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United States of America v. Commonwealth of Virginia, et. al., 976 F.2d 890 (4th Cir. 1992)

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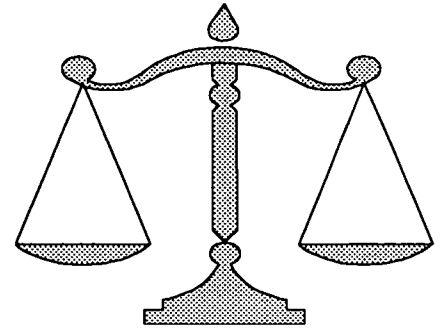
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COURTWATCH by Michael T. Hewitt**United States of America v. Commonwealth of Virginia, et. al. ,****976 F.2d 890 (4th Cir. 1992)**

The Fourth Circuit Court of Appeals declined to order that women be admitted to the all-male Virginia Military Institute (VMI), a state-supported military college in Lexington, Virginia, and the only single-sex public institution of higher education in the Commonwealth. While the court held that the Equal Protection Clause of the Fourteenth Amendment did not permit Virginia to offer the type of educational opportunity available at VMI solely to men, it said that admitting women is not constitutionally necessary. The case was remanded to the District Court in order to require the Commonwealth to come up with a plan that conforms to the requirements of equal protection. Such a plan could include the establishment of a parallel institution or program for women, or withdrawal of state support of VMI, giving VMI the option to pursue its policies as a private institution.

The case originated from a complaint filed by the Department of Justice on behalf of a female high school student who sought admission to VMI. After a six-day trial, the District Court ruled in favor of Virginia, holding that VMI's policy of excluding women enhanced the diversity of educational opportunities within the Commonwealth's higher education system. United States of America v. Commonwealth of Virginia, et. al. , 766 F.Supp. 1407, 1415 (W.D.Va. 1991). The District Court found that single-sex education had a host of pedagogical benefits that were unavailable in a co-educational environment. The Court reasoned that since VMI was unique among Virginia's state-supported colleges, providing the benefits of single-sex education only to men was substantially related to the important objective of diversity of educational opportunities.

On appeal, the United States argued that enhancing diversity by offering a distinctive educational opportunity to men alone was not a legitimate and important state objective, and that VMI's policy to exclude women was rooted in impermissible stereotypes and overly broad generalizations about women. The Fourth Circuit rejected the second part of the argument, agreeing with the District Court's findings as to the pedagogical benefits of single-sex education. However, it did agree with the United States that a policy of diversity that aims to provide a variety of educational opportunities, including single-sex education, must not favor one specific group.

The Court analyzed VMI's males-only admissions policy on two levels. First, it considered the policy within the context of VMI's institutional mission, *i.e.*, the education of citizen soldiers. The success of that mission, the Court concluded, was profoundly dependent on the single-gender environment at the heart of VMI's educational methodology. The educational opportunity provided by VMI could not exist in a co-educational setting. Therefore, if women were admitted to VMI, the very opportunity they sought would no longer exist. The Court said it was not "maleness", as distinguished from "femaleness", that

constituted the salient educational component of VMI. Instead, it was the homogeneity of gender that was the essence of education and training at VMI.

Second, the Court examined VMI's admissions policy within the large context of Virginia's public system of higher education and the Commonwealth's articulated policy of diversity. The Court concluded that, while single-sex education is pedagogically justifiable, the Commonwealth's policy of diversity could not justify offering a unique educational opportunity only to men. Neither VMI's objective of producing citizen soldiers nor its implementing methodology of single-sex education were inherently unsuitable for women. Therefore a legitimate and substantial state purpose was lacking, and the Commonwealth would have to formulate, adopt, and implement a plan that would comport with requirements of equal protection.

The Court did not set forth a specific remedial course for the Commonwealth to follow. Instead, it remanded the case to the District Court to give Virginia the responsibility to select a course for itself, provided that the guarantees of the Fourteenth Amendment are satisfied. On November 19, 1992, the Fourth Circuit denied the defendant's petitions for rehearing. See 1992 U.S. App. Lexis 30490 (1992).

*****EDITORS' NOTE:** On May 24, 1993, the United States Supreme Court denied VMI's petition for writ of certiorari. In a brief statement written by Justice Scalia, the Court explained that the appropriate time for such appeal was after the District Court rendered its decision on remand. Scalia noted, however, that "[this] issue ... should receive the attention of [the] Court before, rather than after, a national institution as venerable as the Virginia Military Institute is compelled to transform itself." This indicates that appeal would be appropriate should the District Court require VMI to change its admission policy. Virginia Military Institute et. al. v. United States, No. 92-1213, 1993 U.S. LEXIS 3564, at 1*