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At War: Narrative Tactics in the Citadel and VMI Litigation

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On August 12, 1995, Shannon Faulkner became the first woman to join the long gray line of cadets at The Citadel, The Military College of South Carolina. After she withdrew for medical reasons, Nancy Mellette, the eighteen-year-old daughter of a Citadel alumnus, stepped forward to continue the fight to open The Citadel. The battle of these two women for admission into The Citadel challenges a 152-year-old tradition that "not only practices inequality, but celebrates it."[1] The Citadel and the Virginia Military Institute (VMI) are the only remaining all-male public colleges in this nation. Both institutions offer male cadets not only an undergraduate education in a military-style environment, but also access to power, wealth, and opportunity, particularly in the South. Legions of alumni have achieved positions of power in government, the military, and business.[2]

Despite tremendous strides made by women in the United States military, The Citadel and VMI have devoted millions of dollars to preserve their all-male tradition, fighting their battles in courtrooms and the media.[3] While The Citadel and VMI have conceded that some women are as qualified as men to succeed in their military-style programs,[4] they have argued that the exclusion of women is justified because The Citadel and VMI are single-sex colleges that offer male cadets valuable benefits.[5] Moreover, they asserted that men and women have different educational needs and that most women would not benefit from the rigorous military education offered at these public colleges.[6] Rather than admit women, South Carolina and Virginia proposed the establishment of separate,

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[1] Shannon Faulkner v. James Jones, 10 F.3d 226, 234 (4th Cir. 1993) (Hall, J., concurring).

[2] *See* United States v. Virginia, 976 F.2d 890, 892 (4th Cir. 1992); Citadel's List of Distinguished Alumni, 1992 (on file with the *Harvard Women's Law Journal*).

[3] *See* Linda Meggett, *Citadel Legal Bill Nears $2 Million*, POST & COURIER (Charleston, S.C.), Aug. 25, 1995, at 1C.

[4] *See infra* note 18 and accompanying text.

[5] *See infra* notes 28–34 and accompanying text.

[6] *See infra* notes 38–43 and accompanying text.

non-military, programs for women at private women's colleges, financed primarily by $13 million in funds from Citadel and VMI alumni.[7]

Shannon Faulkner v. James Jones[8] and *United States v. Virginia*[9] directly challenge these powerful and traditional institutions, as well as the social and cultural norms that not only justify the exclusion of women, but render it natural. In such cases, narrative[10] can be an effective tool to reveal the underlying discrimination against women and to convince courts to "disrupt" an entrenched social institution. To justify granting such relief, courts must find that a legal right has been violated and must be rectified. And to reach that conclusion, a court must construct the facts and circumstances in such a manner so that remedial action is not only doctrinally, but also morally, compelled. Analysis of the narrative tactics in The Citadel and VMI litigation offers the opportunity to understand what persuades courts—and public opinion—to join with women to break traditional gender barriers.

Because the VMI litigation was marked by the absence of any woman who sought admission, the courts were able to frame the constitutional conflict as a battle between Virginia and VMI, on the one hand, and the United States, on the other. Recalling that the parties "first confronted each other" on "the battlefield at New Market, Virginia," the district court envisioned the lawsuit as a continuation of the Civil War involving another "life-and-death" battle over the existence of VMI.[11] In characterizing the United States as the enemy intent on forcing its own notions of equality on Virginia, the court effectively ignored the injuries of the young women and portrayed VMI and Virginia as the real victims.

In contrast, the federal courts in The Citadel litigation repeatedly framed the battle as between female candidates for admission and The

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[7] *See Citadel Battle Will Cost Millions*, HERALD-J. (Spartanburg, S.C.), Apr. 29, 1995, at 1; United States v. Virginia, 852 F. Supp. 471, 499 (W.D. Va. 1994), *aff'd, remanded*, 44 F.3d 1229 (4th Cir. 1995) *cert. granted*, 116 S. Ct. 281; Program Agreement Between The Citadel and Converse College (June 1, 1995) (on file with the *Harvard Women's Law Journal*).

[8] 858 F. Supp. 552 (D.S.C. 1994), *aff'd*, 51 F.3d 440 (4th Cir. 1995), *cert. denied*, 116 S. Ct. 352 (1995) [hereinafter *Faulkner*].

[9] The opinion of the district court regarding liability is reported at 766 F. Supp. 1407 (W.D. Va. 1992), *vacated, remanded*, 976 F.2d 890 (4th Cir. 1992), *cert. denied*, 113 S. Ct. 2431 (1993). The liability cases will hereinafter be described as *VMI I*.

The opinion of the district court regarding remedy is reported at 852 F. Supp. 471 (W.D. Va. 1994), *aff'd, remanded*, 44 F.3d 1229 (4th Cir. 1995), *cert. granted*, 116 S. Ct. 281. The remedy cases will hereinafter be described as *VMI II*.

[10] As Jerome Bruner explains, we organize our experience and our memory of events in our lives primarily in narrative form as stories, excuses, or myths that explain our experience. *See* Jerome Bruner, *The Narrative Construction of Reality*, CRITICAL INQUIRY, Aug. 1991, at 4. Narrative frames experience and provides a means of constructing meaning from events in the world. *See* JEROME BRUNER, ACTS OF MEANING 56 (1992).

[11] *VMI I*, 766 F. Supp. at 1407, 1408.

Citadel.[12] Shannon Faulkner's and Nancy Mellette's injuries are neither abstract nor derivative: The Citadel denied them admission solely because they are female. Their struggle invokes the legal concept of equality and individual rights, but within the context of shared cultural traditions. Their effort to gain immediate admission forces The Citadel into a defensive posture which has led the defendants to engage in a campaign of massive resistance[13] similar to those mounted against racial desegregation.

This Essay analyzes the narrative choices made by the parties in the VMI and Citadel litigation. Part I examines and compares the narratives in the VMI and The Citadel cases. Part II discusses the importance of individual plaintiffs in gender and racial segregation cases and offers some personal observations on the hardships that Nancy Mellette and Shannon Faulkner face in litigating this controversial and high-profile lawsuit.

I. NARRATIVE CHOICES IN VMI AND THE CITADEL LITIGATION

A. The Citadel and VMI Save "Single-Gender" Education

In The Citadel and VMI actions, plaintiffs alleged that the male-only admissions policies of these public colleges violate the Equal Protection Clause of the Fourteenth Amendment.[14] In constructing a legal narrative to justify their facially discriminatory admissions policies, The Citadel and VMI faced several legal and factual hurdles. *Mississippi University for Women v. Joe Hogan* is the only Supreme Court decision which considered a single-sex admissions policy in higher education under intermediate scrutiny.[15] In *Hogan*, the United States Supreme Court held that the exclusion of men from a state nursing college violated the male plaintiff's right to equal protection.[16] The Court rejected Mississippi's proffered justification that the program compensated women for past

[12] *See Faulkner*, 858 F. Supp. at 552, 51 F.3d at 440.

[13] *See Faulkner*, 858 F. Supp. at 567–68.

[14] The United States filed suit against VMI and the Commonwealth of Virginia on March 1, 1990, in federal court. *VMI I*, 766 F. Supp. 1407. Three years later, Shannon Faulkner sued The Citadel in the District of South Carolina on behalf of herself and all similarly situated women. The United States intervened as party-plaintiff in May, 1993. *Faulkner*, 858 F. Supp. 552.

[15] 458 U.S. 718 (1982). In 1970, the District Court of South Carolina applied a rational basis test to allow Winthrop College to remain an all-women's college because, *inter alia*, Winthrop did not offer a unique course of study. An equally divided Supreme Court affirmed this decision. D. Reece Williams v. Robert McNair, 316 F. Supp. 134, 136 (D.S.C. 1970), *aff'd without opinion by divided court*, 401 U.S. 951 (1971).

[16] 458 U.S. at 718.

discrimination, as well as the argument raised in Justice Powell's dissent that offering women the choice of a single-sex college was an important governmental interest.[17]

In addition to a dearth of favorable precedent, The Citadel and VMI defendants faced several factual hurdles. First, both colleges have conceded that some women can perform as well as male cadets.[18] Second, although both argued that the admission of women will require certain changes,[19] neither identified any concrete harm that will result. In fact, one of The Citadel's experts conceded at trial that The Citadel could still fulfill its mission of educating citizen soldiers if women were admitted.[20] Counsel for VMI similarly conceded to the Supreme Court that VMI's male-only policy, while unique, did not produce a different or better leader than other colleges in Virginia.[21] Third, these two colleges are the only remaining state military colleges in the nation.[22] The federal service academies admitted women in 1976.[23] Women serve in all branches of the United States military, and the government recently eliminated the exclusion of women from combat duty.[24] Finally, all of the other public colleges in Virginia and South Carolina that were formerly single-sex have become coeducational.[25]

Seeking to shift the focus away from the exclusion of women, defendants in both cases constructed a narrative around what they defined as governmental interests: the abstract goal of preserving "single-gender" education and the unique traditions of VMI and The Citadel.[26] Defendants then argued that the exclusion of women substantially relates to these two interests.[27] In the story told by defendants, women and men have "different educational needs" that justify segregating women in a deliberately different and non-military program.[28] According to this view,

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[17] 458 U.S. at 727, 731, n.17.

[18] *See, e.g.*, Testimony of Lt. Norman Doucet at Tr. Vol. II at 59–60, *Faulkner*, 858 F. Supp. 552 (No. 2:93-488-2); Testimony of Richard Richardson at Tr. Vol. XII at 37, *Faulkner*, 858 F. Supp. 552; *VMI I*, 976 F.2d at 896.

[19] *See* Citadel Defendants' Proposed Findings of Fact at 80–81, *Faulkner*, 858 F. Supp. 552 (No. 2:93-488-2) (on file with the *Harvard Women's Law Journal*); Brief for the Cross-Petitioners at 34–35, *VMI II*, ____ U.S. ____, 1995 WL 681099 (Nos. 94-1941, 94-2107).

[20] Testimony of Richard Richardson at Tr. Vol. XII at 78, *Faulkner*, 858 F. Supp. 552 (No. 2:93-488-2).

[21] Transcript of Oral Arguments at 50, *VMI II*, ____ U.S. ____, 1996 WL 16020 (1996) (Nos. 94-1941, 94-2107).

[22] *See* Citadel Defendants' Proposed Findings of Fact, *supra* note 19, at 9.

[23] *See* Petitioners' Brief at 31 n.19, *VMI II*, ____ U.S. ____, 1995 WL 703403 (No. 94-1941).

[24] *See VMI II*, 52 F.3d 90, 93–94 (Motz, J., dissenting).

[25] *VMI I*, 976 F.2d at 894; *Faulkner*, 858 F. Supp. at 556.

[26] *See VMI I*, 766 F. Supp. at 1415; *Faulkner*, 858 F. Supp. at 563–64.

[27] *VMI I*, 766 F. Supp. at 1415; *Faulkner*, 858 F. Supp. at 555.

[28] *See VMI II*, 44 F.3d at 1234.

the state's exclusion of women does not "invidiously" discriminate, but rather protects women from the stress of these rigorous military programs.[29]

As the first step in this narrative, The Citadel and VMI redefined themselves as "single-gender" colleges, rather than traditional male military colleges.[30] The Citadel and VMI next conflated these unique military colleges with women's colleges and, in a sleight of hand, relied upon research from women's colleges and secondary schools to argue that "single-gender" colleges benefit men and women.[31] There are no studies on men's colleges in the United States, which have all but disappeared due to lack of demand;[32] studies of male secondary schools fail to demonstrate any positive effects for male high school students, and some demonstrate a negative effect.[33] Consequently, the expert witnesses for both defendants cited outdated studies of women's schools and colleges to justify the historical exclusion of women from the unique military education offered at The Citadel and VMI.[34]

Defendants excluded from their narrative any mention of the history of these military institutions or their role in Southern history and culture. The Citadel and VMI were founded prior to the Civil War as state military colleges that were restricted to men, the only people eligible to join the military.[35] In the nineteenth century most public colleges excluded women, not for pedagogical reasons, but because of the unquestioned belief that men and women should be educated separately.[36] The

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[29] *See VMI I*, 766 F. Supp. at 1408.

[30] *See, e.g., VMI I*, 766 F. Supp. at 1411–12; *Faulkner*, 858 F. Supp. at 564.

[31] *See, e.g.*, Deposition of Elizabeth Fox-Genovese at 124–28, *Faulkner*, 858 F. Supp 552 (No. 2:93-488-2); Richard Richardson, The Effects of Admitting Women to The Citadel 14 n.1 (Apr. 4, 1993) (on file with the *Harvard Women's Law Journal*).

[32] *See* Deposition of Alexander Astin at 153–54, *Faulkner*, 858 F. Supp. 552 (No. 2:93-488-2). Reflecting this lack of demand, The Citadel cannot fill its ranks with men from South Carolina; 50% of its cadets are from out-of-state, the highest percentage of any public college in South Carolina. *See* Admissions Statistics for the Corps 1983–1984 (on file with the *Harvard Women's Law Journal*).

[33] *See* Richardson, *supra* note 31, at 14; Deposition of Elizabeth Fox-Genovese, *supra* note 31, at 124–28; Brief of *Amici Curiae* of Carol Gilligan et al. in Support of Shannon Faulkner and United States at 28, *Faulkner*, 51 F.3d 440 (No. 94-1078).

[34] Most of these studies examined either all-female elementary and secondary schools or elite women's colleges during the 1970s. Higher education experts insist that these studies' findings cannot be applied to present-day all-male colleges. Brief of *Amici Curiae* of Carol Gilligan et al., *supra*, note 33, at 26–28.

[35] South Carolina established The Citadel as a military college in 1842 at a state arsenal in Charleston. *Citadel History*, POST & COURIER (Charleston, S.C.), Aug. 13, 1995, at A7. Because the legislature designated The Citadel as a military college, it "deemed it appropriate" to exclude women. D. Reece Williams v. Robert McNair, 316 F. Supp. 134, 136 (D.S.C. 1970), *aff'd*, 401 U.S. 951 (1971). Founded in 1839 as a military college, VMI's male-only policy "simply reflected the unquestioned general understanding of the time about the distinctively different roles in society of men and women." *VMI II*, 44 F.3d at 1243 (Philips, J., dissenting).

[36] Deposition of Alexander Astin at 152–53, *Faulkner*, 858 F. Supp. 552 (No. 2:93-488-2).

educational disenfranchisement of women reflected their treatment by the state as "second-class citizens" and paralleled their exclusion from the rights and opportunities afforded men.[37] By ignoring the history of women's educational disenfranchisement and exclusion from the military, defendants portrayed women's demand for educational equality as decontextualized and ahistorical.

The Citadel and VMI appropriated not only the empirical research on women's colleges, but feminist theories of difference to prove that their so-called "adversative" method of education is appropriate for men, but not for women. For example, The Citadel's experts cited Carol Gilligan's *In a Different Voice* to argue that women are more nurturing and concerned with relationships than men, who are concerned with formal rules and authority.[38] The defendants' experts also drew heavily on research that purportedly demonstrates that adolescent women suffer from lower self-esteem and self-confidence than adolescent men.[39] Defendants concluded that although some women may be suited for this type of "adversative" education, most are not.[40]

Defendants' story reifies VMI and The Citadel as institutions that embody masculinity, which defendants argued is naturally the opposite, or negation, of femininity. As a Citadel witness explained, "The program is not designed for females."[41] Both colleges seek to develop the "whole man" through programs that purportedly exalt "masculine" traits such as ferociousness, aggression, and competition.[42]

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[37] *Id.* Women's colleges were founded to provide an education that women could not obtain elsewhere. The meaning of "single-sex education" for women is situated in this history and is therefore entirely different than for men, in the "same way that the meaning of the historically black colleges is different than historically white colleges." *Id.* at 155.

[38] *See, e.g.*, Affidavit of Richard Richardson at 2, *Faulkner*, 858 F. Supp. 552 (No. 2:93-488-2) (citing CAROL GILLIGAN, IN A DIFFERENT VOICE (1982)). The Citadel defendants asserted that:

> College age women have less self-confidence than most college age men.
>
> There is biological-neurological evidence showing that adolescent males tend toward more impulsive and risk-taking behavior than females and therefore need a more structured learning environment.
>
> [M]en generally like and need a competitive atmosphere more than women.

Citadel Defendants' Proposed Findings of Fact, *supra* note 19, at 47–48.

[39] *See VMI II*, 852 F. Supp. at 480.

[40] *See, e.g.*, Citadel Defendants' Proposed Findings of Fact, *supra* note 19, at 51–52; Brief For the Respondents at 28–32, *VMI II*, ____ U.S. ____, 1995 WL 745011 (Nos. 94-1941, 94-2107) [hereinafter VMI Respondents' Brief].

[41] Rosanne Howard, *Under Fire: A Would-be Cadet Quietly Storms The Citadel*, CHI. TRIB., Feb. 13, 1994, at § Womanews 1.

[42] *See, e.g.*, Citadel Defendants' Proposed Findings of Fact, *supra* note 19, at 47.

In defendants' view, the admission of women is inherently incompatible with the masculine norms of these colleges.[43] If women were admitted into these male bastions, "[t]he ferocious discipline The Citadel employs in its adversative educational methodology would disappear . . . ."[44] Women would "impair[ ]" their methodology and "dilute[]" the experience for men,[45] "undermine the cohesiveness of the corps,"[46] lower standards,[47] and (curiously) "introduce potentially invidious distinctions between male and female cadets."[48] Neither South Carolina nor Virginia claimed that the admission of women would destroy their ability to educate leaders. Instead, they argued that women would necessarily change these colleges and destroy their distinctive traditions.

As framed by defendants' narrative, the segregation of men and women appears natural. Creating non-military programs for women at Mary Baldwin and Converse Colleges supposedly does not segregate women, but reflects "real" differences in the educational "needs" of men and women.[49] Defendants' insistence on segregated education reinvokes the normative belief in "separate spheres" for men and women: men should be educated in a rigorous military environment that prepares them for conflict, while women should be taught in a supportive environment that teaches cooperation. This notion of natural difference and rigid sex roles resonates with the more conservative social code of the South, particularly with courts that would like to preserve the traditional social roles of men and women.

Within defendants' narrative, Nancy Mellette and Shannon Faulkner are demonized as gender outlaws. In an effort to explain their abilities and interests in a military-style education, defendants would dismiss women like Shannon and Nancy as aberrations from traditional norms of femininity. For example, counsel for The Citadel asked Alexander Astin, plaintiffs' expert witness, whether a woman interested in attending The Citadel would be "that kind of woman" who "would not be all that different from men?" After Astin wholeheartedly agreed, Patterson ended his cross-examination, apparently satisfied that his point was made.[50] According to The Citadel defendants, "[W]omen who are more 'mascu-

[43] For instance, defendants argued that because of the differences between men and women, "[t]he adversative method would not be optimal for the development of the most competitive and aggressive women in the nation." *Id.* at 106.

[44] *Id.* at 80.

[45] *Id.* at 78.

[46] *Id.* at 80.

[47] *Id.* at 81.

[48] *Id.*

[49] *VMI II*, 852 F. Supp. at 476.

[50] *See* Cross-examination of Alexander Astin by Robert Patterson at Tr. Vol. XVI at 99-100, *Faulkner*, 858 F. Supp. 552 (No. 2:93-488-2). Susan Faludi described this testimony as "express[ing] the precise point that the plaintiff's side had been trying to make all along, and that The Citadel strenuously resisted: that the sexes were, in the end,

line' than most men are the exception to the rule."[51] Even worse, women who seek a military education are not victims of invidious sex discrimination, but agents for the elimination of single-sex education for men *and* women. As one expert witness asserted, Shannon Faulkner's selfish desire for equal treatment "deprive[s] all the individuals who want men's single-gender education of their choice."[52]

B. United States v. Virginia: *The United States as the Unwelcome Aggressor*

As the sole plaintiff in the VMI cases, the United States failed to construct a narrative that successfully challenged either VMI's "single-gender" defense or its stereotypical assumptions.[53] The United States argued that women were qualified to attend VMI and that the admission of women would not impair VMI's ability to achieve its mission.[54]

Although VMI had received over 300 inquiries from women who sought admission,[55] the United States did not offer the testimony of any of these women to explain her reasons for wanting to attend VMI or her ability to perform as well as male cadets.[56] The United States instead relied on testimony by social science experts to prove that VMI's exclusion of women, and the segregation of women in the Mary Baldwin plan, were based on gender stereotypes.[57] The United States primarily drew on the successful integration of women into the federal service academies to refute VMI's claim that women would "destroy" VMI.[58] The United States also introduced substantial evidence that the Mary Baldwin plan was inferior to VMI in numerous respects, including its curriculum, reputation, endowment, and faculty.[59]

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not all that different." Susan Faludi, *The Naked Citadel*, NEW YORKER, Sept. 5, 1994, at 73.

[51] Citadel Defendants' Proposed Findings of Fact, *supra* note 19, at 46.

[52] Deposition of Elizabeth Fox-Genovese, *supra* note 31, at 144–45.

[53] The United States is authorized to bring an action in its own name to challenge sexual discrimination in higher education. While the statute requires that a private complaint be made to the United States, it does not require the complainant to be named as co-plaintiff as long as the Attorney General certifies that the complaint is meritorious and that the individual complainant is unable to prosecute the action because, *inter alia*, the complainant cannot afford the expense or fears retaliation. 42 U.S.C. § 2000c-6 (1995).

[54] *See, e.g.*, *VMI I*, 766 F. Supp. at 1413 n.8 (arguing that "success at West Point in assimilating women into the institution is proof that VMI could do likewise").

[55] *VMI I*, 976 F.2d at 894.

[56] *See VMI I*, 766 F. Supp. at 1417–18; *VMI II*, 852 F. Supp. at 489–91.

[57] *See VMI I*, 766 F. Supp. at 1415; *VMI II*, 852 F. Supp. at 489–90.

[58] *See VMI I*, 766 F. Supp. at 1413 n.8.

[59] *See VMI II*, 852 F. Supp. at 477–79.

The United States, however, chose not to dispute VMI's contention that single-sex education offered pedagogical benefits to men and women. Consequently, the United States did not argue that state-sponsored segregation in higher education stigmatizes women or perpetuates sexist attitudes and stereotypical beliefs about gender.[60] Indeed, the Solicitor General conceded that the state creation of two separate-sex institutions would not send any message that women were inferior.[61]

In the VMI case, the district court held that the exclusion of women was substantially related to the asserted state interests.[62] The court found that while "some" women might succeed at VMI, "most" women would not.[63] While the Fourth Circuit held that Virginia had failed to articulate an important policy that supports offering "the unique benefits of VMI's type of education to men and not to women," it agreed that the evidence supported the findings of the district court that the admission of women would destroy VMI's unique methodology and "deny those women the very opportunity that they sought."[64] In light of its conclusions and "the generally recognized benefit that VMI provides," the Fourth Circuit did not order coeducation, but remanded the case to permit Virginia to propose a remedial alternative that might include "parallel" programs or institutions or "other more creative options."[65]

On remand, the courts approved the Mary Baldwin plan, even though it "differs substantially"[66] from the VMI program and did not meet the now-discredited test of "separate but equal" because it could not "supply those intangible qualities of history, reputation, tradition, and prestige that VMI has amassed over the years."[67] The district court found that radically different educational methodologies were appropriate and natural: "If VMI marches to the beat of a drum, then Mary Baldwin marches to the melody of a fife and when the march is over, both will have arrived at the same destination."[68]

Rather than frame the issue as the right of women to be treated as equals, the courts framed the lawsuit as a direct attack by the federal

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[60] *See, e.g.*, Valerie Lee, *Single Sex Schooling: What is the Issue, in* SINGLE-SEX SCHOOLING: PERSPECTIVES FROM PRACTICE AND RESEARCH 39 (U.S. Dep't. of Educ., Draft Report, Dec. 22, 1992) (on file with the *Harvard Women's Law Journal*).

[61] Transcript of Oral Arguments at 10–11, *VMI II*, ____ U.S. ____, 1996 WL 16020 (1996) (Nos. 94-1941, 94-2107).

[62] *VMI I*, 766 F. Supp. at 1415.

[63] *Id.* at 1413.

[64] *VMI I*, 976 F.2d at 897, 898.

[65] *Id.* at 900.

[66] *VMI II*, 852 F. Supp. at 473.

[67] *Id.* at 475.

[68] *Id.* at 484. The Fourth Circuit held that the remedial plan for women did not have to be equal to VMI, as long as the benefits provided to each gender were "substantively comparable" and did not tend "'to lessen the dignity, respect or societal regard' of women." *VMI II*, 44 F.3d at 1234, 1242.

government upon a traditional Southern institution. Because Virginia did not have to challenge the testimony of real female plaintiffs, it was able to characterize the lawsuit as a life and death battle between VMI and the federal government over states' rights.[69] The Virginia district court agreed, characterizing the suit as a confrontation between the federal government and VMI that traced back to the Civil War battlefield.[70] In approving Virginia's remedial plan Judge Kiser also viewed the issue as one of states' rights, concluding that Virginia is "exercising its sovereign prerogative to structure its system of higher education."[71] In rejecting desegregation, Judge Kiser saw his role as that of preserving the traditions of Virginia: "VMI truly marches to the beat of a different drummer, and I will permit it to continue to do so."[72]

In the VMI decisions, women as individuals are invisible. Without an actual female student seeking admission, the courts were able to disregard the concrete harm to young women which resulted from their exclusion from VMI and instead frame the legal issue as Virginia's right to offer men a unique military-style education in a single-sex college. Neither court appeared to believe that a "real" woman would want a VMI education. Neither acknowledged the widespread interest among women in VMI or the presence of women in the federal service academies and the military, other than to agree with the VMI defendants that women had ruined West Point.[73]

The VMI courts thus ignored the particular women who, like some men, seek a military-style education, and substituted instead their idealized construction of "woman" whom they defined as the opposite of "man." Unlike actual women harmed by VMI's exclusionary policy, the theoretical woman featured in the courts' narratives, whom Judge Kiser referred to as "the female,"[74] was not harmed by her exclusion from VMI:

> Gender discrimination, as a rule, works to the benefit of one group and to the detriment of another. But in a real sense of the word, that is not true in this case because, as the testimony of experts demonstrates, it would be impossible for a female to participate in the "VMI experience." Even if the female could physically and psychologically undergo the rigors of the life of a male cadet, her introduction into the process would change it. Thus, the very experience she sought would no longer be available.[75]

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[69] *VMI I*, 766 F. Supp. at 1408.
[70] *Id.*
[71] *VMI II*, 852 F. Supp. at 484.
[72] *VMI I*, 766 F. Supp. at 1415.
[73] *See id.* at 1413.
[74] *Id.* at 1414.
[75] *Id.*

The Fourth Circuit agreed, labelling the problem "the Catch-22."[76]

The absence of female candidates for admission as parties or witnesses also undermined the ability of the United States to challenge effectively the defendants' stereotypical beliefs about men and women. Without a female plaintiff, the United States relied on expert testimony to challenge these gender stereotypes. Rather than offer the testimony of an actual young woman, the United States created a hypothetical woman, "Jackie Jones," who became the "allegor[y]" for those women who might be interested in attending VMI.[77] Construction of a "Jackie Jones" valorized the notion that women are not diverse individuals, but formed of one mold. A conservative and unsympathetic court was free to project its values, expectations, and beliefs about women's roles on this fictitious female candidate. Because the VMI trial became a quintessential battle of the experts, the district court could pick and choose from the conflicting testimony without accounting for the real-life experience of a woman like Nancy Mellette, whose potential for success at The Citadel has been hailed by the former Commandant of The Citadel's Corps of Cadets.[78]

At both the liability and remedial stages, the courts accepted the stereotypes of men and women offered by VMI[79] and concluded that VMI's male-only policy was based upon "real" differences between men and women.[80] Rejecting expert testimony for the United States that men and women are more similar than different, the Fourth Circuit relied on "common experience" to conclude that men and women are physically and psychologically "different."[81] The panel majority likewise referred to social constructions of appropriate roles of men and women in concluding, without any support in the record, that "[i]f we were to place women and men into the adversative relationship inherent in the VMI program, we would destroy, at least for that period of the adversative training, any sense of decency that still permeates the relationship between the sexes."[82] The judges did not base their genteel notion of "decency" on empirical evidence, but rather on their beliefs about the

[76] *VMI I*, 976 F.2d at 897.

[77] *VMI II*, 852 F. Supp. at 481.

[78] Nancy McLaughlin, *They Do Not Want Me There*, NEWS & RECORD (Greensboro, N.C.), Oct. 15, 1995, at A12 (quoting the former Commandant as saying that he has "no doubt that [Nancy Mellette would] be a leader there.").

[79] For example, the district court deemed it a fact that "[m]ales tend to need an atmosphere of adversativeness or ritual combat in which the teacher is a disciplinarian and a worthy competitor. Females tend to thrive in a cooperative atmosphere in which the teacher is emotionally connected with the students." *VMI I*, 766 F. Supp. at 1434.

[80] *See id.* at 1432.

[81] *VMI I*, 976 F.2d at 897 (concluding that the United States' argument "might lead, if accepted, to a finding that would impose a conformity *that common experience rejects.* Men and women are different, and our knowledge about the differences, physiological and psychological, is becoming increasingly more sophisticated.").

[82] *VMI II*, 44 F.3d at 1239.

social norms surrounding gender. Without reference to qualified female candidates like Shannon Faulkner and Nancy Mellette, these courts could ignore women whose qualities, experience, or interests conflict with cultural stereotypes of gender. Rather than treat women as individuals with different abilities and interests, the courts created an essentialized "woman" who would not seek or benefit from VMI.

In permitting VMI to remain closed to women, the courts accepted defendants' reification of VMI as a mythical and traditional glorification of manhood. The district court found that the VMI experience employs "an extreme form of the adversative method"[83] and that its male graduates "have a sense of having overcome almost impossible physical and psychological odds" because "they have been put through great physical pressures and hazards."[84] The Fourth Circuit likewise transformed VMI cadets into larger-than-life warriors who fought valiantly in the Civil War.[85]

To protect the myth of VMI as a bastion of masculinity requires the exclusion of women: if women could succeed at VMI, its masculine value would be lost.[86] Given that our nation's service academies have admitted women for almost twenty years, the courts could not find that the admission of women would render VMI unable to train citizen soldiers. Instead, they decided that VMI would have to adopt "dual" standards for women to accommodate physical differences and privacy concerns[87] that "would tear at the fabric of VMI's unique methodology,"[88] erode VMI's "egalitarianism,"[89] and "adversely affect[]" the "morale" of the young male cadets.[90]

C. Daughters of South Carolina Sue The Citadel

Unlike the VMI cases, The Citadel litigation has not centered around the issue of "single-gender" education, but upon The Citadel's exclusion of women, in particular, Shannon Faulkner and Nancy Mellette. Their presence established the case as a battle between qualified young women seeking admission to a public college and a powerful military college bent on preserving its male-only tradition. By engaging in a campaign

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[83] *VMI I*, 766 F. Supp. at 1422.
[84] *Id.* at 1426.
[85] *VMI I*, 976 F.2d at 892.
[86] *See, e.g., VMI I*, 766 F. Supp. at 1412–13.
[87] *See VMI I*, 976 F.2d at 896.
[88] *Id.* at 897.
[89] *Id.* at 896.
[90] *VMI I*, 766 F. Supp. at 1438.

of massive resistance, South Carolina recalls its history of racial segregation in education and reveals its discriminatory intent against women.

As plaintiffs, Shannon and Nancy, whose credentials are impressive, embody the story of exclusion based on sex: in all other ways they are the perfect candidates for admission to The Citadel. An honor student and athlete at Wren High School,[91] Shannon Faulkner applied to The Citadel in January 1993.[92] The Citadel immediately accepted her into its Corps of Cadets.[93] Only after The Citadel discovered that she was female did it conclude that she was unfit and withdraw its acceptance by letter in February 1993.[94] Despite its assertion that its male-only policy does not discriminate against women, The Citadel's letters to Shannon Faulkner first accepting her, then withdrawing its acceptance, enabled the court and public to see sex discrimination in action.

Nancy Mellette's story similarly reveals the arbitrariness of The Citadel's discriminatory admissions policy. Nancy Mellette is an eighteen-year-old high school senior from South Carolina whose father is a Citadel alumnus; her brother is a senior in its Corps of Cadets.[95] Nancy does not wish to threaten tradition, but like her brother, seeks to continue The Citadel tradition in her family. To prepare for The Citadel, Nancy transferred to a military boarding school, where she is a first lieutenant, member of its cadre and honor court, and letter athlete.[96] Unlike her brother, she is barred from The Citadel simply because she is a woman.

The focus on Nancy and Shannon, two daughters of South Carolina, roots their struggle for admission in the American traditions of equal opportunity and individual rights. Nancy or Shannon become your daughter, your sister, your neighbor's child, or yourself. While The Citadel tried to follow VMI's strategy by litigating the case as an impersonal battle for "single-gender" education, it was forced to fight Shannon Faulkner and Nancy Mellette instead. Unlike the VMI litigation, the legal battle between The Citadel parties immediately exploded into a full-fledged gender war that exposed The Citadel's discriminatory policy and attitudes.

In opposing a preliminary injunction to admit Shannon into day classes, The Citadel argued that her presence would distract male cadets in classes, destroy its all-male tradition, and irreparably harm The Citadel and its male cadets.[97] One witness for The Citadel, Josiah Bunting, now president of VMI, likened the admission of women to the introduc-

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[91] Affidavit of Shannon Faulkner at 1–2, *Faulkner*, 858 F. Supp. 552 (No. 2:93-488-2).
[92] The Citadel's application did not ask the applicant's gender. *Id.* at 2.
[93] *Id.*
[94] *Id.*
[95] McLaughlin, *supra* note 78, at A1, A12.
[96] *Id.*
[97] Brief of Appellants at 20–27, *Faulkner*, 10 F.3d 226 (No. 93-2030).

tion of a "toxic kind of virus" whose presence, even in small numbers, would destroy the entire institution.[98] The courts rejected The Citadel's doomsday predictions of harm, and relied instead on testimony by The Citadel's own witnesses that the school could still fulfill its primary mission if women were admitted to the classroom, and that the academic performance of male cadets would not be affected.[99]

In granting the preliminary relief, the courts rejected defendants' effort to frame the issue as the destruction of single-sex education. In contrast to *VMI*, the courts explicitly framed the conflict as the right of the individual to preliminarily enjoin the ongoing deprivation of her constitutional rights.[100] Finding that The Citadel's male-only admissions policy likely violated Shannon Faulkner's right to equal protection, the district court held that under federal law she is entitled to "the best solution that we have available now" which he concluded was admission to the Day Program at The Citadel.[101]

In his majority opinion, Judge Niemeyer agreed that "[d]enying Faulkner's access . . . might likely become permanent for her"[102] and that this "time pressure, combined with an absence of present opportunity for Faulkner," distinguished this case from *VMI*.[103] Judge Hamilton in his dissent likewise viewed the lawsuit as a personal battle by women seeking to attack The Citadel, claiming that the majority "[w]ithout pause or demonstrated concern for the devastating effect of its action . . . emasculates a venerable institution by jettisoning 150 years of impeccable tradition and distinguished service."[104]

When Shannon Faulkner entered day classes in January 1994, The Citadel's antagonism toward her and women in general became even more visible. Her arrival was accompanied by tremendous media coverage nationwide that communicated visual images of exclusion: a woman, alone, walking among uniformed cadets, all male.[105] Few cadets would speak to her on her first day, with the notable exception of an African American, Cadet Von Mickle, who publicly compared the exclusion of women to the exclusion of African Americans.[106] The school newspaper castigated Mickle in an anonymous column that described Shannon as

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[98] Deposition of Josiah Bunting at 30, *Patricia Johnson v. James Jones* (No. 2:92-1674-2).

[99] Unreported Order at 75, *Faulkner*, 858 F. Supp. 552 (Aug. 12, 1993) (No. 2:93-488-2) (on file with the *Harvard Women's Law Journal*); *Faulkner*, 10 F.3d at 233.

[100] *See* Unreported Order, *supra* note 99, at 74.

[101] *Id.* at 76.

[102] 10 F.3d at 233.

[103] *Id.*

[104] *Id.* at 234 (Hamilton, J., dissenting).

[105] *See, e.g.*, Peter Applebome, *Woman Begins Daytime Classes at The Citadel*, N.Y. TIMES, Jan. 21, 1994, at A12.

[106] *See* Mary Jordan, *Around the South*, ATLANTA CONST., Jan. 13, 1994, at A3.

"The Divine Bovine," "The Shrew Shannon," and "Mrs. Doubtgender."[107] The harassment and media attention continued throughout Shannon's tenure as a day student, reflecting The Citadel's ceaseless attempts to keep women out.[108]

The defendants continued to resist the courts' every effort to provide Shannon Faulkner with some measure of equal treatment. South Carolina twice refused to comply with the district court's orders to file a remedial plan.[109] Following a two-week hearing, the district court held that The Citadel's male-only admissions policy violated the Equal Protection Clause.[110] Because South Carolina had refused to offer any remedial alternative, Judge Houck found that the only available remedy was to order the immediate admission of Shannon Faulkner into the Corps of Cadets.[111]

In contrast to the district court in *VMI II*, Judge Houck again framed the remedial issue squarely within the doctrine of equal protection. The court held that, in cases involving access to public higher education, "time is of the essence"[112] and that Shannon Faulkner was entitled to immediate admission.[113] Judge Houck plainly saw the lawsuit as a battle that pitted Shannon Faulkner and women in South Carolina against South Carolina and The Citadel: "Not once has a defendant done anything to indicate that it is sincerely concerned to any extent whatsoever about Faulkner's constitutional rights."[114] Most telling, the court found, was the defendants' decision to spend millions of tax dollars in support of a frivolous defense.[115] The court concluded that "all of the actions witnessed by this court clearly and unequivocally indicate that the defendants would exert all of their considerable influence to insure that

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[107] *The Scarlet Pimpernel*, BRIGADIER, Jan. 28, 1993, at 7. The column observed, "The PIMP doth long to tame the PLASTIC COW on this most wondrous of nights but it seems that we will have a live specimen, a home grown DAIRY QUEEN from the stables of Powdersville. Perhaps NON DICKLE will be the first to saddle up." *Id.*

[108] Shortly after the district court ordered that Shannon be admitted into the Corps in August 1994, a billboard next to a highway in Charleston was changed overnight to read "Die Shannon." Yardley Rosemar, *A Tale of True Grit*, NEWS & RECORD, Aug. 5, 1994, at A15. Although the message on the billboard was attributed to Company H, a cadet company at The Citadel, authorities could not verify that assertion.

[109] *See Faulkner*, 858 F. Supp. at 567.

[110] *Id.* at 566. The court held that South Carolina had failed to prove that the exclusion of women was substantially related to an important state interest. *Id.* It refused to find, as defendants had requested, that South Carolina had a state policy of providing "single-gender" education. *Id.* at 564.

[111] *Id.* at 568.

[112] *Id.* at 569 (citing James Meredith v. Charles Fair, 305 F.2d 343, 352 (5th Cir. 1962)).

[113] *Id.* at 568.

[114] *Id.* at 567.

[115] *Id.* (criticizing the defendants for not offering a "single case . . . in support of their position that a lack of demand for single-sex education on the part of women justifies its providing such an education only for men").

Faulkner would never have the opportunity to enroll in . . . a parallel institution or program."[116]

The Fourth Circuit likewise conceptualized this lawsuit as a battle of particular women for equal treatment and framed the remedial question in terms of the right of the individual to immediate relief from the denial of constitutional rights. In his concurring opinion, Judge Hall wrote that The Citadel and VMI cases are not about "single-gender" education, but "have very much to do with wealth, power, and the ability of those who have it now to determine who will have it later."[117] Judge Niemeyer appeared to be annoyed that South Carolina had not taken any steps to propose or develop a remedial plan, despite being on notice for four years that such a plan would be required.[118] In affirming, however, the court modified the remedial portion of the district court's order to afford South Carolina yet another opportunity to develop and propose a remedial plan before Shannon joined the Corps of Cadets in the fall of 1995.[119]

Despite the deadline imposed by the courts, South Carolina's resistance continued. It filed a proposal on June 5, 1995 to establish a non-military program for women at Converse College. A Citadel alumni organization donated $5 million to Converse in exchange for their agreement to host the program.[120] In July, the district court found that the defendants had not complied in good faith with discovery and thereby prevented the plaintiffs from adequately preparing for trial.[121] The court scheduled a November trial date, and in doing so, cleared the way for Shannon's admission.

Throughout the summer, The Citadel's resistance intensified as the prospect of a woman joining the Corps grew more likely. The Citadel opposed Shannon's request to try out for the marching band.[122] It refused to assign Shannon a room in the barracks with male cadets and instead proposed to house her in The Citadel's infirmary.[123] The Citadel filed a motion to disqualify Shannon from admission alleging that she was medically unfit.[124] The district court, however, found that under The Citadel's own policy, Shannon would have been admitted if she were male.[125]

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[116] *Id.* at 568.

[117] *Faulkner*, 51 F.3d at 451 (Hall, J., concurring).

[118] *See id.* at 448.

[119] *Id.*

[120] *See* Program Agreement Between The Citadel and Converse College, *supra* note 7, at 2.

[121] Order of District Court at 11–12, *Faulkner*, 858 F.Supp. 552 (Jul. 24, 1995) (No. 2:93-488-2).

[122] Linda Meggett, *Physical Condition Will Not Keep Faulkner Out*, POST & COURIER (Charleston, S.C.), July 27, 1995, at A1.

[123] *See* Defendants' Proposed Contingency Plan For Admission of Shannon Faulkner at 2, *Faulkner*, 858 F. Supp. 552 (June 5, 1995) (2:93-488-2).

[124] *See* Meggett, *supra* note 122, at A1.

[125] *Id.*

Local opposition to Shannon's admission, and the lawsuit itself, mirrored The Citadel's animosity toward women. Residents of South Carolina bought anti-Shannon T-shirts and bumper stickers, reducing the lawsuit to a personal campaign against a twenty-year-old woman. People on campus wore T-shirts printed with "1,952 Bulldogs and 1 Bitch."[126] The week before Shannon entered, pink bumper stickers adorned cars throughout Charleston reading "It's a Girl!" and listing, incorrectly, Shannon's weight.[127]

After exhausting all of their appeals, The Citadel accepted Shannon Faulkner into its Corps of Cadets on August 11, 1995.[128] When Shannon entered the Corps of Cadets in August 1995, the media again captured images of exclusion: one woman sitting alone amongst hundreds of male cadets who appeared to ignore her. After Shannon withdrew from the Corps, the media broadcasted images of the male cadets gleefully celebrating Shannon's departure.[129] Cadets cheered, fists raised in victory, as they surfed on mattresses across the floor of the barracks.[130] One cadet wore a T-shirt emblazoned with a bottle of vodka and the slogan "Absolutely Male."[131] The public relations officer for The Citadel ended a nationally televised interview three days after Shannon's departure by proclaiming, "It's a great day at The Citadel!"[132] The message conveyed was not concern for single-sex education, but determination to exclude women from The Citadel.

Shannon's admission into The Citadel offered numerous opportunities to demystify the institution, as well as to rebut The Citadel's assertion that women would materially change its program. In July 1994,[133] and again in June 1995,[134] the defendants filed contingency plans detailing

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[126] *See* Faludi, *supra* note 50, at 75.

[127] *See Faulkner: New Cadet Doesn't Deserve Scorn for Breaking All-Male Tradition*, CINCINNATI ENQUIRER, Aug. 18, 1995, at A14.

[128] Frustrated in their efforts to obtain approval for the Converse plan, South Carolina and The Citadel filed a motion with the Fourth Circuit to recall its mandate and stay the admission of Shannon. Appellants' Motion for Recall and Stay of Mandate, *Faulkner*, 66 F.3d 661 (July 28, 1995) (No. 94-1978). The Fourth Circuit denied that application. *Faulkner*, 66 F.3d 661. South Carolina then filed an emergency application for a stay with Chief Justice Rehnquist and then Justice Scalia, both of whom denied the request. *See* Frank J. Murray, *Woman to Enter Citadel Today*, WASH. TIMES, Aug. 12, 1995, at A1. Defendants again filed a motion with the Fourth Circuit for a stay pending appeal, which the court denied.

[129] *See, e.g.*, Schuyler Kropf, *Cadets Celebrate After Faulkner Leaves*, POST & COURIER (Charleston, S.C.), Aug. 19, 1995, at A1; *Images of '95*, NEWSWEEK, Dec. 25, 1995/Jan. 1, 1996, at 95.

[130] *See, e.g.*, Kropf, *supra* note 129.

[131] *See Images of '95*, *supra* note 129.

[132] *Good Morning America* (ABC Television Broadcast, Aug. 21, 1995) (transcript on file with the *Harvard Women's Law Journal*).

[133] *See* Defendants' Proposed Contingency Plan For Admission of Shannon Faulkner, *Faulkner*, 858 F. Supp. 552 (June 27, 1994) (No. 2:93-488-2).

[134] *See* Defendants' Proposed Contingency Plan For Admission of Shannon Faulkner, *Faulkner*, 858 F. Supp. 552 (June 5, 1995) (No. 2:93-488-2).

how The Citadel would integrate Shannon Faulkner into its Corps of Cadets. Contrary to the findings of the courts in *VMI*, The Citadel's plans did not require any material changes in their system.[135] Initially, The Citadel did not attempt to modify its method of discipline for Shannon. After plaintiff's counsel advised the Fourth Circuit of this fact, defendants revised their initial plan and asked Judge Houck in June 1995 to order that the rules of its so-called "adversative" system would not apply to Shannon, claiming that the system was inappropriate for women.[136] The district court denied defendants' request, holding that there were no differences between men and women that would require such a change.[137]

II. MAKING THE FEMALE PLAINTIFF VISIBLE

The power of judicial narrative to make individuals and history invisible is the power to exclude. By framing the dispute in *VMI* as a battle between the United States and VMI over "single-gender" education, the courts rendered invisible the young women who seek equal access to VMI. Within this narrative of "single-gender" education, the fact that VMI discriminates against qualified individual women disappeared, along with the history of women's exclusion from public education and the military. Women become invisible outsiders; their status as individuals with legally enforceable rights is not recognized. The courts failed to characterize the exclusion of women from VMI as state-sponsored segregation, a narrative choice that would have evoked parallels to racial segregation and its ugly history.

Facts or events that fall outside the narrative framed by the courts become invisible: "[W]hat does *not* get structured narratively suffers loss in memory."[138] Once the courts excluded segregation from their narrative, the history and experiences of women and African Americans are lost. VMI's exclusion of women became detached from the history of women's exclusion from public education and the military.

By constructing women as "the other," the VMI decisions perpetuate the myth that women are fundamentally and naturally different from

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[135] *See id.* The Citadel uses a positive method of leadership training similar to that used at West Point and the service academies. This method is distinctly different than the so-called "adversative" method used at VMI. *See supra* notes 83–84 and accompanying text.

[136] Transcript of Hearing at 322, *Faulkner* 858 F. Supp. 552 (July 26, 1995) (No. 93:488-2). The Citadel also proposed to limit the number of cadets who could issue "on-the-spot" corrections to Shannon. Because Shannon was the only female cadet, and because the Citadel had refused to propose guidelines prohibiting sexual harassment, Shannon did not object.

[137] *Id.*

[138] BRUNER, ACTS OF MEANING, *supra* note 10, at 56.

men. This myth of difference is a fundamental barrier to equal treatment of women. The Supreme Court repeatedly has recognized that, like African Americans, women have suffered "a long and unfortunate history of discrimination"[139] and that "throughout much of the nineteenth century the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes."[140] Despite the similar history of discrimination and prejudice, the Supreme Court considers classifications based on race inherently suspect,[141] while affording gender classifications only intermediate scrutiny.[142] The assumption is that some differences between men and women may justify differential treatment. The task of courts, therefore, is to distinguish whether differential treatment of men and women is legitimate.

Under the standards of *Curtis Craig v. David Boren*[143] and *Mississippi University for Women v. Joe Hogan*,[144] courts have focused primarily on whether a gender classification is based upon overly broad generalizations and stereotypes that reflect traditional notions about the relative roles and abilities of men and women. This approach assumes—incorrectly—that individual judges are able to see and understand stereotypes of gender. As the VMI decisions demonstrate, the myth of difference is so powerful that discrimination against women often appears natural.

Almost all of the Supreme Court cases on gender discrimination involved male plaintiffs.[145] Litigating on behalf of male plaintiffs may help establish abstract definitions of stereotypes or even gender discrimination, yet it does little to challenge the myth of difference or our expectations about who women and men should or can be. Nor does it offer the opportunity to understand discrimination against women in a historical context.

As plaintiffs, Nancy Mellette and Shannon Faulkner challenge the myth of difference. Both are real-life examples of women with non-traditional interests and ambitions: Nancy leads a company of both men and women at Oak Ridge Military Academy; Shannon Faulkner faced her first day at The Citadel with strength and determination. These images not only challenge traditional constructions of gender, but undermine social science evidence that is (mis)used to support gender stereotypes.

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[139] *See, e.g.*, J.E.B. v. Alabama ex rel. T.B., 114 S. Ct. 1419, 1425 (1994); Sharron & Joseph Frontiero v. Elliot Richardson, 411 U.S. 677, 684, 687–88 (1973).

[140] *Frontiero*, 411 U.S. at 685.

[141] *See, e.g.*, Richard & Mildred Loving v. Virginia, 388 U.S. 1 (1967).

[142] *See, e.g.*, Curtis Craig v. David Boren, 429 U.S. 190 (1976).

[143] *Id.*

[144] 458 U.S. 718 (1982).

[145] *See* MARY BECKER ET AL., CASES AND MATERIALS ON FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY 47–48 (1994).

Focusing attention on one or two role models, however, can exert tremendous pressure on these individuals. Shannon Faulkner and Nancy Mellette have had to endure considerable media attention and public scrutiny. To be with Shannon Faulkner in Charleston was to be constantly in the public's eye. Shannon could not eat dinner, walk through the streets, or shop without attracting attention, both positive and negative. While she received many supportive comments, many people thought nothing of treating her as though she were not a person. Despite Shannon's tenacity, public criticism weighed heavily on such a young, inexperienced woman.

When Shannon walked through The Citadel's gates on August 12, 1995 to become its first female cadet, she faced a phalanx of reporters and television news crews intent on recording her every move. Local supporters joined together to express their appreciation for Shannon's efforts, encouraging her to "Go Girl!" Wives and girlfriends of Citadel cadets and alumni, however, planted themselves immediately next to The Citadel's gates, wearing black ribbons and handing out "Save the Males" bumper stickers to freshmen and their families. The Citadel permitted its supporters to distribute the bumper stickers at a reception for families of entering students, which Shannon's parents attended.[146]

The stress and loneliness were overwhelming for Shannon. She became sick from the record-breaking heat in Charleston, as did a number of male cadets.[147] Because of the stress, she could not keep food down.[148] In the end, she found the pressure too much, as the public decided to treat her as a flag-bearer or symbol for all women. She later explained that:

> I now recognize that it was an impossible task to require myself to perform under the world's spotlight in surroundings where I did not have even a person to confide in. Being completely cut off from the outside world, except for the glare of cameras, I felt stranded, isolated and hated.[149]

Although many male cadets routinely leave The Citadel without public censure, Shannon faced criticism from all sides. Many feminists in particular denounced her for not enduring the isolation she faced as a cadet for the sake of all women.[150] In the haste to judge, we forget the

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[146] Interview with Henry Weisburg, co-counsel to Shannon Faulkner, in Charleston, S.C. (Aug. 12, 1995).

[147] *See Faulkner Drops Out of Citadel*, ROANOKE TIMES & WORLD NEWS, Aug. 19, 1995, at A1.

[148] Affidavit of Shannon Faulkner at 2, *Faulkner*, 858 F. Supp. 552 (No. 2:93-488-2).

[149] *Id.* at 3.

[150] *See, e.g.*, Sean Piccoli, *Faulkner's Quick Exit Pokes Hole in 'Feminist Juggernaut'*, WASH. TIMES, Apr. 23, 1995, at A6.

experience of Lloyd Gaines, the African American student who sued to desegregate the University of Missouri law school in 1938, but who disappeared before the lawsuit was completed.[151]

CONCLUSION

Shannon Faulkner fought for nearly three years and won a substantial victory for women interested in attending The Citadel by breaking the gender barrier there. While she was unable to fulfill her dream and wear the ring of Citadel graduates, she inspired countless other women, including Nancy Mellette, with her courage and her grit. Since Shannon left The Citadel, over 240 young women have written to The Citadel to express interest in following her lead.[152]

Nancy Mellette and Shannon Faulkner shifted the court's attention to the rights of individual women, which are at the core of traditional equal protection analysis. Despite tremendous personal costs, Shannon and Nancy have inspired and empowered women to defy outdated notions of women's roles and interests. The human cost of litigation demonstrates, however, that courts should liberally certify class actions, in order to protect young plaintiffs like Shannon and Nancy from the pressure of public scrutiny and harassment.[153] Class certification refutes the assumption that Shannon and Nancy are merely exceptions to traditional gender norms and instead affirms that they embody generations of women to whom South Carolina has denied equal educatinal opportunity.

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[151] *See* Robert Weiner, *It's Not Easy Being a Pioneer*, WASH. POST, Aug. 24, 1995, at A19.

[152] *See Citadel Told To Process Applications From Women*, USA TODAY, Dec. 8, 1995, at 3A.

[153] The South Carolina district court found that plaintiffs have met all of the requirements of Fed. R. Civ. P. 23(a) but so far has declined to certify a class. Hearing at 127, *Faulkner*, 858 F. Supp. 552 (Oct. 3, 1995) (No. 2:93-488-2).