote under a photograph on a personal page in 1985 stating “Negro Triad.” There are also multiple photographs of individuals in costume, wearing Latin American, Asian, or Middle Eastern dress. The 1980s yearbooks contain many photographs and captions with sexual scenarios and sexual innuendo that could be considered offensive and/or sexist. Most of this material is included in yearbooks from 1980 to 1985.

c) 1990s

Several of the 1990s yearbooks contain photographs of individuals in blackface. Those photographs which were identifiable were contained in the 1992, 1993, and 1996 yearbooks. There are numerous photographs depicting individuals wearing Native American, Latin American, Asian, or Middle Eastern dress, some with race or ethnicity related captions in the 1990s yearbooks, including a photograph of a male with a wide lamp shade on his head with the caption “Who ordered the moo goo gai pan?” in 1991. Photographs with content which could be considered insensitive and offensive are also featured in several 1990s yearbooks.

d) 2000s

From 2000 through 2009, the yearbooks contain one blackface photograph (2004). The blackface photograph in the 2004 yearbook appears to be a photograph from Match Day, with a student dressed as the character “Chef” from the cartoon television program South Park. In 2009, a photograph depicts two females, one white and one Asian, pulling their eyes to the side of their faces. Also featured in the yearbooks from this decade are quotes which do not reflect a diverse and inclusive environment, related to disability, gender, and which may be considered offensive and/or sexist. There are several photographs of students dressed up in Latin American, Middle Eastern, and Native American costumes. There are also photographs that could be considered offensive depicting sexual scenarios and sexual innuendo.

e) 2010s

The last four EVMS yearbooks (2010–2013) have less content that fails to demonstrate a diverse and inclusive school. There are no blackface photographs. Overall, there are far fewer photographs of students in costume, and very few captions under the photographs. In the 2013 yearbook, however, there are three headshots of male students holding guns and wearing Confederate uniforms in front of a Confederate flag.

f) Termination of the Yearbooks

Yearbooks were discontinued after 2013. Both the administration and students decided to stop the publication, albeit for different reasons. Former students who attended EVMS between 2012 and 2014 told us that the students were no longer interested in the yearbook and that the

⁵ This faculty member no longer teaches at the school.

student body disliked paying for the yearbooks. The decision to stop the yearbooks occurred in 2013, before the publication of the last yearbook. Both a current and a former administrator corroborated this.

Dr. Homan became President of EVMS in April, 2013. Within a year, in early 2014, he announced the termination of the yearbooks, after Mr. Gameda showed him the photographs of students in Confederate costumes in the 2013 yearbook. Dr. Homan recognized that the students chose to terminate the yearbooks for different reasons, but stated that he wanted to ensure the publication of the yearbooks stopped after the Confederate photographs.

2. Process

Our interviews, and the records provided, indicate that students ran the yearbook, with little to no administration oversight. Due to the passage of time, there were no substantive documents, that would allow us to definitively determine the assembly process (i.e., whether photographs were submitted in sealed envelopes, which students had access to yearbook materials, etc.). The information provided during our interviews indicated the process, and administration involvement, varied from year-to-year. We received feedback from alumni and former yearbook staff members that the process was at times chaotic and often frustrating. While we were made aware of later edits in the general layout, we received no information that identified a specific mistake in a yearbooks, nor did anyone we interviewed alert us to the existence of a misplaced or incorrect photograph on a personal page. We were told that many students were disinterested or apathetic about the yearbooks in general, and yearbook editors and staff struggled to obtain content for the yearbook.

We reviewed the policy documents, including student handbooks when available, provided to us by EVMS for any guidance on the yearbook. No information was contained in these documents to give any indication about the yearbook or the assembly process. However, the student-published “TRASH” guides referenced the yearbook. These guides, from 1981, 1982, 1984, and 1993–1995, all indicated the students, and specifically the senior class, published a yearbook every year. From 1993–1995, the TRASH guide shows the yearbook was distributed in the fall, and that the yearbook was assembled “under the guidance of the senior class and the Student Affairs Advisor.” In 1984, according to the TRASH guide, the yearbook was distributed, free of charge, in June, and the TRASH guide states the students handled the publication. In 1981 and 1982, the TRASH guide states the yearbook was distributed free of charge and the students handled the publication. We are aware of no other documents that would have instructed students on the production of the yearbook or its assembly process.

We received a document from a 1980s graduate setting forth the EVMS yearbook process. This document indicates students produced the EVMS yearbook, but received administrative support from the Office of Student Affairs and Dean of Students. The editor was a member of the graduating class, and the staff consisted of eight to ten members of the graduating class, along with two to four members of each class below that (Med I-III). According to the document, the yearbook consisted of sixteen sections, with members of staff assigned to produce a specific section or sections. Members of the graduating class received half a page to fill with photographs or text, and no formal editing occurred of this half page. Then, the editor assembled the final draft yearbook, and submitted the draft to the publishing company. This document also noted the

administration had a support role, but did not review, edit, or approve the content of the yearbook.

The 1984 yearbook lists fourteen members of staff and one editor from the class of 1984. We were able to speak to five members of staff, and four other students from the class of 1984, who recalled the following about the yearbook assembly process:

1. One former member of staff reported that although he was listed as a staff member, that he did not recall serving such a function and that the listing came as a surprise. This individual, 1984-1, told us multiple people worked on the yearbook at different times, because in the last year of medical school, students were scattered throughout the area at different hospitals. Depending on where each student was working at the time, and the type of rotation, different students worked on the yearbook at different times. 1984-1 remembered there was a yearbook office, which was a room with a desk and a pile of yearbook related items. 1984-1 recalled dropping off the information and photographs for his personal yearbook page at the last minute, during a break from rotations when he had a few minutes to spare. He did not remember the yearbook office being locked, but rather submitting the personal photographs by leaving them in the office. 1984-1 believes the yearbook was edited without the staff's knowledge, and recounted a story told by another member of the yearbook staff, 1984-3, about the last page of the yearbook being changed and not discovered until the yearbooks were published.⁶
2. Another individual listed as a member of the yearbook staff, 1984-2, remembered working on the yearbook very clearly. According to 1984-2, he was the last student to handle the yearbook before it was sent to the publisher. 1984-2 commented that most students were exhausted at this stage of medical school, and had limited time to spend on the yearbook. He only remembered ten to twelve students assisting with the process, and he remember calling other classmates and trying to convince them to help. The yearbook staff in 1984 used the 1983 yearbook as a guide. 1984-2 told us that there were boxes of yearbook related materials, mostly unsealed envelopes with photographs, which were assembled by other students. 1984-2 recalled another student trying to sort out the photographs and working to resize them. As a student involved in the final assembly portion of the yearbook, 1984-2 was responsible for the faculty photographs, and was so pressed for time that he simply used the same photographs from 1983. 1984-2 repeatedly described the process as chaotic, and assembled in bits and pieces. He does not believe that he or the other staff went through the yearbook to ensure the accuracy of the information or that photographs were in the correct place. 1984-2 also does not believe students received proofs of their personal pages before publication. He did remember the publishing company provided a loose outline of where to place photographs and materials, and the staff would create packets of material. 1984-2 also believes he may have gone through some of his classmates' photographs, but he was not thorough. He commented during our interview that the process was a "nightmare" and a "walk through hell." He told us the students did the best they could, and then passed the box of yearbook materials off to someone in the Dean's office who mailed it out. When the yearbooks returned before graduation,

⁶ We confirmed this information when we interviewed 1984-3.

1984-2 said students were not interested in it. He concluded that it was possible a photograph could have fallen from one envelope into another, but stated the likelihood of something getting misplaced was not high, but also not impossible.

3. A third member of the 1984 yearbook staff, 1984-3, told us he was responsible for preparing personal page layouts and group photographs. 1984-3 was unaware of any pranks or mistakes on personal pages, but did tell us that one aspect of the layout was changed without his knowledge. 1984-3 pointed to the final page of the yearbook; when 1984-3 finished the layout on this page, it contained only a photograph of a man in silhouette. When 1984-3 received the yearbook after it was published, there was a picture of a woman's face and a poem. 1984-3 believes the yearbook editor may have made these changes, but he could not be sure that she did. 1984-3 thought it was odd if this occurred as she did not do much work in the darkroom.⁷
4. Two other individuals interviewed, who were listed as members of the 1984 yearbook staff, had no recollection of working on the yearbook.
5. Other members of the class of 1984 had no knowledge of the yearbook assembly process. Several individuals remembered submitting photographs for their personal pages, but did not remember receiving a proof, or any other information about the yearbook process.
6. Alumni quoted in news articles following the story breaking in the media have provided additional information about the yearbook process.⁸ Some members of the yearbook staff have described a more organized process, in which mistakes were unlikely to occur. Others have stated it was possible mistakes could be made.

Apart from Governor Northam's public claim on February 2 that he had not seen the picture before, no one we interviewed, however, could provide any first-hand knowledge of an actual mistake on any page, including any personal page, within the 1984 yearbook. However, we were also not able to conclusively determine the origin of the Photograph.

We also considered information from other students in the 1980s to be relevant to the process, especially those in the years immediately before and after 1984. This information is not

⁷ We attempted on numerous occasions to reach the editor of the 1984 yearbook, but we were unable to do so.

⁸ See, e.g., John Eligon, *Yearbook Pages at Northam's Medical School Recorded Both Memories and Prejudices*, N.Y. Times, Feb. 5, 2019, <https://www.nytimes.com/2019/02/05/us/northam-yearbook.html?searchResultPosition=1>; Ben Finley, *Could Racist EVMS Yearbook Photo Have Been Inserted Mistakenly or as a Prank? Staff Disagree.*, Associated Press, Feb. 6, 2019, https://pilotonline.com/news/government/politics/virginia/article_66a7ce9a-2a0a-11e9-9a24-f39536057a86.html; Erin Burnett, *Northam Worried He'll Be Branded "Racist for Life,"* Cable News Network, Feb. 4, 2019, <http://www.cnn.com/TRANSCRIPTS/1902/04/ebo.01.html>; and Laura Vozzella and Gregory S. Schneider, *Northam Won't Step Down, Denies Photo Includes Him*, Wash. Post, Feb. 3, 2019.

dispositive, as the process could have varied from year to year. Other students from the 1980s, who were not members of the class of 1984, had different experiences with the yearbook assembly process. One individual, 1980s-3, thought photographs were submitted in sealed envelopes, and told us that he remembered seeing a proof of the final personal page. Another student, 1980s-2, recalled giving yearbook photographs to a member of the yearbook staff, and 1980s-2 was unaware of any mistakes being made in the yearbook, or that students might swap out photographs. Another former student from the 1980s thought he saw a proof of his page before it was published, but had no memory of any issues with mistakes or incorrect photographs on yearbook pages. All three of these students attended EVMS before 1984. 1980s-4 told us that in his year, students were provided with a piece of paper for their personal pages, and were instructed to put the photographs and text in the layout the student wanted. This former student told us there were no proofs, and if someone wanted to add something to a page, there was no way to edit it. 1980s-4 also remembered that the photographs chosen were not returned to the students. 1980s-4 attended EVMS in the mid-1980s, and was on the yearbook staff for the 1984 yearbook, although 1980s-4 did not graduate that year. There was no consensus from the students from the 1980s whether students had to order the yearbooks versus an automatic delivery. Several students, including 1980s-4, 1984-2, 1984-5, and 1984-6 all recalled receiving the yearbooks on or before graduation.

Students from the 1990s through 2013 had very vague recollections about the yearbook assembly process. In the early 1990s, it appears the process remained similar to the 1980s. Students sent in photographs for their personal pages, and yearbook staff exercised little-to-no control over the contents. There were no policies or guidelines relied on by the students in creating the yearbooks. We were told that, beginning in the early 1990s through 2013, yearbooks were sent out after graduation. At some point, likely in the mid to late 1990s, the process became computerized. Recent alumni recalled sending in their photographs via e-mail. The yearbook was assembled on a computer, using software provided by the publisher. There was a technical guidebook for the software, but otherwise no policies or procedures about yearbook assembly during this time. Notably, the final years of the yearbook had issues when section editors inserted photographs of students without permission. The section editors found photographs on students' Facebook pages and included those in the yearbook when individual students did not respond to the request for photographs.

Based on our investigation, it is apparent the yearbooks were assembled and published by the students with little oversight from EVMS. We learned that students assembled and worked on the yearbooks at EVMS. Generally, someone in the administration acted as a liaison between the students and the publisher. This administrator sent the yearbook on to the publisher, and in some years, may have assisted with typing and text corrections. Per our investigation, the yearbooks were a student-driven process, with minimal oversight from the EVMS administration. Our interviews of former students, administrators, and the acknowledgements within the yearbooks support our assessment.

B. The Photograph on Ralph S. Northam's Personal Yearbook Page

The Photograph on Governor Northam's personal page and Governor Northam's response gave rise to several questions for our investigation. First, after initially issuing a public statement on February 1 in which he admitted being in the Photograph, the Governor claimed publicly on February 2 that he had not seen the Photograph before and suggested it may have been placed on

his personal page in error. We have therefore attempted to determine whether the Photograph was placed on Governor Northam's page in error or by any other means not at the Governor's direction. We have also attempted to determine whether we could positively identify either of the individuals that appear in the picture. Second, we have also considered the Photograph in our overarching assessment of the culture of EVMS related to diversity and inclusion.

We found no information that the Photograph was placed in error, though we acknowledge there is scant information on this subject thirty-five years after the fact. Nor were we able to conclusively determine the identity of either individual in the Photograph, or the origin of the Photograph. No one we interviewed told us the Governor was in the Photograph, and no one could positively state who was in the Photograph. As described further below, the Governor in interviews with us has consistently denied that he appears in the Photograph or knew of its existence before February 1, 2019. Other individuals have corroborated that the Governor's initial reaction upon viewing the Photograph on February 1 was a denial that he appears in the Photograph. However, one witness has reported to us that he recalls reviewing the Governor's personal yearbook page with the Governor in 1984. While the Governor denies that this encounter occurred, this witness's account would indicate that the Governor did know about the Photograph in 1984, however, the witness did not think the Governor was personally depicted in the Photograph.

1. Relevant News Articles and Public Statements

On February 1, 2019, the website Big League Politics published Governor Northam's 1984 yearbook page.⁹ Other media outlets quickly picked up the Photograph, and the story broke in the press and widely on social media on the same day.

In response, Governor Northam has made several public statements, including as particularly relevant here three public statements on February 1-2, followed by a Washington Post interview and an interview with Gayle King of CBS. In the first two statements made on February 1, 2019 (one posted on his website and another posted on Twitter),¹⁰ Governor Northam apologized:

- First, on his website, Governor Northam stated, in relevant part, that: "Earlier today, a website published a photograph of me from my 1984 medical school yearbook in a costume that is clearly racist and offensive. I am deeply sorry for the decision I made to appear as I did in this photo and for the hurt that decision caused then and now," and
- Second, via Twitter, Governor Northam stated, in relevant part, that: "That photo, and the racist and offensive attitudes it represents does not reflect that person I am today or the way that I have conducted myself as a soldier, a doctor, and a public servant. I am deeply sorry. I cannot change the decisions I made nor can I undo the harm my behavior caused then and

⁹ See Patrick Howley, *Yearbook: Ralph Northam in Blackface & KKK Photo*, Big League Politics (Feb. 1, 2019), <https://bigleaguepolitics.com/yearbook-ralph-northam-in-blackface-photo/>.

¹⁰ See *Governor Northam Statement on Offensive Photo* (Feb. 1, 2019), <https://www.governor.virginia.gov/newsroom/all-releases/2019/january/headline-838358-en.html>; see also <https://twitter.com/GovernorVA/status/1091510484468146176>.

today. But I accept responsibility for my past actions and I am ready to do the hard work of regaining your trust.”

On February 2, 2019, Governor Northam recanted at a press conference, stating “When [] confronted with the images yesterday, I was appalled that they appeared on my page. But I believe then and now that I am not either of the people in that photo.” He explained that his belief stems, in part, from that fact that he can clearly remember “darkening” his face for a Michael Jackson costume that same year at a dance contest and that “you remember these things.” Also, he stated that it was the first time he ever saw the Photograph. During a question-and-answer session following the press conference, Governor Northam stated he didn’t want to speculate on how the Photograph ended up on his yearbook page, but a classmate told him “someone could have put a photo on the wrong page. She said it happened on numerous pages in this very yearbook.”¹¹

The following week, Governor Northam sat down for two interviews, one with Gregory Schneider from the Washington Post, and another with Gayle King from CBS This Morning. In the Washington Post interview, Governor Northam said he “overreacted” when he saw the Photograph on February 1st and accepted responsibility for the Photograph.¹² Speaking with Gayle King, Governor Northam stated February 1st was the first time he had ever seen the Photograph, and was in shock when he initially made the statements.¹³ He again stated that a number of friends and classmates from medical school called and told him that it was not his picture.

2. Interviews with Governor Northam

Governor Northam was cooperative with our investigation, including by participating in two in person interviews, and the Governor’s cooperation facilitated our investigation. The Governor permitted us to interview his own staff as well. With the Governor’s assent, we were able to receive a briefing from a lawyer from Alston & Bird, who have been retained by a political action committee associated with the Governor. This lawyer summarized for us the results of his own investigation. We note that Alston & Bird, and Jeffrey Breit, the Governor’s personal attorney, were also cooperative and helpful with the investigation.

We interviewed Governor Northam on March 27, 2019 and on May 8, 2019. During these interviews, we asked Governor Northam about the events immediately following the release of his 1984 yearbook page on February 1, 2019, his knowledge of the yearbook process, and the culture at EVMS when he was a student. Attached as Exhibit 1 is our summary setting forth in detail the

¹¹ We attempted to contact the classmate Governor Northam spoke to, but after initially agreeing to speak with us, we were unable thereafter to reach the former classmate.

¹² See Gregory S. Schneider, *Va. Gov. Ralph Northam Says He Wants to Focus Rest of His Term on Racial Equity*, Wash. Post. (Feb. 9, 2019), https://www.washingtonpost.com/local/virginia-politics/va-gov-ralph-northam-says-he-wants-to-focus-rest-of-his-term-on-racial-equity/2019/02/09/2a739b20-2c76-11e9-984d-9b8fba003e81_story.html?utm_term=.3c94ab7e15f9.

¹³ See *Virginia Governor Says He “Overreacted” with Initial Apology for Racist Photo*, CBS News (Feb. 11, 2019), <https://www.cbsnews.com/news/ralph-northam-interview-virginia-governor-tells-gayle-king-i-definitely-overreacted-initial-apology-2019-02-11/>.

content of our two interviews with the Governor with respect to the Photograph and the culture of EVMS related to diversity and inclusion.

Governor Northam maintained throughout the interviews that he was not in the Photograph in question, and that the first time he saw the Photograph was on Friday, February 1, 2019. He learned of the Photograph that afternoon, when his Chief of Staff, Clark Mercer, alerted him. Governor Northam described the situation as shocking and chaotic. As he did not remember the Photograph, there were discussions as to whether the news stories were accurate, or the Photograph was Photoshopped. Based on conversations with his staff, Governor Northam told us there were two initiatives: (1) to issue a statement out as quickly as possible, and (2) to call members of the Virginia Legislative Black Caucus.

Governor Northam told us that he did not write the statements he released on Friday. He said that he felt he should take accountability, and that the situation was urgent. However, he told us that although he did not believe he was in the Photograph, “this was thirty-five years ago,” and “the last thing I wanted to do is say ‘this isn’t me’ and then have someone come forward and say ‘I was there and remember and it is you.’”

Governor Northam explained to us that his staff drafted the statements issued Friday, February 1. Governor Northam, however, read and approved the publication of these statements before they were issued. When asked whether he was surprised when he received the statement admitting he was in the Photograph, Northam responded, “I wouldn’t say I was surprised. I said ‘what do you need to me to do and I’ll do it.’ That’s the mode I was in. There was an urgency to get the statement out. If I had it to do over again I’d do it differently. I always rely on my communications people. You see these statements... I don’t know why the statement went in the direction it did.”

In reviewing the events of Friday, February 1, 2019, Governor Northam told us about a series of conversations about the Photograph. Governor Northam mentioned a conversation with Delegate Luke Torian, of the Virginia Legislative Black Caucus, in which Delegate Torian asked Governor Northam “which one are you?” (referring to the individuals in the Photograph). Governor Northam told us that he responded, “Luke, I can’t answer that, I have no memory of this.”¹⁴

Governor Northam told us that he also began speaking to friends and former classmates. He stated that these conversations got him thinking, and furthered his certainty that he was not in the Photograph. During the interview, Governor Northam identified the people he spoke to following the release of the Photograph. These individuals included a former VMI roommate, three classmates from EVMS who believed it was not Governor Northam in the Photograph, and

¹⁴ We spoke with Delegate Torian to discuss the events of Friday, February 1, 2019. Delegate Torian told us he and other members of the Virginia Legislative Black Caucus met Governor Northam in the Patrick Henry building that evening. Delegate Torian told us that Governor Northam’s apology to the group led him to believe Governor Northam was in the Photograph. He recalled asking Governor Northam “which one are you?” and Governor Northam responded, “I don’t know.”

his girlfriend at the time. The former VMI roommate, who is now a practicing dentist, told him it was not Governor Northam for several reasons. First, he told Governor Northam his teeth had never looked as good as the individual in blackface, and he did not think Governor Northam wore bowties or plaid pants. The former VMI roommate also noted that the person in blackface held beer in his right hand, whereas Governor Northam usually uses his left hand.¹⁵ One classmate told Governor Northam it was not him in the Photograph, and that the classmate was aware of several instances in the 1984 yearbook where pictures were misplaced.¹⁶ Other classmates told him the yearbook process was chaotic.¹⁷ Finally, Governor Northam's girlfriend at the time told him she had never seen the Photograph.¹⁸

Governor Northam also believes he is not in the Photograph based on the size of the individuals in the Photograph. He noted the person in blackface had much larger legs than he did in medical school, and the person in the KKK robes is much shorter than he is. Governor Northam commented that he would remember standing next to someone dressed in KKK robes. Further, Governor Northam stated that he "remembered like it was yesterday" dressing up as Michael Jackson. Throughout our interview, Governor Northam stated he was "positive" it was not him in the Photograph.

When asked who is in the Photograph, Governor Northam told us that he did not know, and he did not want to speculate on who it might be. He was concerned that anyone in the Photograph may be a physician with an ongoing medical practice, and Governor Northam stated that he did not want to put anyone through what he and his family have been through. Governor Northam was surprised the Photograph had never surfaced before, as in six campaigns for political office it had not been released.

Governor Northam did not recall much about the yearbook process. Governor Northam confirmed that he did submit the other photographs that appear on his personal page in the 1984 yearbook and that he submitted the quotation that appears on that page. Governor Northam does not believe the Photograph was a prank. While he was familiar with some individuals on the yearbook staff, he did not know many of them. He said he was not particularly social while a student at EVMS, that he had to study hard while many people in his class were big partiers. Governor Northam also told us that he did not think students at EVMS would have found the

¹⁵ We spoke to Governor Northam's former roommate at VMI following this interview. He told us, in a brief conversation, that as a practicing dentist, the individual in blackface could not be Governor Northam based on that individual's teeth shape and appearance. He also told us emphatically that he did not believe Governor Northam was in the Photograph.

¹⁶ As mentioned previously, our attempts to set up an interview with this classmate were unsuccessful, and we have been unable to reach this person to verify this information.

¹⁷ We had previously interviewed one of these former classmates, who served on the 1984 yearbook, and who provided a similar description to us.

¹⁸ We also spoke with a woman Governor Northam dated during college and his first two years of medical school. She told us that she had never attended a party with Governor Northam in which he wore blackface or KKK robes, nor had she attended any party at EVMS where people were dressed in such a manner. She also told us she did not believe Governor Northam was in the Photograph.

Photograph funny at the time. He did not report observing any racist incidents or behavior at EVMS while he attended, nor did he recall seeing anyone in blackface or KKK robes.

3. Interviews Related to Governor Northam's Initial Reactions Upon Viewing the Photograph on February 1

Following our interview with Governor Northam, we asked to speak to individuals who were with or spoke to the Governor, who might recall Governor Northam's contemporaneous statements, made on February 1, 2019 in and around when the Governor reported that he first saw the Photograph. We spoke to five individuals, including two of Governor Northam's staff, and the First Lady of Virginia, Pam Northam.¹⁹ Our impression from the staffers to whom we spoke generally echoed the Governor's account that the environment on February 1 was chaotic and there was a great deal of pressure, with one staffer describing it as a "crisis situation," and another stating there was an overwhelming sentiment that a statement had to be made.

Each person we interviewed reported that Governor Northam in conversations with the witnesses denied that he was in the Photograph on February 1. One person stated at all points on Friday, Governor Northam stated "this is not me in this picture, I don't believe this is me in this picture." Another individual told us that on Friday afternoon he called Governor Northam and the Governor said "I've never seen the picture and I've never seen the yearbook," as well as it's "just not me." One senior staffer we interviewed reported asking Governor Northam point blank if he was in the Photograph, and Governor Northam responded "I don't think so." This staffer followed up by asking, "Are you sure?" and Governor Northam responded "I don't think that's me." After this exchange, this staffer left to get a laptop, believing that the staff would prepare a statement for the Governor that denied he was in the Photograph.

Clark Mercer, Governor Northam's Chief of Staff explained that Governor Northam's level of certainty increased from Friday to Saturday, but his initial reaction was always a denial that he was in the Photograph. Most of the staffers we interviewed commented that as a physician, Governor Northam seemed never to speak in absolutes. However, they all reported Governor Northam said from the outset that he did not remember the picture, his wife did not think it was him in the picture, and he had never seen the picture.

We were told there was immense pressure for Governor Northam to issue a statement. Mr. Mercer described in some detail the genesis and selection of statements issued on Friday, February 1.²⁰ He described three options of potential statements that were discussed among staff and a crisis communications firm: a full denial, a full acceptance, and something in between. The staff and crisis communications firm rejected the in between option as a viable possibility. The options for a full denial and a full acceptance were then discussed with Governor Northam according to Mr.

¹⁹ We recognize that all of these individuals are staffers, close friends, trusted advisors, and in one case a family member of the Governor. We have considered their relationships to the Governor. That is why we sought to speak to as many witnesses as possible. These witnesses were consistent in their accounts that the Governor's reactions to the Photograph on February 1st were ones of denial.

²⁰ Attached as Exhibit 2 is our summary setting forth in detail the content of our two interviews with Mr. Mercer regarding the Photograph.

Mercer. Mr. Mercer recommended to the Governor that the Governor select the statement accepting responsibility, and that is the statement the Governor directed his staff to prepare. Mr. Mercer shed light on the Governor's reasoning in selecting the acceptance statement: "I think the two paths forward were predicated on—[Governor Northam] interpreted that if he said it's not me and someone comes out and says it is me...the one thing I [the Governor] have is my credibility, my honor, and that would devastate me." In other words, according to Mr. Mercer, the Governor did not think it was him in the Photograph but the Governor did not want to say something publicly that someone might challenge or disprove and thus the Governor selected a statement saying he was in the Photograph. Following the decision by the Governor, Mr. Mercer described a group effort, in which there was a "laptop in a conference room with lots of folks surrounding it, tweaking this word, that word. It was not the most effective way to write [the statement] but that's how it was." Once the staff wrote the statement, Mr. Mercer said it was shown to Governor Northam, and the Governor approved it.

During our interview of Mrs. Northam, she stated that she was not aware that the statement on Friday, February 1 would be an acceptance that Governor Northam was in the Photograph. She said if she had been made aware of this, she would have "physically stood there and stopped it." Mrs. Northam said there was no doubt in her mind that Governor Northam was not in the Photograph. After the statement was issued, she demanded that Governor Northam return home. Thereafter, she recalled that Governor Northam looked at her and said "that's not me in the photo." She stated, "There was no doubt. No equivocating," from Governor Northam after he denied being in the Photograph. She told Governor Northam he had to say that publicly.

4. Information Collected Regarding the Identities of the Persons in the Photograph

To date, no one has come forward and admitted to being in the Photograph, except for Governor Northam's statements of February 1, which he quickly recanted on February 2.

During the course of the investigation, several individuals, including Governor Northam, provided their views as to why they do not believe that that Governor Northam is in the Photograph. We also received a forensic facial recognition report from Alston & Bird. This report, conducted by a reputable vendor, found the image of the Photograph was not of sufficient quality to conduct a comparison with other photographs.

Specifically there were several points made about the physical characteristics of the individuals in the Photograph. Governor Northam's former VMI roommate, who is a practicing dentist, believes the person in blackface has better teeth than Governor Northam. We were also told by Governor Northam the individual in blackface has much thicker legs than he did in medical school. Governor Northam also believes he is not the person in KKK robes because that individual is shorter than the man in blackface, and Governor Northam is tall.

There were also theories provided that the individual in the KKK robes was female, based on the stature of that individual, and the use of a narrow belt in the costume. Several members of the class of 1984 told us they believed this individual was female, although they were unable to tell us the identity of the person. Throughout our investigation, we considered a number of possibilities regarding who might be in the Photograph. In each case, we conducted further

investigation. Our investigative efforts, however, did not result in any positive identification. The individuals we were able to speak to all denied being in the Photograph, and other individuals either did not return our calls or refused to speak with us. We recognize that there are strong disincentives for anyone to acknowledge being in that Photograph given the media coverage of the Photograph and the potential professional and social repercussions of doing so.

Those we interviewed thought the Photograph may have occurred at a Halloween party, or perhaps a costume party with the theme of odd couples or opposites. No one we interviewed reported attending parties during their time at EVMS where they saw an individual in blackface. Many of the individuals we interviewed commented that photographs on personal pages did not always reflect the student's time as EVMS, i.e., a student could chose a photograph for his or her personal page that was from a time period before that individual attended EVMS, and theorized this particular Photograph could have been from college and would be unrelated to EVMS.²¹

In light of the foregoing, we were unable to conclusively determine whether Governor Northam is, or is not, in the Photograph. Nor could we determine the identity of either individual in the Photograph.

5. Was the Photograph Placed in Error?

The second component of the question about the Photograph on Governor Northam's page is whether the Photograph was placed on Governor Northam's page in error or by any other means not at Governor Northam's direction, e.g., a prank. Governor Northam – although he has denied any knowledge of the Photograph – could have chosen the picture for his page even if he is not depicted in it. Everyone that we interviewed who expressed a view on the subject agreed that members of the yearbook staff would not have put the Photograph on Governor Northam's yearbook page as a prank.

With respect to whether the Photograph was placed in error, we did hear from the 1984 yearbook staff that the yearbook compilation process was chaotic. As a result, some members of the yearbook staff believed it was possible that a photograph could have been misplaced. However, no one we spoke with identified an actual mistake in the 1984 yearbook – or any other yearbook – in which a photograph appeared on a student's personal page that the student did not submit.²²

We also interviewed an alumnus who attended EVMS in the same timeframe as Governor Northam. This individual recalled talking to Governor Northam outside of the EVMS library in the weeks before the class of 1984 graduated. This alumni told us he and Governor Northam flipped through the 1984 yearbook together and that included looking together at Governor Northam's personal page. This individual did not recall the Governor having any reaction to the photographs on his personal page that would suggest the Governor thought there was an error on

²¹ Our review of the yearbooks indicates many students chose photographs unrelated to medical school events, including photographs of family members, childhood photographs, and landscapes.

²² In our review of the EVMS yearbooks, we did identify one occasion, in the 1986 yearbook, in which it appears the captions under two faculty photos have been switched.

his page. He did remember discussing the photograph featuring the car on Governor Northam's page. This former student told us that he did not believe Governor Northam was in the Photograph.

We have verified that this individual did attend EVMS based on his inclusion in the yearbooks and student data provided by the school. The timeframe in which the individual describes this encounter with the Governor is potentially within the timeframe that yearbooks would have been distributed to students in 1984, although we lack precise information regarding when this reported encounter occurred and when specifically the 1984 yearbooks issued to students. Though the evidence as to the timing of distribution is not definitive, several individuals from the Class of 1984 have reported to us that they received the yearbooks on or shortly before graduation. Graduation occurred on June 16, 1984. We are not aware of any motive this individual would have to fabricate this account. As with all witness accounts related to the 1984 yearbook, there is the element of the passage of time and that any person's recollection may dim after thirty-five years. With that said, this individual did not report any difficulty of memory. We note that this account, if accurate, is apparently inconsistent with the Governor's statement that the first time he reviewed the Photograph was on February 1, 2019.²³

When asked about this during our follow-up interview, Governor Northam stated he would not have interacted with students in other classes, and did not recall this particular individual. Governor Northam stated that he did not recollect reviewing the yearbook with this former student before graduation.

6. EVMS's Prior Knowledge of Yearbook Content

We were told in the course of our investigation that persons at EVMS had knowledge of the Photograph being on Governor Northam's yearbook page prior to it being widely reported on February 1, 2019. We learned that the former alumni affairs director at EVMS had noticed the Photograph while preparing for an EVMS reunion event. EVMS typically placed the yearbooks for the reunion years on a table during the reunion events, and the former alumni affairs director had observed the Photograph while looking through the 1984 EVMS yearbook. The Photograph shocked the former alumni affairs director, who then showed it to some other EVMS personnel. The EVMS personnel decided to remove the 1984 yearbook from the table at the reunion event so as not to upset anyone who might see the Photograph. The EVMS personnel who became aware of the Photograph expressed surprise and disappointment in the Photograph.

Members of EVMS staff brought the Photograph to the attention of the President of EVMS on two separate occasions. Most recently, it was brought to the attention of President Homan, and prior to that it was brought to the attention of then-President Lester. The timing of when it was

²³ We specifically asked Governor Northam about this individual's recollections, and Governor Northam denied meeting or knowing this individual, and points to their being in different class years at EVMS. Governor Northam also denies having seen the Photograph prior to February 1, 2019. An attorney from Alston & Bird has also advised us that, based on his investigation, he understands that the 1984 yearbook was not distributed until after graduation. We acknowledge the lack of clear documentary evidence on this point – we note that the TRASH guide states the yearbook was distributed in “June” – but the witnesses we have spoken to who had a recollection describe receiving the yearbooks in 1984 on or shortly before graduation.

raised to the attention of each President corresponded with periods when Governor Northam was running for different public offices. In essence, the staff members were advising the President at the time of the Photograph and asking if EVMS had an obligation to or should do something about it, such as notifying Governor Northam about it. In each case, the President of EVMS decided that the school should not take steps to publicly announce the Photograph or to call Governor Northam's attention to it. We understand President Homan's reasoning was EVMS should not become involved, or be seen to become involved, in an election as it is a public body and a public institution, and that EVMS did not want there to be any suggestion that it had tried to influence Governor Northam in any respect by calling the Photograph to his attention.²⁴

C. EVMS Culture

Our objective was to evaluate the culture at EVMS historically and to the present with respect to diversity and inclusion. We engaged in a comprehensive review of the statistics and policies related to diversity and inclusion. In addition, we conducted over forty interviews with former and current students, faculty, and administrators and asked about the culture of EVMS, as it relates to diversity and inclusion.

1. Statistics and Policies on Diversity and Inclusion

a) Diversity of Student Body (M.D. program) and Faculty

EVMS provided McGuireWoods with current faculty diversity statistics as well as historic and current diversity statistics for students. In nearly every interview in which we asked students, alumni, or current faculty and administrators "What could EVMS do better in terms of diversity and inclusion," the answer was always a more diverse²⁵ student body and faculty.

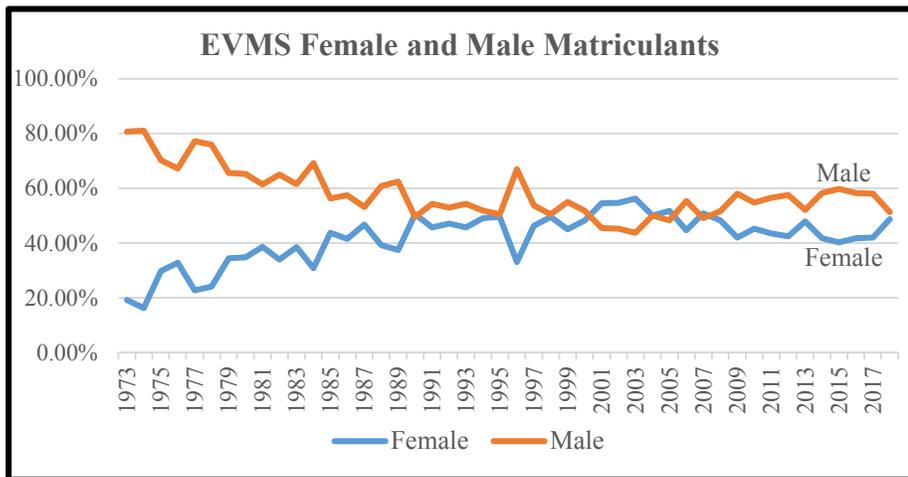
²⁴ Those we interviewed also explained they assumed that Governor Northam would already be aware of what was on his personal yearbook page. As the yearbooks had been cancelled by the time the issue was brought to Dr. Homan, there was no risk of issues with future publications, and, as they told us, they wanted the school to move forward with new initiatives rather than focus on the past.

²⁵ The term "diverse" is an evolving concept according to EVMS's own website, and in our conversations with current administrators, we understand the school is focused on those underrepresented in medicine, as well as women, veterans, and those from socioeconomically disadvantaged backgrounds. The Association of American Medical Colleges ("AAMC") defines "underrepresented in medicine" (commonly referred to as "URM"), as "those racial and ethnic populations that are underrepresented in the medical profession relative to their numbers in the general population." See <https://www.aamc.org/initiatives/urm/>. The historically underrepresented racial/ethnic groups in medicine are African-Americans, Mexican-Americans, Native Americans, and mainland Puerto Ricans, but the AAMC now allows for a flexible definition of the term URM based on local and regional demographics. See <https://www.aamc.org/download/54278/data/urm.pdf>.

Current statistics for the faculty show 7% of the full-time, salaried faculty are African American, 2% are mixed race, and 1% are Hispanic.²⁶ Of the full-time, non-salaried faculty, 5% are African American, 2% are Hispanic, and 1% are mixed race. Female faculty represent 48% of the full-time, salaried faculty, and 44% of the full-time, non-salaried faculty.

EVMS provided McGuireWoods with statistics reflecting students' gender, race, and ethnicity. The data shows EVMS has undergone significant changes in the student body in the past forty-five years.

With respect to gender, the number of female students has increased significantly, and the student body is reaching a more even gender balance, as shown on the graph below.



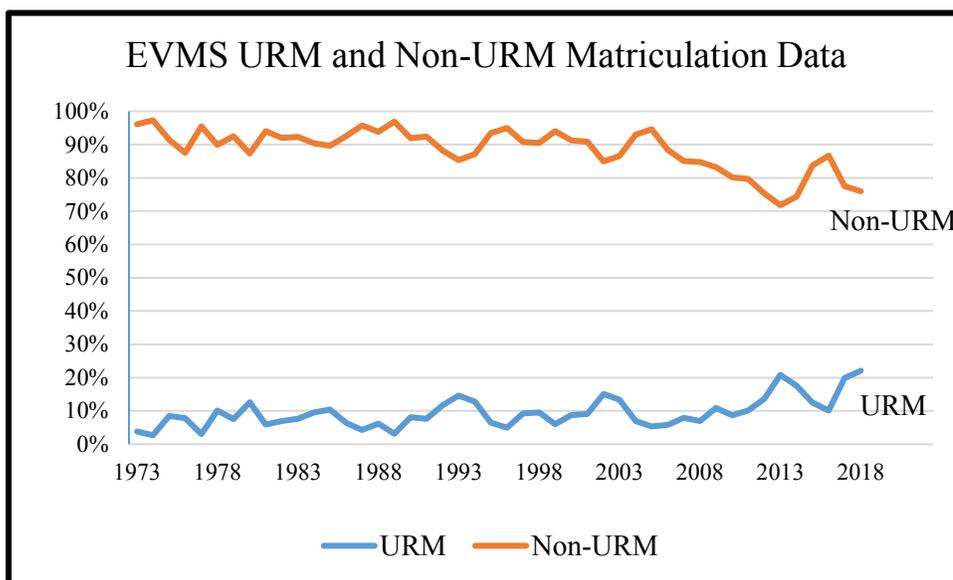
Historic diversity statistics provided by the school did not always measure the races or ethnicities currently available on the AAMC application. Rather, from 1973 to 2012, the numbers we were provided for African, African American, Afro Caribbean, and Black students were put into one category, Black or African American. From the late 1970s through 2012, Hispanic students had options to identify as Puerto Rican, Mexican American or Chicano, or other Hispanic. In recent years, students have more options, and there are a variety of ways students can identify ethnicity and race. Currently, and as allowed by the AAMC, EVMS has adopted a flexible definition of the term URM, and includes individuals from the following backgrounds: African, African American, Afro Caribbean, Black, American Indian or Alaskan Native, Mexican, Mexican American/Chicano, Native Hawaiian, or Puerto Rican. According to Mr. Gameda, Vice President of Diversity and Inclusion, the school obtains its current diversity statistics based on the ethnicity and race identified by each student on the AAMC applications.

For reference, to examine the diversity of the student body from the 1973 to present day, we considered the four categories currently used by EVMS to identify URM students: (1) Black or African American (which includes African, African American, Afro Caribbean, and Black students), (2) Hispanic (which includes Mexican, Mexican American/Chicano, Puerto Rican,

²⁶ The statistics provided to us by EVMS for the faculty use the following descriptors: American Indian or Alaskan Native, Asian, Black, Hispanic, Mixed Race, White, and No Response.

Hispanic, Latino, or of Spanish origin), (3) American Indian/Alaska Native, and (4) Native Hawaiian/Pacific Islander. The diversity statistics provided indicate EVMS has rarely exceeded a 1% student population of American Indian/Alaska Native students, or of Native Hawaiian/Pacific Islander students.

Student data indicates that the number of URM students fluctuated over the years, but the number of URM students has increased from 3.85% in 1973 to 19.2% in 2018.²⁷ As shown on the chart below, the number of URM students often changed dramatically from one year to the next. EVMS made considerable gains in the number of URM students between 1992 and 1994, and again in 2002 and 2003. As of 2018, the number of URM students is close to the national average for medical schools.



In the 1970s, for example, the 1978 class was 8.86% African American, but the 1977 class was 1.52% African American. A small percentage (1.25-3.23%) of the 1977, 1978, and 1979 classes were of Hispanic origin. The number of URM students in the 1980s was fairly consistent, with anywhere from approximately 4.12-8.42% of the classes comprised of African American or Black students, and 0.99-3.19% of the classes comprised of Hispanic students. The number of URM students dropped considerably in 1989, with only 1.04% of the class identified as Black or African American. The numbers continued to ebb and flow in the 1990s. In 1993 and 1994, the classes were 10.34% and 11.01% Black or African American. However, in 1990 and 1996, the classes were 4.04% and 3.00% Black or African American, respectively. Hispanic students constituted between approximately 1-4% in this decade.

Similarly, between 2000 and 2010, the number of Black or African American students spiked in 2002 and 2003 (12.26% and 10.71%, respectively), but dropped to 3.88% and 4.42% in 2006 and 2008. Hispanic students continued to constitute approximately 1-4% of the class. The

²⁷ The data provided to us by EVMS also shows, as of 2006, a percentage of students who do not provide a response when asked to identify race or ethnicity. This number fluctuates, and there are some students who identify ethnicity but not race, and vice versa.

pattern continues in the years between 2011 and 2018. In 2015 and 2016, the number of Black or African American students dipped to 4.41% and 4.00%. However, in 2014, 12.7% of the class was Black or African American, and in 2018, the class was 12.34% Black or African American. The number of URM students increased significantly in 2013, and, although the percentages dropped in 2015 and 2016, the number of URM students increased again in 2017 and 2018.

When we interviewed both current students and alumni, the general consensus was that most classes were fairly diverse, but that the number of URM students fluctuated in each class year. Some alumni had a different perspective. Alumni who graduated in the 1980s tended to believe their classes were diverse, even though the numbers of African American students may have been small. One former student commented that there was not much diversity among the faculty in the 1980s, but that the school was active in trying to recruit minority students. A former student from the 1990s told us she believed there was a quota of African American students, as there seemed to be two students per class. Alumni from the early 2000s reported low numbers of diverse students in some class years, although one former student believed the class was 10% African American when that student graduated. Recent alumni and current students all commented on the recent change in the administration, and the focus on increasing diversity in the student body and faculty. Many commented that faculty should be increasingly diverse. Current students reported significant fluctuations between class years in terms of URMs, but noted efforts by the school to encourage more diversity.

Interviews with members of the administration and faculty supported the statistics we were provided. Dean Flenner, for example, told us the number of URM students had increased since the 1980s, and that the school was currently much more diverse than when he attended. Other members of the administration noted the school had attracted a large number of diverse students in the past, including in the early 1990s and the early 2000s, commenting that in the early 2000s, EVMS' diversity statistics were above the national average.

b) Admissions Process

We reviewed the admissions process at length with Thomas Kimble, Associate Dean of Admissions. Also, we spoke to a number of current administrators, faculty, and former administrators about the admissions process.

During the interviews, alumni and current students raised some concerns about the admissions process and the admissions committee. One former student, 1980s-1, stated that the interview process was unpleasant, and 1980s-1 felt "race-baited," and considered not attending EVMS. Another former student, 1980s-3, later served on the admissions committee, and observed a passive-aggressive attitude towards students from historically black colleges and universities ("HBCUs") from other members of the admissions committee. 1980s-3 told us others on the admissions committee expressed opinions that minority students were given preferential treatment and had inflated grades, thus passing them over for consideration. 1980s-3 also reported he was aware of a classmate, who he thought was racist, who may have served on the admissions committee after graduation.

Dr. Kimble explained the current admissions process to us. The Executive Admissions Committee oversees the admissions process. A larger, in terms of personnel, Admissions

Committee participates in the interviews of applicants. The Executive Admissions Committee is comprised of two co-chairs, the past chair of the committee, and community faculty members. Fifty percent of the Executive Admissions Committee, or four members, are community faculty. Dr. Kimble is on the committee in an *ex officio* capacity. The larger Admissions Committee is the Executive Admissions Committee plus interested faculty members, medical students, and community faculty.

Dr. Kimble told us that the admissions process begins with between 6,000 to 8,000 applications each year. Of these, a certain number are screened out immediately if the applicant's grades and MCAT scores do not meet the minimum requirement. Following this, each application is reviewed manually by the Executive Admissions Committee, which takes a holistic approach, considering letters of recommendation, experiences, and exposures. URM applications are directed to the Assistant Dean of Diversity and Education, who prepares a very thorough report, taking an "extra-holistic" view of each applicant, which Dr. Kimble described as an individualized review of the applicant's background and experiences. Dr. Kimble then meets with the Assistant Dean, and each file is reviewed separately to determine whether the applicant will get an interview. Dr. Kimble stated most URM applications are selected for an interview, and once they are, they go back into the pool of applicants. There is no separation after that point. Of the thousands of applicants, approximately 12% are offered an interview.

The admissions interview process, according to Dr. Kimble, has been changed significantly since he stepped into his role. Most interviews of applicants are conducted by a panel of three interviewers: an admissions committee member, faculty member (which could be current, former, or community faculty), and a medical student. From time to time, interviews are conducted with only two panel members due to scheduling difficulties. Dr. Kimble now provides each interviewer with a list of standardized interview questions, as well as a list of things interviewers should not discuss.

Recent alumni and current students were aware the new administration had changed the admissions process. However, one current student, Student-2, recounted an incident in which she was told by another student that it was easier for African Americans to get into EVMS than other ethnicities. Student-2 later saw the student who made this statement participating in admissions interviews. Student-2 also reported issues with local physicians or community members who serve on the admissions committee. Namely, Student-2 told us she heard a physician make a remark during a training session that he did not know why women were trained to be physicians as they "leave to go into politics or be mothers." Student-2 told us that Dr. Kimble immediately interceded when the individual made this remark. A current administrator also told us about several incidents and statements made by "community" admissions committee members, who are often retired physicians. This administrator noted this was likely an issue at many medical schools, and that EVMS was working to resolve the problems.

When we interviewed Dr. Kimble, he was forthright in raising the incidents relayed to us by the current student and administrator. One of these incidents involved the use of a racial term related to Native Americans by an admissions committee member. Dr. Kimble immediately removed this individual from the Admissions Committee. Dr. Kimble told us, that if an interviewer makes an inappropriate comment, he would counsel that individual. He explained that

he has had some success with counseling admissions committee members who were otherwise unaware of how such comments were perceived. On the other hand, Dr. Kimble told us he would forego counseling and remove the admissions committee member if the comment is egregious. Dr. Kimble noted the admissions committee now undergoes training every year, and issues are addressed immediately.

Dr. Kimble credits the changes in the admissions process to training from the AAMC conducted at EVMS. Dr. Kimble believes the school's approach to the admissions process has improved significantly, and he told us that since he began in his position, the numbers of URM students have gone up by 10% and that EVMS is close to the national average. The matriculation data EVMS provided us supports this statement. It indicates 19.2% of the 2018 class was comprised of URM students, and the national average is 20.6%.

c) Relevant Policies and Records

McGuireWoods was provided with a number of diversity policies and statements which were adopted in 2012 and 2013, as well as information presented to the Community Advisory Board for Diversity and Inclusion, a list of diversity initiatives, and documents pertaining to the history of EVMS and its current community efforts. All of these documents evince a commitment to a diverse and inclusive workforce, as well as a diverse and inclusive student body. The more recent documents set forth a plan to enhance various programs and evaluate performance, which is discussed in more detail in below.

EVMS also provided us with information related to active complaints of inappropriate behavior, discrimination, and harassment, and we obtained information about complaints and claims made by employees and students, including EEOC claims.²⁸ We conducted research into litigation involving EVMS to determine whether there were any recent lawsuits pertaining to the foregoing issues.

EVMS further provided us with student complaint procedures, historic grievance policies, and handbooks outlining these procedures and policies, as well as information related to the Student Review and Advisory Committee and Student Progress Committee. These policies and procedures have evolved significantly since the school's inception.

With respect to mechanisms for reporting incidents with faculty or students, current students also noted some confusion over available procedures and a fear that any reports would not be anonymous. As to after-class surveys, students were unsure whether or not such surveys were anonymous, and whether instructors would be able to see results before releasing student grades. As to any process for making formal complaints outside of the surveys, students did not have a clear understanding of the process but thought it was geared toward third and fourth year medical students. Students expressed that even if reporting systems were anonymous, they might be reluctant to make a report.

²⁸ We did not consider a review of EEOC or Title VII claims, the handling of these claims by EVMS, or any legal compliance issue to be within the scope of our investigation. We did look at these claims, however, as a part of our analysis of diversity and inclusion at EVMS.

As we understand, any complaints related to the mistreatment of students generally go through Dr. Allison Knight, Associate Dean for Student Affairs. The current students we interviewed all stated they felt very comfortable raising issues with both Dr. Knight, and Ms. Williams, the Assistant Dean for Diversity in Educational Programs and Diversity in Education. Also, we learned that the Office of Academic Affairs handles any Academic grievances, and Student Affairs handle violations of the EVMS Code of Conduct. Per the documents provided to us by EVMS, there are ways for individuals to make anonymous complaints.

d) *Recent Diversity Initiatives*

In recent years, EVMS has focused on diversity initiatives. Dr. Homan was hired in January 2012, and recruited a Vice President of Diversity and Inclusion, Mekbib Gemeda, who began working in this newly created position at EVMS in 2013. Mr. Gemeda developed a diversity statement for the school, which calls for the creation of a Diversity and Inclusion Enhancement Program. This program includes a holistic review admissions process, discussed above, as well as implicit bias training of the admissions committee, the Board of Visitors, faculty, residents, staff, and students.²⁹ EVMS also changed its faculty search process to include the Vice President of Diversity and Inclusion to ensure underrepresented minorities are included in the applicant pool. The Dean of Admissions, Dr. Thomas Kimble, is African American and began serving in this position in April 2014. There is an URM mentoring program with local high school students in place. New curriculum changes include social determinants of health and service learning programs. There are new initiatives to encourage African American males to seek careers in the health professions, and scholarships targeted towards diverse students. As recently as January 2019, EVMS has partnered with Portsmouth Public Schools to host a summer educational program for high school students. When we spoke to Dr. Homan about the school's diversity initiatives, he noted his goal was to create an infrastructure for the school that would allow it to have a diverse student body and faculty, which in turn, benefits the community.

We also spoke to other faculty and administrators who commented that the school has always had goals for diversity and inclusion, but has not always put sufficient funding towards such initiatives, or had the infrastructure to support diversity and inclusion initiatives. Several of these individuals emphasized to us that, in their experience, the school has been a welcoming and diverse place.

Many current faculty and administrators, as well as current students and recent alumni, commented on the school's push for diversity and inclusion since Dr. Homan's arrival. These individuals cited mandatory training on implicit or unconscious biases, the hiring of Mr. Gemeda, and the school's efforts in the community as a good sign for diversity and inclusion. They also noted the school's initiatives with admissions and increasing the number of URM students. Dr. Kimble told us the school, in addition to reaching the national average in terms of URM admissions, is also working to have a stronger retention program for URM students and to increase diversity in the residency program. We received feedback from recent alumni, current students,

²⁹ Two current students interviewed told us they did not believe students received official implicit bias training, or were unaware of having received any implicit bias training.

and faculty, that while the diversity and inclusion initiatives had made great strides, the school could benefit from a more diverse faculty. In addition, EVMS has focused on illustrating diversity issues in its publications, addressing issues like the low enrollment of African American males in medical school, and the difficulties African American women experience with pregnancy and childbirth, in its magazine.

2. Diversity and Inclusion at EVMS – Personal Experiences

One of the most notable features of our investigation was the interviews conducted with thirty former and current students.³⁰ Many people told us they did not view the Photograph did not reflect their own experiences at EVMS. Most non-URM alumni and current students we interviewed told us they did not witness or perceive any racial incidents or other discrimination. A substantial portion of African American alumni and current students we spoke to, on the other hand, recounted some discrete negative experiences. We also received a number of recommendations from those we interviewed, and we will forward those recommendations to the Community Advisory Board for consideration if so directed by EVMS.

Many individuals interviewed stated they did not see anyone in blackface or KKK robes during their time as a student at EVMS. We did interview one former student who recounted an off-campus party involving an individual in KKK robes.³¹ In addition, the former Associate Dean of Student Affairs, Robert McCombs, told us he could not recall specific instances of individuals in blackface, but that he witnessed it at parties. Dr. McCombs told us he saw such instances approximately once a year, and the practice had essentially stopped by the 1990s.

a) 1980s Alumni

Due to the focus on the 1984 yearbook, we spoke to fifteen alumni from the 1980s, including ten alumni from 1984. We also interviewed the former Associate Dean of Student Affairs, Robert McCombs; former Assistant Dean of Student Affairs, Richard Michael Oliver; as well as a faculty member who has taught at the school since the 1980s.

The majority of alumni with whom we spoke told us that students would not have tolerated seeing a classmate in blackface or KKK robes, and that type of behavior would not have been accepted on the EVMS campus. Members of the class of 1984 instead focused on the efforts of the school and the students to engage in the Community Action Committee, which provided medical students with experience while working in underserved areas and with underserved populations. Several alumni emphasized the school's focus on the surrounding community and dedication to community service.

³⁰ It was not feasible or practical to interview every current or former student from EVMS who attended the school in the past forty years. Although we interviewed a total of thirty alumni and current students, we are aware that we were only able to speak to a limited number of students from each decade, and the experiences relayed here are a relatively small sample.

³¹ We have assessed, based on this former student's account, that the person described by this former student in KKK robes is not the same person depicted in the Photograph.

When we interviewed African American alumni from the 1980s, we learned there was a spectrum of personal experiences. One former student, for example, told us he did not have any negative issues, and he spoke to other African American students frequently, who also did not experience any issues. Conversely, former student 1980s-3, discussed at length the issues seen upon arrival at EVMS. 1980s-3 described Hampton Roads as a tumultuous place in the early 1980s, and commented that traditionally black hospitals were still present. 1980s-3 did a clinical rotation at one of these hospitals, where he observed poor treatment of African American patients. We were told that there were meetings run by faculty and generally attended by white students, geared towards helping African American students, but African American students felt they could not attend these meetings due to negative reactions from EVMS faculty. Also, we were provided with an article titled *The Disadvantaged Student*, J. Med. Educ. 54(8):672-3 (Aug. 1979), which 1980s-3 found was inappropriate. 1980s-3 told us African American students felt they had to “get in, get out” of EVMS, and while there was no overt racism, there was an undercurrent which made the students uncomfortable. He also mentioned there were some faculty members who were thought to be racist, and that African American students, including himself, were held back or did not have their residency positions renewed, which 1980s-3 believed was racially motivated.

In addition, we heard, not only from 1980s-3, but also former students 1980s-1 and 1980s-2, who told us about the issues African American students experienced during clinical rotations. For example, 1980s-1 said a professor told him that he would fail a rotation, but when 1980s-1 questioned the professor’s rationale, there was no objective assessment provided. 1980s-1 concluded this possible failure was due to race, but he later met directly with the professor. Subsequently, he reported he passed the class, and the professor became his strongest recommender. Former student 1980s-2 reported physicians in the community who indicated favoritism towards students who were not African American. 1980s-2 also recounted a story, although it was not clear if 1980s-2 witnessed this personally, of an African American student being hit with a medical dictionary during a rotation. Lastly, 1980s-3 said other African American students and Dean McCombs warned that African American students would not pass clinical rotations at a certain facility. 1980s-3 did well in all other electives and rotations, but upon drawing this facility, he failed. 1980s-3 told us that other non-URM students who appeared to perform worse than he did all passed that rotation.

Former student 1980s-1 did not experience overt racism, but felt unseen. 1980s-1 said EVMS was a great place to attend school, but there was a separation between URM students and white students, which could be racially driven, but also motivated by socio-economic factors. 1980s-2 provided a similar recollection of a good experience during medical school, but that students often congregated in cliques. Another former student, 1980s-4, who is not white, told us he did not experience any racial bias during his time at EVMS.

Several other alumni, who were not URM students, told us they never witnessed or felt any racial issues or prejudice. However, some of these individuals candidly commented that they may have not recognized blackface or there may have been less of a reaction than there would be today. One former student admitted he may not have been sensitive to issues experienced by minority students. Former administrators and faculty thought the classes in the 1980s were friendly, and that the relationship between diverse students was good.

Overall, students from the 1980s described the school as community-focused, in which the students could speak out and address issues, and a generally inclusive environment. A social, student-run life at EVMS also presented some issues for the former students. Social events included class retreats, which faculty attended, to various locations including the Outer Banks of North Carolina or the mountains in Virginia. These were described in varying terms, from events in which students could bond with one another, to total “drunk fests.” We received no reports of any racially inappropriate occurrences, but most students commented these events were alcohol-driven.

Former students also told us about P.O.E.T.S. events, which stood for “Piss On Everything, Tomorrow’s Saturday.” These events took place on campus, and were designed to bring students and faculty together on Friday afternoons to relieve stress and have a few beers, according to the individuals we interviewed. Dr. McCombs recalled that he used funds from vending machine sales to purchase a keg of beer for each event, and that with one keg for all the students, plus faculty and staff visitors, most people had only one or two beers, and there were no problems. Dr. Oliver echoed this sentiment.

As we understand from the interviews, former students saw P.O.E.T.S as essentially a school sponsored event. While the non-URM former students we interviewed had little to no commentary about P.O.E.T.S, the African American students from the 1980s had a very different perspective. For example, 1980s-3 told us he heard faculty and some students commenting that perhaps black students would not go to P.O.E.T.S. events, and 1980s-3 was not comfortable attending EVMS student social events. 1980s-1 remembered disliking P.O.E.T.S., as he and other African American students generally did not drink alcohol. He expressed frustration that the school would purchase “copious amounts” of beer, but would not provide soda or food, especially when there were some students from poor socio-economic backgrounds.

Despite noting issues with racial undercurrents and the deterrence from attending school social events, most African American students we interviewed told us their experience at EVMS was good. 1980s-3 cited Dean McCombs as spearheading efforts to bring in minority students to EVMS, and noted Dean McCombs helped him to resolve some issues during a rotation. 1980s-1 said he appreciated the lack of administration oversight of the students, and stated the administration allowed for free speech and inclusion. Former student 1984-5 explained that concerns raised by the students were addressed through a “free-flowing” process, but that the administration treated the students with respect, and allowed the students to speak out about any issues they faced.

b) 1990s Alumni

As the 1992 and 1993 yearbooks contained the majority of blackface photographs from the 1990s, we focused on interviewing African American students from the early 1990s. These former students did not recall seeing blackface at any EVMS events, but upon a recent review of their yearbooks, they stated they found inappropriate and offensive content. The experiences of these African American students from the 1990s with whom we spoke, often echoed the experiences and issues of their 1980s counterparts. This included references to negative experiences during clinical rotations. Again, those we interviewed had varied experiences.

One former student, 1990s-1, described a mostly positive experience at EVMS. 1990s-1 was involved with the EVMS chapter of the Student National Medical Association (“SNMA”), and told us that many African American students were sponsored by the Norfolk Medical Society, which was a group of practicing African American physicians. The group would meet regularly to discuss community issues, and 1990s-1 remembered the group helping students with issues like residencies. In fact, 1990s-1 stated this group included almost every African American EVMS student at the time, and 1990s-1 did not recall that the group had any pressing issues or complaints with the school. In addition, 1990s-1 remembered the Dean for Minority Affairs by name, and told us this indicated support at the school for minorities. 1990s-1 also had the opportunity to work with African American physicians in the community on rotations, and described this an overwhelmingly positive experience that had a significant impact on 1990s-1’s career. 1990s-1 concluded that the school was sensitive to African American students, made the students feel comfortable, and were there to help them.

Conversely, another former student, 1990s-2, had a much more negative experience at EVMS. 1990s-2 began to face issues when clinical rotations started. There, 1990s-2 encountered a faculty member³² who singled out 1990s-2 because English was not her first language. This faculty member made 1990s-2 feel degraded and humiliated, and made the comment that 1990s-2 should take a speech class because she could not articulate properly. 1990s-2 told us that public speaking has been incredibly difficult ever since. Another issue occurred during a second rotation. There, the Chief Resident told 1990s-2 that she was jealous of another intern as the other intern was prettier because she had blue eyes and blonde hair. 1990s-2 said there was no system in place for her to make a report, and that she felt abused and discriminated against. 1990s-2 did not feel comfortable talking to Dean McCombs, as she perceived him to be available to white, male students, and not to her. Towards the conclusion of our interview, 1990s-2 commented that her treatment and experiences at EVMS could have happened at any medical school, but she would like to ensure they do not continue to occur.

Lastly, a non-URM student, 1990s-3 did not notice any underlying racism or sexism. 1990s-3 commented on the blackface photographs in the 1993 yearbook, noting this likely occurred at a Halloween party, but 1990s-3 did not witness it. 1990s-3 felt EVMS was a great place to go to school. All the former students from the 1990s with whom we spoke recalled P.O.E.T.S. events, but most stated they were not interested, or only attended the event from time to time. 1990s-2 believed most social events were alcohol driven, but none of the former students from the 1990s recalled instances of blackface, KKK robes, or anything similar during these events. During the early 1990s, P.O.E.T.S. events took place on campus, but we heard less from our interviewees about social events generally than we did from former students in earlier decades.

c) 2000s Alumni

A decade later, and the alumni we interviewed continued to highlight very different personal experiences, with a few recounting incidents of alleged insensitivity. No one raised any issues about other classmates, but one former student, 2000s-3, who is African American, recalled

³² Based on the information provided to us by the former student, we believe this faculty member retired decades ago.

that upon seeking advice in a class, the professor³³ told her that she did not belong at EVMS “because of where she came from.” 2000s-3 left this professor’s office, and told Professor Aravich what took place. According to 2000s-3, Professor Aravich told her the other professor was wrong, and 2000s-3 was accepted into the school along with every other student. 2000s-3 was not surprised by the incident, due to her experiences living in the south. She did not take the issue any further, but she believed she could have raised the issue with either Gail Williams (Director of Minority Affairs at the time), or Professor Aravich had she chosen to do so. 2000s-3 told us she did not fear negative repercussions by addressing issues. She also felt African American students were included by their classmates, and noted EVMS had a good retention program and a supportive administration.

Another former student, 2000s-2, who is also African American, did not recall any problems which could be attributed to race. However, 2000s-2 did experience comments from clinical faculty that female physicians should go into “mom-friendly” practices rather than surgery. 2000s-2 stated this is a pervasive perspective in medicine, and not something unique to EVMS. 2000s-2 felt the culture at EVMS was always one of diversity and inclusion, and that she also believed she could raise issues with Dean McCombs if there were any problems. With respect to racial issues, 2000s-2 told us she had a terrible experience at her undergraduate institution (i.e., not EVMS), where, in the early 1990s, she witnessed students in blackface holding a mock slave auction.

All of the former students from the early 2000s spoke positively about their overall experiences at EVMS. Some students recalled P.O.E.T.S., which one student remembered stood for “Put Off Everything, Tomorrow’s Saturday,” and which were still held on campus. Former student 2000s-1 recalled that alcohol was eventually prohibited at these events, and that students at that time heard the event had been wilder in the past. 2000s-2 stated she attended the retreats during her time at EVMS, and noted most of the social events she attended were enjoyable – and none of these events included blackface or inappropriate costumes.

d) 2010s Alumni

Former students who have graduated in the past five or six years consistently discussed their experiences with diversity and inclusion in the context of the change in administration and arrival of Dr. Homan. None of these alumni identified incidents of overt racial or gender bias by classmates or faculty. One student, 2010s-1, told us the school’s initiatives with respect to diversity and inclusion transformed his perspectives on diversity and medicine. Another, 2010s-2 recounted that EVMS felt like an “old boys club” at the beginning of medical school, but by graduation, the school had changed significantly due to the diversity initiatives. 2010s-4 told us the school was not racially divided, and friends that were people of color did not feel that they were on the receiving end of any negative bias.

In particular, the only racially motivated incident we were told about from recent alumni, was that 2010s-4 had heard a classmate experienced alleged racism from a patient in the community. We were told by another former student, 2010s-3, that he wondered if he experienced

³³ Based on our investigation, we believe this professor no longer teaches at EVMS.

racism from his classmates, as all the students in his class year inducted into Alpha Omega Alpha (a medical honor society) were white.

All of the recent alumni commented that P.O.E.T.S. was an event held off-campus, and no alcohol was purchased by the school. Similarly, several recalled that Match Day was an event where students dressed up at the time, but that no one saw any culturally offensive or racially insensitive costumes. These recent alumni also noted they were all comfortable with the complaint process and their ability to raise issues with the new administration. In particular, 2010s-2 stated that he had met with the past administration to address issues with the educational programs, and was “pretty much kicked out” of the office. 2010s-2 told us that under the previous administration, students could not complain, there was no formal complaint process, and members of the administration appeared less supportive. However, 2010s-2 stated that when Dr. Homan, Dr. Flenner, and Dr. Knight arrived, the school became more professional, revamping the admissions process and educational programs. 2010s-2 believes there are more resources for students, as well as open door policies that enable students to bring issues to the attention of the administration. 2010s-2 also cited the schools’ efforts to provide African American students with physician mentors in the community as a positive step towards diversity and inclusion. 2010s-4 echoed many of the statements made by 2010s-2 regarding the complaint process and open door policy.

Also, we received an email from a recent alumni in response to Dr. Homan’s request, who graduated in 2014. This former non-URM student related that EVMS provided an excellent experience, and specifically that she witnessed cultural sensitivity and kindness during her training, and learned how to address care for patients with Sickle cell disease and sarcoidosis, which occur predominantly in African Americans. She related that students learned how to address these patients both in lectures and by example, and that many members of the faculty demonstrated “excellence in providing culturally appropriate care that should be acknowledged and emulated.” This former student stated she did not witness any racism, and that EVMS taught her skills to interact with patients with different racial, cultural, and socioeconomic backgrounds. She further commented that she has been disappointed to see EVMS associated with hate and racism.

e) Current Students

Current students we interviewed expressed concerns about the school, and its efforts towards diversity and inclusion. Several recounted uncomfortable race-related experiences with other classmates. However, all of those students interviewed thought EVMS was working on improvement, and the administration was supportive of students. Most commended the administration’s efforts but stated there was work left to create more diversity amongst the student body and faculty.

Following the story breaking with the Photograph, current students reacted with disbelief and anger. As we understand, the Student Government Association sent out a Google poll to allow students to provide anonymous feedback. We were told the responses varied widely (i.e., they ranged from EVMS is responsive to racial issues, to EVMS is a racist institution). We spoke to several African American students, who expressed that they were satisfied with how the administration has handled the issue. These students voiced a concern focused on whether current members of faculty were depicted in the yearbooks in blackface.

With respect to any form of discrimination, Student 1, who is African American, has overheard white students claiming they were treated unfairly during patient panels focused on African Americans. Student 1 has been told that he was only admitted to EVMS because he is African American. Student 1 told us the school and white students are not focused on implicit bias and social health determinants training, which Student 1 believes would be beneficial. In fact, Student 1 stated implicit bias training was not provided to M.D. students. Student 1 also noted that diversity fluctuates significantly in each class year, which makes it difficult to find a mentor in more senior classes where there are so few minorities. Student 2, who is also African American, recounted similar experiences, including that other students told her she was admitted only because she was African American. Student 4 told us about classmates making inappropriate racial jokes and comments.

Several current students also expressed confusion over the ability to make complaints about, or raise issues with, the administration. Student 2 told us about an unnamed faculty member who makes offensive statements. Student 2, Student 4, and others believe they cannot bring these issues up because faculty members decide the students' grades. However, Student 4 also mentioned Dr. Knight, Ms. Williams, and Mr. Gameda were all available and allies to the URM students. Student 4 believes those individuals would keep complaints confidential. Similarly, Student 1 expressed trust in Dr. Knight, and that he would go to her if there were an issue. Outside of this, the majority of the current students interviewed felt the complaint process was unclear.

Current students did not emphasize the social aspect of EVMS. One current student explained that the new administration stopped funding alcohol at events, and while P.O.E.T.S. is still held, it was not a topic of conversation. The URM students we interviewed indicated that minority students socialize with the class as a whole, but tend to congregate more with one another.

f) Faculty, Administrators and Former Administrators

When interviewed, faculty, administrators, and former administrators indicated the blackface photographs in the yearbook were not indicative of EVMS, from its inception to the present. We interviewed two members of the faculty, who have each taught at the school in excess of twenty-five years, as well as a current administrator, who has worked at the school for almost thirty years. These individuals all described a school with a tradition of service in the community, and whose students have embraced diversity and provided an inclusive environment. These faculty members were not aware of overt racial issues, but were aware of complaints made by female students about male classmates and male physicians making sexist or insensitive comments.

One administrator we interviewed explained EVMS always focused on diversity and inclusion, with student URM statistics close to or surpassing the national average in the early 1990s and early 2000s. This individual told us budget constraints and the actions of those in leadership positions within the school often hampered diversity and inclusion efforts. An administrator told us of a few incidents, which were not recent, of which the administrator was aware, one involving a sexual harassment complaint made by a student, and two other issues, which involved a list of stereotypes posted at the school and a racially charged word written in one of the bathrooms. The administrator felt the past administration had not adequately responded to these issues. Although this individual noted concerns about communication in the current administration, the

administrator believes the school is on the right path now, and is being proactive in terms of diversity and inclusion.

Faculty and administrators who were at EVMS in the 1980s emphasized the community focus of the school, and the programs geared towards attracting students from the local area, including a program with a nearby high school at that time. The consensus from faculty and administrators was that the same things that made EVMS a great school in the 1980s and 1990s also caused significant problems. While the school was community driven and students were engaged in school activities, the students were also at liberty to engage in behavior not befitting the medical profession. Alumni have shared stories about alcohol-fueled social events, including inappropriate behavior among both students and faculty, with current administrators. Some former students have indicated they felt pressured to engage in these activities.

One current administrator learned of significant discrimination suffered by one African American graduate in the 1980s, who reported that faculty threatened to remove his scholarship based on his race. Another current administrator told us that four or five years ago, individuals in long white coats told an African American student that “we didn’t used to let people like you in.” We were told the school had no way to identify these individuals, and that it could have been someone who was not EVMS faculty. The administrator further commented that this did not seem to be a unique incident, and was aware of it happening at other medical schools.

Reports of racism, discrimination, and inappropriate behavior have lessened in recent years according to those faculty and administrators we interviewed, although they also believe that this generation of students is far more comfortable raising issues and providing feedback to the faculty and administrators. Although there continue to be challenges, most individuals interviewed pointed to the increase in diversity and the recent diversity and inclusion efforts by EVMS as a positive step forward.

III. Conclusion

McGuireWoods appreciates the assistance and cooperation we received from the EVMS community during the course of our investigation. We particularly would like to thank those students and alumni who came forward and were willing to speak with us about their experiences. We hope this report will be of value to them, to the school, and to the greater EVMS community.

Respectfully submitted,

McGuireWoods, LLP

Richard Cullen, Esq.

George K. Martin, Esq.

Benjamin L. Hatch, Esq.

Rebecca Gantt, Esq.

Jeanne E. Noonan, Esq.

Elizabeth F. Tyler, Esq.

Katherine Leal, paralegal

Connor Symons, paralegal
Krystal Gollogly, paralegal

Exhibit 1

**SUMMARY OF STATEMENTS BY GOVERNOR NORTHAM TO MCGUIREWOODS
LLP REGARDING THE PHOTOGRAPH AND CULTURE OF EVMS RELATED TO
DIVERSITY AND INCLUSION**

Governor Ralph Northam was interviewed by Richard Cullen, Ben Hatch, and Rebecca Gantt of McGuireWoods LLP in his offices in the Patrick Henry Building on March 27, 2019. Governor Northam was interviewed a second time on May 8, 2019, by Richard Cullen, Ben Hatch, and Liz Tyler in his office at the Executive Mansion. Counsel for the Governor, Jeffrey Breit, attended both interviews. The following summary of statements is not a transcript, or verbatim recitation of the interview, but a summary of statements made by Governor Northam regarding the Photograph and the culture of EVMS related to diversity and inclusion. Consistent with our report, we generally do not include the names or personal information of private persons. Where direct quotes appear, we believe we captured the Governor's actual quote. Governor Northam has not reviewed, approved, or otherwise ratified this summary.

Statements of March 27, 2019 Interview

Governor Northam was asked to recount the events of Friday, February 1, 2019:

- Governor Northam explained that the story broke when he was on his way to a funeral in Petersburg for a soldier. His chief of staff [Clark Mercer] called to say that a picture has surfaced, and texted or emailed it to the Governor. Governor Northam said that was the first time he had ever seen the photo. He and Mercer discussed whether it was real, or had been planted/photo-shopped, so they asked a friend of Governor Northam's in Norfolk to go to EVMS and look at the actual yearbook. The friend did, and said the photograph was in the yearbook. Governor Northam said the situation was "shocking" and "chaotic." Governor Northam then turned around from the funeral.
- Governor Northam was given the advice to get a statement out and to call friends and supporters. He released a written and then a video statement later on Friday.
- Governor Northam said he did not write the statements he released on Friday, and that "if I had to do this over again I would do it differently." It was a shock; the picture was on his yearbook page, he was trying to be accountable, and everyone said he needed to get a statement out and own up to it.

Governor Northam was asked why he stated on February 1 that it was his responsibility to recognize and prevent the photo from being published in the first place:

- Governor Northam said he didn't have "a good excuse," but wanted to be accountable. He said that he simply read the statement he was given, and probably wouldn't do it over again or issue the same statement. He doesn't remember anyone running the yearbook by him before it was published.

- Governor Northam identified the “main people” he spoke to personally who had knowledge as follows:
 - Governor Northam left the office around 10 p.m. on Friday, February 1. When he got home, his VMI roommate called and said, “Have you taken a good look at it?” Governor Northam said that he had, and that it was on his page. The roommate, who is a dentist, said, “I don’t think it’s you.” He said that Governor Northam’s teeth had never looked that good, and that Governor Northam never wore bowties or had plaid pants. Also, the roommate said whoever is in blackface is holding beer with their right hand, whereas Governor Northam usually uses his left hand. Governor Northam responded that he didn’t remember the photo, or dressing up like that.
 - Governor Northam said that the conversation with the roommate started him thinking about whether it was really him.
 - The following morning, the Governor’s staff tried to get a copy of the yearbook, but there was a feeding frenzy and it was impossible to find one. Then he got on the phone with a classmate from EVMS, who practices in Hampton Roads. The EVMS classmate said it wasn’t Governor Northam in the picture, and that she had been to a lot of parties on the third floor of a condo complex (not medical school), and didn’t remember Governor Northam doing that. Governor Northam said he didn’t think she had seen anyone dress this way. The classmate also said that she knew of several instances in that yearbook where pictures were misplaced.
 - A couple of days later, another EVMS alumni described the process for the yearbook as being very chaotic.
 - Governor Northam also spoke with an EVMS classmate, who was on the 1984 yearbook staff, who said there were pictures flying back and forth in different directions when the yearbook was put together.
 - Governor Northam spoke to the woman he dated at the time, as she liked to take pictures, and he reached out to her and she said she hadn’t seen the picture.

Governor Northam also mentioned the following:

- Governor Northam was not able to get in touch with the editor of the 1984 yearbook, and noted that she was the person that had the final say as to yearbook photos.
- Governor Northam also noted that the printer of the yearbook is no longer there, and the person who ran it is no longer living.

Governor Northam was asked if he told anyone on his staff that he was not in the Photograph on February 1:

- Governor Northam's counsel raised a concern regarding executive privilege, and so this question was not addressed at this time. Governor Northam stated that he did say that to his chief of staff the next morning. Governor Northam then did a press conference which did not go well. He acknowledged that he was accused of flip-flopping, and said he wouldn't do it the same way if he could do it over again.

Governor Northam was asked if he knew who was in the Photograph:

- He is "positive" that it is not him in the Photograph, but that he doesn't know who is in the picture and to say who it is would be speculative.
- With respect to rumors about who could be in the Photograph, and whether Governor Northam was trying to protect them, he said he did not know for sure, and noted that it would be difficult for someone to come forward and identify themselves. The issue has received a lot of press, and there is a chance that whoever is in the picture are doctors with ongoing medical practices. He would not want to put anyone through what he and his family have been through. He just wants to exonerate himself, but doesn't want to throw anyone under the bus. He doubts that whoever it is will ever come out; although he is not advising them, he wouldn't recommend anyone to go through what he went through. Governor Northam said he thought we were in a "hypersensitive" period regarding race, that the things people could get away with then they can't get away with now.

When asked if there were any other reasons that Governor Northam thought he was not in the Photograph:

- Governor Northam noted that he was very slender in college and medical school, and that the legs on that person are much thicker than his.
- Regarding the individual in KKK robes, Governor Northam said he would hope he would remember if he had been standing next to someone dressed like that; as to whether that person was him, he said that person is "obviously" much shorter than he is. He also noted that "people have commented that it looks like odd couple," where a man and a woman dressed up together.
- Governor Northam noted that he "remembered like it was yesterday" when he entered a dance contest in San Antonio in the fall of 1984 and dressed up in blackface (with shoe polish) as Michael Jackson. Looking at the KKK robes, he would remember if he had done that, and said he never would have done that.
- When asked about the "prank theory," i.e., the possibility that someone placed the Photograph on the Governor's page as a prank, Governor Northam said that no one has told him anything about pranks, and that he "just do[es]n't know how it got there." In politics, you are always wondering where the next attack is coming from, but this one

totally blindsided him. Governor Northam didn't think anyone in his class had it out for him. He wasn't the most popular student, but wasn't disliked either, and flew under the radar screen.

- No one had told Governor Northam about the photo before, even though he did six very contentious campaigns (including primaries for Lt Governor and Governor). He explained that when you run a campaign, you do opposition research with a consultant; your opponent looks for everything too. Governor Northam said it was fascinating to him that in six races, that yearbook was sitting there in the library and in people's homes—why it never surfaced is beyond him.

Governor Northam was asked about the yearbook process:

- Governor Northam said that as best he can remember, he did submit the other photos that are on his yearbook page, but that he doesn't remember that process well. He thought there was a formal picture, and that he was then asked to submit three informal photographs. One is of him in front of a Corvette. Another is him in Texas holding a beer. And the third is the picture that he doesn't know where it came from.
- Governor Northam did not specifically remember whether or not he submitted three photos, though said he was never big on cameras or pictures, and that he would be hard-pressed to find four pictures of himself now.
- When asked if there was a misplaced third picture anywhere else in the 1984 yearbook, i.e., whether Governor Northam had submitted three pictures and one of the three pictures he had submitted had been erroneously placed elsewhere in the yearbook, Governor Northam said there is another one of him in there, but that he doesn't think it was the one that he submitted. He doesn't remember if there was a third picture that he submitted. If he had submitted another picture, it would have been one of his favorite pictures, of him with a VMI roommate on a boat; he doesn't have a copy any more.
- Governor Northam did remember submitting the quote that appears on his yearbook page, and said the quote and all the photos on his page are ones he selected, other than the Photograph.
- Governor Northam did not recall seeing a proof or approving the layout of the photographs on his page after submitting them.
- Governor Northam could not identify any mistakes in the yearbook that he had seen or knew of, but pointed back to what he was told by his former classmates.
- Governor Northam could not recall if he ordered or paid for a copy of the yearbook, and said he didn't have a copy of one. He did not get one until February 2nd of this year.

We reviewed the 1984 yearbook staff and asked whether Governor Northam knew any of them. Governor Northam reported that he knew the yearbook editor somewhat. Most of the persons

listed as members of the yearbook staff the Governor either did not know, did not remember, or has limited information about them.

Governor Northam was asked about the culture and his social life at EVMS:

- Governor Northam did not ever see anyone at a gathering at EVMS in blackface or Klan robes.
- Governor Northam noted had to study very hard, and wasn't a big partier. He would go to POETS events sometimes, which he described as low key gatherings on Friday.
- Most of Governor Northam's friends were the year ahead of him. In Governor Northam's fourth year, Governor Northam was away most of the year on rotations and did not have much interest in either the yearbook or social events.
- Governor Northam also went to a retreat the first week medical school, at a hotel in Bridgewater, Virginia. He said classmates were doing things he did not condone, like stealing drinks from a vending machine, and taking a canoe off the roof of a family's car and placing the canoe in a pool, and he thought "these weren't my kind of people."
- Governor Northam said that there was no question that people in his class were big partiers. He did not like studying and was very easily distracted, but he and his roommate would stay longer at the library longer than anyone else. Governor Northam had always wanted to be a surgeon, and did a rotation at Leigh Memorial where he was getting up at 3 a.m. for call. The party life was not a part of who he was; he was really focused on where he wanted to go with medicine. He did an externship at San Antonio, at an Army burn unit and premiere surgery program. They had a very competitive pyramid scheme for surgery; all the residents had marital problems, and Governor Northam decided not to go through with that and did pediatrics instead.
- Governor Northam does not recall dressing up for any Halloween parties at EVMS. Governor Northam's former EVMS roommate told him that he does remember Governor Northam dressing up as a lawyer in a three piece suit with a briefcase. Governor Northam also recalled on Match Day people going all out, although he did not go. He understands that the school has changed its practice for Match Day, as there used to be a lot of drinking.

Governor Northam was asked if the atmosphere at EVMS was such that people would have found the Photograph funny:

- Governor Northam said he didn't think so—he thought "race wasn't an issue," either at EVMS or VMI, or growing up. He remembered only a couple of African Americans in his class at EVMS. He recounted that he was in the 5th grade when schools were desegregated, and his parents chose to keep him in public schools. Now, Governor Northam believes that we live in a "hypersensitive time" regarding race.

- Overall, Governor Northam said there was nothing about EVMS that was different from how things generally were. Students did rotations at different hospitals, and would take care of all patients—it wasn't a racist environment. EVMS was designed by people who were visionary in the community, and created a community-based medical school. Students were very involved in the community, such as through working in free clinics. Governor Northam didn't think the other pictures – which we understood him to be referring other pictures from EVMS yearbooks which were subsequently raised in the news – that have surfaced “were trying to be racist” Governor Northam did a rotation at Portsmouth Naval Hospital in pediatrics, but didn't see anything racist there.
- Governor Northam acknowledges that knowing what he knows now, the Michael Jackson blackface that he did was offensive. He entered a dance contest, and was trying to emulate Michael Jackson, not trying to make fun of him. Governor Northam said he has “never been that way,” pointing to how he had grown up, who his friends were, and who he went to school with. Governor Northam noted that Attorney General Mark Herring did blackface at UVA, his intent was also not to be racist; like Governor Northam he did not understand what he was doing.
- Governor Northam does not think he ever went to an EVMS reunion. He did go back to Norfolk in 1992 when he separated from the Army. He has been on the EVMS staff in neurology; taught classes including ethics and also did clinical rotations. He was very involved and won a lot of teaching awards. He stopped doing a teaching role when he became Governor. As Governor, he has gone to every medical school in Virginia to talk about opioids.

Statements of May 8, 2019 Interview

We asked why Governor Northam put out the February 1, 2019 statement if, as we had heard, he had been denying to his staff and others that he was in the Photograph, and Governor Northam was asked to review the timeline of events:

- Governor Northam: Around the 3:30 p.m. time frame, “Clark [Mercer] my chief of staff called me into his office and said ‘there’s a blog post that’s come out today with a picture on your yearbook page.’ He showed it to me on his cell phone. I said ‘this has got to be someone playing games and it’s Photoshopped.’ I don’t have any picture like that don’t have any recollection of that. I called [my friend in Norfolk]and said ‘can you go by the medical school and see what’s going on?’ I left to go on a helicopter to Suffolk for a gold star pinning service for a fallen soldier.” It then started snowing, “so we weren’t going to go” to the funeral. “I think we were near Petersburg when Clark called about the picture. I was shocked so we turned around and came back here.”
- “I talked to Clark and [a senior staffer]. There were two initiatives. One, to get a statement out as quickly as we could. It literally was blowing up. Another initiative was to call my colleagues in what we call the Black Caucus. They—my staff—sat me down and started giving me numbers without any discussion. So I sat in a room and started calling people and trying as best I could to take responsibility, because it’s an abhorrent picture and it’s

on my yearbook page. I have conversations with Bobby Scott and Don McEachin, and then a written statement was given to me.”

Mr. Cullen pointed out that the Governor’s senior staffer has said “after [the staffer] talked to you [on February 1] [the staffer] walked down the hall and was ready to put out a denial statement.”

- Governor Northam: “I don’t know what that was. I told Clark I had no memory of the picture, don’t know how it got onto my page. I told Clark and [my senior staffer]. [Other individuals] were asked to come in, and some crisis team, I don’t know who they were. They were writing a statement. I didn’t adequately think through this. I felt a need to be accountable. I looked at the statement and said that’s fine. Initially they were going to do the same statement on camera. Then communications people said ‘no, we need to change the wording.’”

Mr. Hatch noted that you described how you called Congressman Scott and others and wanted to take responsibility. Was that your feeling or was that something the staff brought to you? Because your first reaction was “that’s not me.”

- Governor Northam: “In discussions with the Black Caucus, I never said it was me.” I said “there’s this terrible picture on my yearbook page and I’m very sorry and I’ll take responsibility.”

Mr. Hatch asked whether the statements Governor Northam made accepting responsibility on February 1 were his own statements or from his staff:

- Governor Northam: “It was both. I needed to take responsibility I felt. They said these are the people we want you to call and I just started going through that list. The other problem – and I told this to Jeffrey – the most important thing to me is my word. This hit me like a ton a bricks. This was 35 years ago. If it was one year or two years ago, I’d know. But this was on my yearbook page. The last thing I wanted to do is say ‘this isn’t me’ and then have someone come forward and say ‘I was there and remember and it is you.’ That would devastate me.”
- Then I was “talking to Luke Torian [delegate from Prince William County] of the Black Caucus, who said ‘which one is you?’ I said ‘Luke I can’t answer that I have no memory of this.’” That’s when Pam [Mrs. Northam] came in and said you need to get out of here you’ve had a long day. “So Pam and I walked back to the mansion. We talked about it. I said ‘those are not clothes that I had.’ I have a bowtie for a tux and that’s it. I’ve never worn bowties. I don’t have pants like that. That’s not me.”
- Then I got a call from my roommate at VMI. He said ‘that’s not you, you need to look at that picture.
- “I talked to [a classmate] – she said ‘that’s not you in the picture’ and said she knew of several pictures that were misplaced in the yearbook and that it was a chaotic process.

That's when, Saturday morning, I said I need to get back in front of the camera. This is not me."

Mr. Cullen: Can you help us understand why you issued the public statements on February 1 when you were denying it was you to people you talked with. Did you feel like the communications people were experts?

- Governor Northam: "I wanted to take responsibility for a picture being on my yearbook page and—I hate to say this because I've been in the army and taken care of dying children—but I was shocked. It hit me like a ton of bricks. I didn't think through it. I was rushed to..."

Mr. Cullen: "Did [the communications people] say 'you're finished?' unless you make this statement?"

- Governor Northam: "I shouldn't use the term raising a gun to my head, but they were saying we need to do it quickly. This is blowing up."

Mr. Hatch asked Governor Northam: you are telling us that you told your staff on February 1 that it wasn't you in the Photograph, but then your staff provided you with a statement saying it is you. "Were you surprised by the statement that they drafted?"

- Governor Northam: "I wouldn't say I was surprised. I said 'what do you need for me to do and I'll do it.' That's the mode I was in. There was an urgency to get the statement out. If I had it to do over again I'd do it differently. I always rely on my communications people. You see these statements... I don't know why the statement went in the direction it did."

Mr. Cullen: "Do you think staff thought it would be worse for you to deny it if you're not 100%?"

- Governor Northam: "I can be absolute. But it was 35 years ago. But my word is so important to me. I think the strongest I could be is 'I have no memory or recollection of this and don't know how it got in my yearbook.'"

Mr. Hatch: Did you edit or change the draft statement your staff brought to you?

- Governor Northam: "No."

Mr. Hatch: "So you said, 'the decision I made to appear as I did in this photo' . . . that was not your own words on the front end?"

- Governor Northam: "I had nothing to do with writing the statement other than reading it over and saying OK."

Mr. Cullen: "Did the Black Caucus say 'if you take responsibility this will all be ok?'"

- Governor Northam: “No.”

Mr. Cullen asked whether any staff said not to put out the statement, noting this question was previously objected to as within the scope of the executive privilege during our interviews of staff, and also asked whether something was being held back to protect the Governor or the staff.

- Governor Northam: “I don’t think it’s to protect me. I’ll be diplomatic.”
- “My staff is young. They work hard, but I haven’t heard anyone say ‘we should’ve sat down and talked about this.’ That’s not in their playbook.”

Mr. Hatch: An individual, who Mr. Hatch named, from EVMS Class of 1985 relates an encounter with him in which he you and he looked through your yearbook in 1984, around graduation, and you looked at your personal page. Do you recollect this individual?

- Governor Northam: “I don’t recall the name. I didn’t know people in my class that well. You just don’t interact with people in another class, below you. You’re doing your clinical rotation while they’re in classes. I don’t know who that is.”

Mr. Hatch: He says that around your graduation he saw you and you looked at the yearbook together. That’s not consistent with your recollection?

- Governor Northam: “Correct.”

Mr. Cullen: “You told us this never came up in any of your campaigns. So you never brought it to any staff’s attention or anything?”

- Governor Northam: “Right. The first time I was aware of this was on February 1.”

Mr. Hatch: In our first interview with you, you said the first time you saw the picture was in the car on February 1. Today you say you were in your Chief of Staff’s office when you first saw it. Can you help us understand that?

- Governor Northam: “My best recollection is that Clark called me into office and said ‘this is being reported on a blog.’ I said ‘let’s get the yearbook and see what’s going on.’ I think he showed it to me on his phone.”

Mr. Hatch: So the picture you saw in Clark’s office was presumably the picture from the internet. Then you had your friend go get the actual yearbook and send you a picture, and that’s the picture—from the actual yearbook—you looked at on your phone in the car?

- Governor Northam: “Yes.”

Exhibit 2

**SUMMARY OF STATEMENTS BY GOVERNOR NORTHAM’S CHIEF OF STAFF
CLARK MERCER TO MCGUIREWOODS LLP REGARDING THE PHOTOGRAPH**

Clark Mercer, Chief of Staff to Governor Ralph Northam, was interviewed by Richard Cullen and Liz Tyler of McGuireWoods LLP in his office in the Patrick Henry Building on April 22, 2019. Mr. Mercer was interviewed a second time on May 14, 2019, by Richard Cullen and Liz Tyler in Mr. Mercer’s office, with Ben Hatch of McGuireWoods LLP participating by telephone. Counsel for the Governor’s Office attended both interviews.

The following summary of statements is not a transcript, or verbatim recitation of the interview, but a summary of statements made by Mr. Mercer regarding the Photograph. Consistent with our report, we generally do not include the names or personal information of private persons. Where direct quotes appear, we believe we captured Mr. Mercer’s actual quote. Mr. Mercer has not reviewed, approved, or otherwise ratified this summary.

Statements of April 22, 2019 Interview

Mr. Mercer was asked to provide a narrative of the events of February 1, 2019:

- Mr. Mercer: “That afternoon, I got a knock on the door from staffer down the hall”
 - The staffer asked had I seen it. I didn’t know what “it” was.
 - This was between 3 and 5 p.m. – closer to 3.
 - Someone pulled up Big League Politics – the conservative website – had the picture – this was the first time I had seen the photo.

- Mercer’s reaction was, “It had been a long week,” and thought it was a “hoax in reaction” to Governor Northam’s “moves earlier in the week I was worried about”

- Mr. Cullen asked whether Mr. Mercer thought that Governor Northam was not in the Photograph:
 - Mr. Mercer: “Yes, I didn’t think it was him. I didn’t think it was a real photo.”
 - I know the Governor – he had been “highly vetted” by then through 2 statewide races and his time as a State Senator; I thought “that’s not him.”

- Mr. Mercer was asked what happened next:
 - The Governor was headed to Winchester for a funeral for a fallen officer.
 - We showed Governor Northam the Photograph (can’t remember who first showed him) -
 - “His first comment was ‘I don’t think that’s me in the photo’”
 - I reached out to someone in Norfolk to go to EVMS and verify that it was actually a photo in the yearbook.

Mr. Cullen asked whether Mr. Mercer took Governor Northam’s statement as a denial not a qualified denial:

- Mr. Mercer: “Governor Northam’s “level of certainty from Friday to Saturday increased dramatically.”
- But “the Governor was consistent in his statements that it wasn’t him; he never hedged on that; but his level of certainty increased.”
- Mr. Cullen asked, “Did you first take his reaction as a denial?”
 - Mr. Mercer responded, “That’s correct.”

Mr. Mercer was asked what happened next:

- Mr. Mercer: When Governor Northam first saw the Photograph, I was with a senior staffer and the Governor.
- Things moved “incredibly quickly” from there throughout the evening.
- Phones ringing off the hook.
- “Overwhelming” sentiment that “a statement needed to be made that evening.”
- Mr. Cullen noted the senior staffer left the room to begin a denial statement
 - Mr. Mercer – “I certainly believe that’s what [the staffer] went down the hall to do.”
 - We “didn’t really talk about it.”

Mr. Mercer was asked about discussions related to the Photograph being a fake, or Photoshopped:

- Mr. Mercer: I “believe the Governor mentioned Photoshop. That phrase popped up a lot.”
- “My priority was to figure out whether this was a real photo or not – that’s what I was primarily focused on.”
- We were not going to comment on a picture only seen on a phone/computer screen.

Mr. Mercer was asked whether he had a conversation with Governor Northam about how the Photograph ended up in the yearbook:

- Mr. Mercer: Yes, Governor Northam “recalled the 3 other photos,” he remembered “the quote as one that he liked/used/would have submitted”; “he did not recall the 4th photo.”

Mr. Mercer was asked to add to his description of Governor Northam’s response on Friday, February 1:

- Mr. Mercer: “He was consistent that it was not him;”
- “All of us were in a state of confusion/shock over what was transpiring;”

- “Given the zoo that this building was,” press inquiries were coming in;
- “By Saturday morning, he was resolute”; he was “going to make a statement that it was unequivocally not him.”

Mr. Mercer was asked to provide a narrative about the events of Saturday, February 2:

- Mr. Mercer: On Saturday morning, the “general sentiment was that the statement Friday night was not going to be sufficient.”
- There was “lots of weighing in that had only increased by Saturday.”
- Lots of “thought that he need to make statement and take questions that day.”
- He was “resolute” that it was not him and that’s what he was going to lead with at the press conference.

Mr. Cullen asked if there was any time on Saturday where there was any wavering on the Governor’s part:

- Mr. Mercer – “No.”

Mr. Mercer was asked about speculation about who was in the Photograph:

- Mr. Mercer: “From the moment we saw it, there was speculation” about who it could be.
- This was not discussed among the “individuals putting the statements together or advising the Governor.”
- Governor Northam “did not say on that Friday/Saturday who he thought it might be.”
- Governor Northam did not discuss the timing or speculation as to why this was happening when it was happening.
- Others were talking about it though.
- “We were focused on how to deal with that photo and his association with it in real time.”

Mr. Cullen asked whether there was an identification of who might be in the Photograph that Mr. Mercer could recount to us:

- Mr. Mercer: “I don’t know when I first heard names of who might be in the photo.”
- Certainly in days following when the “Governor had time to call some of his classmates” – maybe as early as Friday evening – “a name came up – folks wondered where that person might be”

- “But initially, out of the gates, he did not have that name.”

Mr. Cullen asked if there was anything else in the Friday/Saturday timeframe we should know about:

- Mr. Mercer: “The Governor was consistent that it was not him.”
- “His resoluteness/certainty increased over time.”

Statements of May 14, 2019 Interview

Mr. Cullen asked, following a brief discussion of the previous interview, in which they discussed the senior staffer leaving to prepare a denial statement, “The question is why did he [Governor Northam] give a statement if he didn’t think that was him?”

- Mr. Mercer began by summarizing events on Wednesday, January 30, 2019, to provide context for the week leading up to the publication of the Photograph. Mr. Mercer explained that on January 30, Governor Northam responded to questions on a radio show related to proposed legislation concerning late-term abortions. Mr. Mercer said that Governor Northam gave high-level answers as a physician who has delivered babies – not answers that a political person would have necessarily recommended. Mr. Mercer explained that was how Governor Northam thought and spoke – as a doctor, not a politician. Mr. Mercer heard from political opponents who planned to use Governor Northam’s statements against him and accuse him of supporting infanticide. In the wake of the radio broadcast and the political commentary that followed, Mr. Mercer recalled that the Governor’s Office received death threats by late Wednesday. Thus, the Governor’s Office endured this high-pressure, high-stress situation days before the fallout from the Photograph began.
- Mr. Mercer stated, “I think absent Wednesday, Friday would not have happened. This was a reaction from folks who” perhaps didn’t like his comments, but “who didn’t like all the fall out being hurled at him.”
- On Friday, “The Governor never said ‘I’m in this photo’ and was consistent that he never said that. Over several hours – walking into Friday, half of the state already had their knives sharpened and out for the Governor.” We “walk into Friday afternoon, and this photo hits. I didn’t get a single call on Friday from an elected official offering to help.” No elected official called to say, “This is intense, let me help” the Governor navigate this.
- It has “come to light that Governor Northam holds close counsel with old friends of his who are not political, who are not necessarily Democrats – folks in the Army, or who have their own medical practices. That night his closest political allies abandoned him en masse. Not one called him and said ‘Governor, can we walk through this?’ or offered to stand by him.”
- On Friday, “We were on an island” in this office. “We pulled in people. The current communications director. Former communication directors, plural – they pulled in crisis

communicators.” We—referring to the staff and the communications people—talked through “three options:”

- Option 1: “flat out denial of being in that photo”
 - Option 2: a “statement that that’s an abhorrent image, it’s obviously on my page, which is associated with me,” it’s “with other photos I do recognize and my quote,” “I’m looking into its origin.”
 - Option 3: essentially admitting
- By a certain point, “it was confirmed it was in fact on his page, there was no Photoshop.” The Governor “was being pulled in a thousand directions.” There were literally “thousands of calls and texts that night.” And the “resignation calls started prior to *any* statement going out.” Elected “officials were saying it didn’t matter whether it was him or not, before he uttered a word.” In this office, there was “*not* a uniform sentiment about what the statement should be.”
 - “Given those 3 options – at the staff level – hindsight 20/20, we all wish we could go back and give him different advice. At the time [our thought was] if you don’t make a statement tonight, your Governorship is over. I offered to make a statement myself that we were looking into it.” That was shot down. The “middle ground statement” (Option 2 above) was rejected by the staff in their discussions with the communications people, i.e., this statement was not even presented to the Governor as a potential option. “The response was you can’t equivocate whether you were in the picture or not. The image is so abhorrent that that would lead to its own problems. If you have 100% certainty, you can say you’re not in it.” Otherwise, “you can take responsibility.” “In the time since, no one has [come forward and] said they were in the photo. We all have our suspicions as to who it might be.”
 - The Governor’s “resolve only increased Friday to Saturday,” and it “increased greatly.”

Mr. Mercer stated, “There are two things I look back on and regret:”

- Mr. Mercer: “One, I have served the Governor the longest. I probably understand his thinking better than most folks. Folks there that night didn’t appreciate how he thinks. They heard a politician saying ‘I’m not sure.’ With most other politicians, you would think it’s them” if they said they were not sure. “Most political people speak differently.” So other people hearing the Governor “took that and provided the statement they did.”
- “I also think we naively thought that long-term friends of the Governor would stand by him.” There’s a sentiment that “you take ownership, you do the right thing, and you move on.” We “thought we’d have one or two folks standing behind us.” Instead there was a “torrent of resignation calls. We underestimated how strong and how quickly they would be” coming in. “That was poor advice we provided the Governor.”
- “People he naively thought were friends didn’t even make a phone call to at least tell the Governor they were going to call for his resignation.” We asked, but they “wouldn’t give him heads up about what they were going to put on Twitter,” etc. “I’m talking about

electeds. I think they made political calculations. I think some of the conversations they had with the Governor led him to believe they would stand with him. I have my suspicions why—but I don't know—but they changed their minds.”

Mr. Hatch asked about the three options of statements prepared: “full denial to full acceptance and something in between. I thought I heard you say you or some group discussed with the Governor which option to go with. Is that correct, that you all discussed the options with the Governor?”

- Mr. Mercer: “Two options were discussed with the Governor. When I say prepared—the one that was written was written. The other two were just discussed. The middle one – the apology for the photo and it appearing on the page and looking into it – [that] was dismissed by folks that do communications and crisis communicators as unacceptable.” It was “too untenable and weak.”

Mr. Hatch: But the full denial and the essentially full acceptance were discussed with the Governor?

- Mr. Mercer: Yes.

Mr. Hatch: And you attended that?

- Mr. Mercer: Yes.

Mr. Hatch: Did the Governor decide which option to go with?

- Mr. Mercer: It is “safe to say it was a collective decision to go with the statement that he read. He read it.” And “that’s the statement that he went with on the advice of staff. He puts a fair amount of faith and confidence in his staff to give him good advice.” That’s a “fair account, what I’ve described on where we were that night.”

Mr. Hatch then asked what happened following the Governor’s approval of the staff recommendation, and how it was written:

- Mr. Mercer: “Yeah, and it was kind of a group effort to write it up.” There was a “laptop in a conference room with lots of folks surrounding it, tweaking this word, that word. It was not the most effective way to write” the statement, “but that’s how it was.”

Mr. Cullen: “We got the impression from talking with the Governor that something was drafted and it was given to him as the recommendation, and he said ‘let’s do it.’ That is a little different than what I just heard you say to [Mr. Hatch], that there was a group effort with a crisis communication expert, your team, and the Governor, and a decision was made collectively with the advice that we’ll do that type of statement, and then all of you start writing it. That is a little different than you all are in the conference room writing and then come in to the Governor....”

- Mr. Mercer: “I don’t think it’s inconsistent.” We said to the Governor “here’s what we think.” He says “OK.” “We go write it, show it to him, he looks at it and says OK and reads it.” “Things were moving pretty quickly.”

Mr. Cullen explained the issue was that as several individuals interviewed told us they all heard the Governor say he was not in the Photograph, and asked how could Governor Northam let a statement go out that it is not him?

- Mr. Mercer: “I don’t think everyone heard that.” There were “other folks there drafting the statement. My job is to gather all of that information from staff and make a recommendation. I don’t feel the least bit inhibited to discuss what *I* recommended.” But “staff can have different views. Maybe some folks were louder, maybe some weren’t heard. There was a range of statements made that night: ‘it’s not me,’ ‘don’t think that’s me,’ ‘not sure.’ To different people, some people heard something different.” I “think some of them heard a politician.” They were hearing that the Governor was “not sure,” and that “leads them to a statement like” the one that was written.
- There is “no question that he [Northam] was in a state of shock that evening.” And “given the kind of person he is,” his attitude was “I’m going to take responsibility for this.” “Ten weeks later” we can say that “things could have been handled differently. I wish we had listened a little more intently. But I’m not going to blame staff. I’m in the one who listens to all the staff and makes a recommendation.”
- “Once he could sit in a quiet room and think critically about this, any doubt or indecision he had was gone. Then he didn’t care what these political people thought. He couldn’t care less. He was going to do what he was going to do and plow forward.” On Saturday, “that press conference could have obviously been handled differently too.” But “when he got home, he was a little more clear-headed. Just like staff. If we had more time, we could have been more clear-headed. But we didn’t have the luxury of time that night.”

Mr. Mercer was asked if Governor Northam said to him “do you think this is the one I ought to do?”

- Mr. Mercer: The “two options were presented, and they were up to him. I think the two paths forward were predicated on—he interpreted that if he said it’s not me and someone comes out and says it is me...the one thing I have is my credibility, my honor, and that would devastate me.” He “would rather take responsibility and move forward from the amount of pain this has caused.” There were “also some miscalculations on my part. Taking responsibility is what is preached every day. You think you’ll have some friends stand by you. We didn’t anticipate the wholesale asking him to resign. That and “also no one has come forward to put their careers on the line” and say it’s them in the photo. “Not surprising,” but still that has not happened.