

FROM SUFFRAGE TO CITIZENSHIP: THE BATTLE FOR GENDER EQUALITY AT THE CITADEL

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INTRODUCTION

The battle for women's suffrage in the United States was prolonged, waged by an army of courageous women. In Charleston, South Carolina, the Grimke sisters—Sarah Moore Grimke and Angelina Emily Grimke—spoke and wrote eloquently against slavery and in support of women's emancipation.¹ Challenging the exclusion of women from the public sphere, Angelina Grimke wrote in 1837 that “[t]he whole land seems aroused to discussion of the province of women . . . and I am glad of it. We are willing to bear the brunt of the storm, if we can only be the means of making a break in the wall of public opinion which lies in the way of woman's rights, true dignity, honor and usefulness.”² Women did not win the right to vote for another eighty years. Adoption of the Nineteenth Amendment of the United States Constitution in 1920 extended the franchise to women, which suffragists believed would secure equal citizenship.³

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1. *The Grimke Sisters: Sarah and Angelina Grimke*, CITADEL, <http://www.citadel.edu/root/whm2013-features/african-american-graduates/241-women-s-history-month/20744-the-grimke-sisters-sarah-and-angelina-grimke> (last visited Aug. 3, 2019); *Women's Rights: Grimke Sisters*, NAT'L PARK SERV. <https://www.nps.gov/wori/learn/historyculture/grimke-sisters.htm> (last updated Feb. 26, 2015).

2. ANN F. SCOTT & ANDREW M. SCOTT, *ONE HALF THE PEOPLE: THE FIGHT FOR WOMAN SUFFRAGE* 8 (Harold M. Hyman ed., 1975).

3. See Gretchen Ritter, *Jury Service and Women's Citizenship Before And After the Nineteenth Amendment*, 20 LAW & HIST. REV. 479, 479–80 (2002).

The hope of equal citizenship, however, proved elusive. Although the Nineteenth Amendment opened voting booths to women,⁴ notions of citizenship remained gendered.⁵ Despite winning the right to vote, women continued to be excluded from jury service in many states.⁶ State and federal laws denied women equal employment opportunity and reserved admission to many institutions of higher education solely to men.⁷ The Nineteenth Amendment had not transformed the gendered systems of power that denied women equal citizenship.⁸ The focus of feminists then shifted from the ballot box to the federal courts, where women began to challenge entrenched structures and practices of discrimination that continued to exclude them from political, economic, and social power.

The battle for the admission of women to The Citadel, the Military College of South Carolina (“Citadel” or “the Citadel”), exemplifies the struggle to transform institutions of male privilege and power. Located in Charleston, the birthplace of the Grimke sisters, the Citadel had excluded women for over 151 years.⁹ In 1993, Shannon Faulkner filed a § 1983 action in federal court in Charleston, challenging the Citadel’s males-only admission policy.¹⁰ Faulkner was an eighteen-year-old high school senior from upstate South Carolina who had been accepted by the Citadel, and only rejected when it found out she was female.¹¹ In challenging its admission policy, Shannon Faulkner sought to enjoin the Citadel’s wholesale exclusion of an entire class of persons from the benefits of its unique and prestigious program, solely because of their sex.

I was the lead lawyer who represented Shannon Faulkner in her lawsuit against the Citadel and South Carolina. At a time when women were serving alongside men in the Gulf War to defend our

4. See Gretchen Ritter, *Gender and Citizenship After the Nineteenth Amendment*, 32 *POLITY* 345, 346 (2000).

5. *Id.*

6. *History Made When Women Were Allowed to Serve on Jury*, AP NEWS (Nov. 16, 2018), <https://www.apnews.com/50fb651b7fb84221887f8a7534a87fff>.

7. Kristen M. Galles, *Filling the Gaps: Women, Civil Rights, and Title IX*, AM. B. ASS’N (June 30, 2017), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol31_2004/summer2004/irr_hr_summer04_gaps/.

8. See generally Ritter, *supra* note 4.

9. See *The Grimke Sisters*, *supra* note 1; *Women’s Rights*, *supra* note 1; Peter Applebome, *Woman Begins Attending Class at Citadel*, N.Y. TIMES, Jan. 21, 1994, at A12, <https://www.nytimes.com/1994/01/21/us/woman-begins-attending-class-at-the-citadel.html>.

10. *Faulkner v. Jones*, 10 F.3d 226, 234 (4th Cir. 1993).

11. *Id.* at 228–29.

Nation, the Citadel waged a holy war to preserve its males-only institution. Its legal defense of the Citadel's exclusionary policy relied on outdated yet deeply rooted gender stereotypes. Men and women, it argued, are fundamentally different and the "very presence" of women would require changes to its system that would "destroy" the institution.¹² Rather than admit women, the Citadel sought court approval for a plan to relegate women to a separate and intentionally unequal program at a private, non-military women's college,¹³ turning back the clock to *Plessy v. Ferguson*, when separate and unequal educational facilities for African-Americans were lawful.¹⁴ Its proposed remedy did not remedy the violation, but perpetuated it.

On the frontlines of this gender war, I quickly learned that the Citadel was not merely a state college, but an entrenched South Carolina institution that offered its male citizens access to a powerful alumni network. The Citadel, as one federal judge wrote, "not only practiced inequality, but celebrates it."¹⁵ By challenging the Citadel's admission policy, Shannon Faulkner threatened to disrupt the political, economic, and social power of the its male alumni, many of whom were state legislators and prominent leaders.¹⁶ Her story is one of tremendous courage in the face of bitter resistance. This essay examines her struggle for the admission of women, offering it as an example of how the fight for women's full citizenship has been waged in the federal courts. It illustrates the persistence of gendered power structures and power of courageous women who, like the Grimke sisters, are "willing to bear the brunt of the storm" to secure women's equal status under the law.¹⁷

This essay consists of three parts. Part I considers the limits of the Nineteenth Amendment in guaranteeing women full citizenship status. Allowing women the vote did not dismantle long-standing, deeply engrained institutions that denied women political, economic, or social power. Increasingly, women turned to the federal courts to challenge gender discrimination under the Fourteenth Amendment. Part II discusses Shannon Faulkner's legal challenge to the Citadel's

12. 1995 WL 17047693, at 11–12 (addresses argument that coeducation would destroy ability to provide educational benefits).

13. 1994 WL 16048428, at n.2 (discusses the state filing a plan for a separate institution); 1994 WL 16048431, at *13.

14. *See generally* 163 U.S. 537 (1896).

15. *Faulkner v. Jones*, 10 F.3d 226, 234 (4th Cir. 1993) (Hall, J., concurring).

16. *The Citadel Alumni Association*, CITADEL ALUMNI, <https://secure.citadelalumni.org/dcal/notable.php> (last visited Aug. 14, 2019).

17. GERDA LERNA, *THE GRIMKE SISTERS FROM SOUTH CAROLINA* 139 (1998).

males-only admission policy. The exclusion of women from the Citadel was not based merely upon erroneous or stereotypical views about men and women or the alleged value of single-sex education. Rather, it was part and parcel of a legal and political system that had long subordinated women, denying them the dignity of full citizenship. By seeking admission to the Citadel, Shannon Faulkner became a target for tremendous hostility and rage that reflects the power of deeply entrenched gender norms and institutions. Part III reflects on the benefits and costs of the litigation as a means of advancing women's full status as citizens. While Shannon willingly bore the brunt of the storm, the cost was high. Her courage and persistence, however, opened the doors to women who now, as Citadel alumni, continue to inspire and transform.

I. FROM THE BALLOT BOX TO FEDERAL COURTS

From its beginning, the United States maintained a dual system of law for men and women—separate and unequal.¹⁸ In the private sphere, state law made the husband the legal head of each family and sole guardian of his wife, his children, and their property.¹⁹ Husbands also had the sole right to collect wages for a wife's work outside the home, owned his wife's personal property, and had the right to manage and control all of her real property.²⁰ A wife could not sell her property without her husband's consent.²¹ In the public sphere, women fared little better. Despite the passage of the Fourteenth Amendment prohibiting states from denying the equal protection of the law to "any person,"²² courts held that women did not have the right to vote, nor to practice law.²³ The position of women throughout much of the nineteenth century, the United

18. For a thorough explication of this point, see Brief of Amici Curiae National Women's Law Center, American Civil Liberties Union et al. in Support of Appellant's Brief Urging Reversal at 27, *Atkinson v. Lafayette College*, 460 F.3d 447 (3d Cir. 2006) (No. 03-3426).

19. The husband also chose his wife's domicile, was entitled to custody and control of her children, and was permitted to rape and beat her. BARBARA A. BABCOCK ET AL., *SEX DISCRIMINATION AND THE LAW: HISTORY, PRACTICE, AND THEORY*, 561–63 (1996); see also *id.* at 1–2 (describing the dual law system for men and women).

20. See JoEllen Lind, *Dominance and Democracy: The Legacy of Woman Suffrage for the Voting Right*, 5 *UCLA WOMEN'S L.J.* 103, 134 (1994).

21. *Id.*

22. U.S. CONST. amend. XIV.

23. *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 177–78 (1874) (denying women the right to vote); *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 139 (1872) (upholding the exclusion of women from practicing law).

States Supreme Court has repeatedly recognized, “was, in many respects, comparable to that of blacks under the pre-Civil War slave codes.”²⁴ The Constitution treated women as second-class citizens, denying them the right to vote until 1920, when the Nineteenth Amendment was adopted.²⁵ As Justice Ruth Bader Ginsburg has written, “well into the 20th century, total political silence was imposed on females.”²⁶

Despite winning the right to vote, women continued to find themselves excluded from full and equal citizenship by legislators and courts alike.²⁷ Women historically were barred by legislation from serving on juries, presumed incompetent to administer justice.²⁸ Decades after the adoption of the Nineteenth Amendment, many states continued to exclude women from jury service. In 1947, sixteen states excluded women from juries; Alabama, Mississippi, and South Carolina continued to deny women the right to serve as jurors in 1961, and Alabama did not eliminate its restriction until 1966.²⁹ States that did permit women to serve on juries often erected other barriers to deter women from exercising their right to jury service, such as registration requirements and automatic exemptions.³⁰ Courts thus enabled state legislatures that were unwilling to extend the right of jury service to women. The United States Supreme Court, for example, upheld a state exemption from jury service for women as late as 1961. In *Hoyt v. Florida*, the Court upheld the constitutionality of a discriminatory Florida exemption law, holding that the “woman is still regarded as the center of home and family life” unless “she herself determines that such service is consistent with her own special responsibilities.”³¹ It was not until 1975 that the Court finally struck down an exemption from jury service for women in *Taylor v. Louisiana*.³²

24. *Frontiero v. Richardson*, 411 U.S. 677, 685–86 (1973).

25. *The 19th Amendment*, NAT’L ARCHIVES (May 16, 2019), <https://www.archives.gov/exhibits/featured-documents/amendment-19>.

26. Ruth Bader Ginsburg, *Women As Full Members of the Club: An Evolving American Ideal*, 6 HUM. RTS. 1, 4 (1976–77).

27. *United States v. Virginia*, 518 U.S. 515, 531–32 (1996).

28. Holly J. McCammon et al., *Becoming Full Citizens: The U.S. Women’s Jury Rights Campaigns, the Pace of Reform, and Strategic Adaptation*, 113 AM. J. SOC. 1104, 1108–09 (2008).

29. See Wallace M. Rudolph, *Women on the Jury Voluntary or Compulsory?*, 44 J. AM. JUDICATURE SOC’Y. 206, 207 (1961); *Hoyt v. Florida*, 368 U.S. 57, 62 (1961).

30. See, e.g., *Fay v. New York*, 332 U.S. 261, 289 (1947).

31. 368 U.S. at 62.

32. 419 U.S. 522, 537 (1975).

States continued to deny admission to women at public institutions of higher education, blocking critical gateways to economic, social, and political power.³³ The Commonwealth of Virginia, for example, bitterly fought the admission of women to its flagship university, the University of Virginia. It did not open its doors to women until 1970, when it was ordered to do so by a federal court after it lost a lawsuit brought by a woman seeking admission.³⁴

Nor did women's suffrage translate into equal employment opportunity. During the late nineteenth and early twentieth centuries, state legislatures adopted many laws mandating discrimination in employment. For example, state laws barred women from certain occupations and from types of work that would result in higher pay (such as overtime work, heavy work, and night work).³⁵ Even as late as 1948, the Supreme Court in *Goesaert v. Cleary* upheld a state statute prohibiting women from being bartenders because of the alleged "moral and social problems" that arise when women tend bar.³⁶ Other laws prohibited women from working before or after childbirth.³⁷ Despite the application of intermediate scrutiny to sex-based classifications in *Reed v. Reed* in 1971,³⁸ women continued to face persistent workplace discrimination and inequality of pay. Some state laws, for example, forced public schoolteachers to take unpaid leave at a certain point in their pregnancy.³⁹ In 1994, when Shannon Faulkner's lawsuit was pending, women earned an average of seventy-two cents for every dollar earned by men.⁴⁰

Women continue to remain underrepresented in the political process, not surprising given this country's exclusion of women from the right to vote.⁴¹ In 1995, women constituted only nine percent of all U.S. Senators and eleven percent of all U.S. Representatives.⁴²

33. *United States v. Virginia*, 518 U.S. 515, 536–39 (1996).

34. *See Kirstein v. Rector & Visitors of the Univ. of Va.*, 309 F. Supp. 184, 187 (E.D. Va. 1970).

35. *BABCOCK ET AL.*, *supra* note 19, at 261.

36. 335 U.S. 464, 466 (1948).

37. Nicholas Pedriana, *Discrimination by Definition: The Historical and Legal Paths to the Pregnancy Discrimination Act of 1978*, *YALE J.L. & FEMINISM* 1, 7 (2009).

38. 401 U.S. 71 (1971).

39. *See Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 632 (1974).

40. U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, P60-193, *MONEY INCOME IN THE UNITED STATES: 1995* (1996).

41. *See Ginsburg*, *supra* note 26, at 4.

42. *History of Women in the U.S. Congress*, CTR. FOR AM. WOMEN & POL., <https://cawp.rutgers.edu/history-women-us-congress> (last visited Apr. 11, 2019).

Only 20.6 percent of state legislators were women; women held only 25.9 percent of all state elective executive offices, and there was only one female governor.⁴³

Women also have been excluded from opportunities for military service afforded men. Like jury service and participation in the political process, military service has long been considered a fundamental component of citizenship.⁴⁴ Until recently, the United States military excluded women from direct combat, redefining combat to exclude situations where women nevertheless were in harm's way.⁴⁵ The exclusion of women from combat served an important symbolic function, preserving military service as a male province.⁴⁶ The military defended its opposition to the full integration of women, for example, by claiming it needs to preserve the military as a place where men can "prove" and "celebrate" their manhood.⁴⁷ Retired Navy Admiral James Webb, for example, has argued that the military provided a "ritualistic rite of passage into manhood," and the integration of women into the military makes troops "feel stripped symbolically and actually."⁴⁸ He queried, "The real question is this: Where in the country can someone go to find out if he is a man? And where can someone who knows he is a man go to celebrate his masculinity?"⁴⁹

Congress has enacted specific laws to prohibit some, but not all types of gender-based discrimination, including discrimination in education and employment.⁵⁰ As Wendy Williams has argued, gender stereotypes are deeply rooted in this history of exclusion of women under law and, as a result, political leaders and courts often

43. *Historical Summary of Women in Statewide Elective Executive Office: 1969–Current*, CTR. FOR AM. WOMEN & POL., <https://cawp.rutgers.edu/historical-summary-women-statewide-elective-executive-office-1969-current> (last visited Apr. 11, 2019); *Women in State Legislatures 1995*, CTR. FOR AM. WOMEN & POL., <https://cawp.rutgers.edu/sites/default/files/resources/stleg1995.pdf> (last visited Apr. 11, 2019).

44. Lind, *supra* note 20, at 134.

45. KRISTY N. KAMARCK, CONG. RESEARCH SERV., R42075, WOMEN IN COMBAT: ISSUES FOR CONGRESS 1 (2016), <https://fas.org/sgp/crs/natsec/R42075.pdf>.

46. See generally Lucy V. Katz, *Free a Man to Fight: The Exclusion of Women from Combat Positions in the Armed Forces*, 10 LAW & INEQ. 1 (1992).

47. James Webb, *Women Can't Fight*, WASHINGTONIAN, Nov. 1, 1979, at 280.

48. *Id.*

49. *Id.*

50. See, e.g., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (2012) (generally prohibiting sex discrimination in federally funded education programs); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (2012) (prohibiting sex discrimination by employers with fifteen or more employees).

have difficulty in recognizing gender discrimination.⁵¹ Both legislatures and courts, for example, have justified discriminatory treatment of women under the guise of protecting women's supposed health and welfare.⁵²

While the Nineteenth Amendment opened the ballot box to women, it did not overturn the existing structures of political, economic, or social power. With the rise of the civil rights movement, women began to turn to the federal courts to challenge state-sponsored discrimination that preserved power for men. The Fourteenth Amendment provided the basis for redressing gender discrimination. Justice Ruth Bader Ginsburg helped found the ACLU's Women's Rights Project, litigating a series of cases involving gender discrimination, helping to persuade the Supreme Court to apply heightened scrutiny to gender classifications.⁵³

In *Frontiero v. Richardson*, a plurality of the Court concluded that, "classifications based upon sex, like classifications based upon race, alienage, or national origin, are inherently suspect, and must therefore be subjected to strict judicial scrutiny."⁵⁴ The *Frontiero* plurality held that "sex, like race and national origin, is an immutable characteristic" that bears no relationship to individual ability.⁵⁵ In *J.E.B. v. Alabama*, the Supreme Court recognized that it was time that the Court clarified "what, by now, should be axiomatic: Intentional discrimination on the basis of gender by state actors violates the Equal Protection Clause"⁵⁶ In a concurring opinion, Justice Kennedy explained that the Court's decisions under the Fourteenth Amendment "reveal a strong presumption that gender classifications are invalid."⁵⁷ The Supreme Court repeatedly has recognized that state policies that exclude women, like those that exclude racial minorities, historically have been rooted in prejudicial attitudes about the relative abilities and roles of men and

51. See generally Wendy Williams, *The Equality Crisis: Some Reflections on Culture, Courts and Feminism*, 7 WOMEN'S RTS. L. REP. 175 (1982).

52. See, e.g., *Goesaert v. Cleary*, 335 U.S. 464, 466 (1948); *M. v. Superior Court*, 450 U.S. 464, 470–73 (1981); Nancy Gertner, *Bakke on Affirmative Action for Women: Pedestal or Cage?*, 14 HARV. C.R.-C.L. L. REV. 173, 184–89 (1979).

53. See, e.g., Sandra Pullman, *Tribute: The Legacy of Ruth Bader Ginsburg And the WRP Staff*, ACLU, <https://www.aclu.org/other/tribute-legacy-ruth-bader-ginsburg-and-wrp-staff> (last visited Apr. 20, 2019).

54. *Frontiero v. Richardson*, 411 U.S. 677, 688 (1973).

55. *Id.* at 686–87.

56. *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 130–31 (1994).

57. *Id.* at 152 (Kennedy, J., concurring) (citing *Miss. Univ. for Women v. Hogan*, 458 U.S. 718 (1982)).

women.⁵⁸ Gender classifications are unlikely to further a legitimate state interest and instead reflect “invidious, archaic, and overbroad stereotypes about the relative abilities of men and women.”⁵⁹

Unfortunately, courts have treated gender classifications differently than racial classifications. While courts strictly scrutinize race classifications, courts apply intermediate scrutiny to gender classifications, substituting a more permissive standard that invites states to rationalize treating men and women differently.⁶⁰ The decisions of the lower federal courts in *United States v. Virginia* exemplify the failure of intermediate scrutiny to guarantee women equal treatment.

In *Virginia*, the United States Justice Department filed suit against the Commonwealth of Virginia, challenging the males-only admission policy of the Virginia Military Institute (“VMI”).⁶¹ Like the Citadel, VMI was a state college that educated male students in a military-style environment.⁶² Both colleges defended their males-only traditions, arguing that the Fourteenth Amendment permitted South Carolina and Virginia to exclude qualified female applicants from the benefits afforded males.⁶³ The lower federal courts agreed with Virginia. In 1992, a federal district court in Virginia upheld the constitutionality of VMI’s discriminatory policy, holding that Virginia could deny qualified women admission to a state college based upon generalizations about “most” men and “most” women.⁶⁴ The district court judge concluded, “VMI truly marches to the beat of a different drummer, and I will permit it to do so.”⁶⁵

The United States Court of Appeals for the Fourth Circuit agreed that the admission of women would destroy VMI’s unique educational method and “deny those women the very opportunity that they sought.”⁶⁶ However, the court held that Virginia failed to articulate an important policy that justifies offering the unique benefits of VMI’s education to men and not women.⁶⁷ It did not, however, require VMI to admit women. Instead, it remanded the case to the district court to permit Virginia to propose a remedial

58. *Id.* at 131 (majority opinion).

59. *Id.*

60. See *Faulkner v. Jones*, 10 F.3d 226, 231 (4th Cir. 1993); *United States v. Virginia*, 976 F.2d 890, 895 (4th Cir. 1992).

61. *Virginia*, 976 F.2d at 892.

62. See *id.* at 892–93.

63. *United States v. Virginia*, 766 F. Supp. 1407, 1408 (W.D. Va. 1991).

64. *Id.* at 1413–15.

65. *Id.* at 1415.

66. *Virginia*, 976 F.2d at 897.

67. *Id.* at 898.

alternative that might include a “parallel” program or “other more creative option.”⁶⁸

Rather than admit women, Virginia proposed creating a separate and intentionally different program for women at Mary Baldwin, a private women’s college close to VMI. The program—called the Virginia Women’s Institute for Leadership (“VWIL”)—was not a military program, but a leadership program designed for what Virginia considered women’s unique educational needs.⁶⁹ In approving Virginia’s VWIL program as a remedy, the federal district court explained, “If VMI marches to the beat of a drum, then [VWIL] to the melody of a fife and when the march is over, both will have arrived at the same destination.”⁷⁰ The Fourth Circuit affirmed.⁷¹ Instead of applying intermediate scrutiny, however, the court created a new standard to review the two separate programs. Virginia did not need to offer women an educational program equal to that provided to men so long as the separate women’s program that was “substantively comparable” to VMI.⁷² The Court thus turned back the clock for women to before *Plessy v. Ferguson*, when the Supreme Court held that states may provide separate but equal facilities on the basis of race.⁷³

As discussed below, the United States Supreme Court in 1996 reversed, holding that Virginia’s exclusion of women violated the Fourteenth Amendment and that the only adequate remedy was for VMI to admit women.⁷⁴ In 1992, however, women’s rights advocates were deeply concerned that a federal district court had interpreted the intermediate scrutiny test to approve the continued exclusion of women from a state college that for nearly 150 years had reserved its program solely for men.⁷⁵ The Citadel in South Carolina offered an opportunity to persuade a different federal court that a state could not deny to its female citizens equal access to education, power, and opportunity.

68. *Id.* at 900.

69. *See* *United States v. Virginia*, 852 F. Supp. 471, 473–75 (W.D. Va. 1994).

70. *Id.* at 484.

71. *United States v. Virginia*, 44 F.3d 1229, 1232 (4th Cir. 1995).

72. *Id.* at 1241.

73. *See* *Plessy v. Ferguson*, 163 U.S. 537 (1896).

74. *United States v. Virginia*, 518 U.S. 515 (1996).

75. *See* *United States v. Virginia*, 766 F. Supp. 1407, 1413–15 (W.D. Va. 1991).

II. *FAULKNER V. JONES*: CHALLENGING THE CITADEL'S EXCLUSION OF WOMEN UNDER THE FOURTEENTH AMENDMENT

The Citadel was founded in 1842 as a military-style college for men only.⁷⁶ Despite its name, it is not an official military college or a federal service academy, but a public college that chose to educate male students in a military-style environment similar to West Point.⁷⁷ Cadets are organized into companies within battalions, wear uniforms and live in barracks, and are subject to a student chain of command that is similar to the military.⁷⁸ Entering freshmen are called “knobs” and are subjected to the “Fourth Class system,” a system of rules and discipline.⁷⁹ The Citadel offers its graduates access to a powerful alumni network. Described as “one of the South’s greatest incubators for powerful political and professional men,” it boasts alumni who include General William C. Westmoreland (1935), Senator Fritz Hollings (1942), and writer Pat Conroy (1967).⁸⁰

Following the decision of the Virginia district court upholding VMI’s males-only tradition, three female Navy veterans took aim at the Citadel, filing suit in federal court in Charleston, South Carolina, challenging the exclusion of female veterans from the Citadel.⁸¹ Initially represented by the ACLU Women’s Right Project and local counsel, Bob Black, the female veterans opened a new front in the battle for women’s civil rights.⁸² The Citadel offered male veterans the opportunity for an undergraduate education in its Veteran’s Day Program, which did not require veterans to live in the barracks or participate in the Corps of Cadets.⁸³ After the suit was filed, the Women’s Rights Project asked me to join as co-counsel. At

76. *Brief History of The Citadel*, CITADEL, <http://www.citadel.edu/root/brief-history> (last visited Apr. 19, 2019).

77. *Id.*

78. *See generally* CITADEL, BLUE BOOK REGULATIONS, <http://www.citadel.edu/root/images/commandant/blue%20book.pdf> (last visited Apr. 19, 2019).

79. *A Knob’s Life: One Day at a Time*, CITADEL NEWSROOM (Aug. 14, 2007), http://www.citadel.edu/root/2011_addresses; *Fourth Class System and Leader Development*, CITADEL, <http://www.citadel.edu/root/assistant-commandant-fourthclass-system> (last visited Apr. 19, 2019).

80. Catherine Manegold, “*Save the Males*” Becomes Battle Cry in Citadel’s Defense Against Women, N.Y. TIMES, May 23, 1994, <https://www.nytimes.com/1994/05/23/us/save-the-males-becomes-battle-cry-in-citadel-s-defense-against-woman.html>.

81. *See generally* ROBERT R. BLACK, LOCAL COUNSEL: FIRST WOMEN AT THE CITADEL AND BEYOND (2012).

82. *Id.*

83. *Id.*

the time, I was an associate at Shearman and Sterling in New York City, a prominent international law firm. I had reached out to the ACLU Women's Project in the hopes of working on a major women's rights case. Reading the district court opinion in the VMI case, replete with its outdated generalizations about men and women, persuaded me to help represent Pat Johnson and the other two female veterans. Having served their nation in the first Gulf War, these female veterans were denied a state-sponsored education solely because of their sex.

Like VMI, the Citadel admitted only men, not because of any pedagogical belief in the benefits of "single-gender" education, but because of the "unquestioned general understanding of the time about the distinctively different roles in society of men and women."⁸⁴ South Carolina's effort to preserve its unique military-style program for men only was rooted in the belief that women are different and inferior, neither capable or worthy of being educated as leaders alongside men. Although it admitted that some women would benefit and succeed at the Citadel, South Carolina relied on alleged differences between "most" women and men to preserve the benefits of the Citadel for men only. To justify its wholesale exclusion of women, the Citadel proffered two justifications: (1) offering men the opportunity for a "single-gender education" advances the diversity of South Carolina's higher education system, and (2) the admission of women would destroy the unique methodology used to train its male students, depriving both men and women of what they seek at the college.

As the litigation began, it seemed likely that the federal court would quickly conclude that the Citadel's males-only tradition violated modern notions of equal protection.⁸⁵ The Supreme Court had repeatedly recognized that women have suffered "a long and unfortunate history of sex discrimination," including in the political sphere and in public education, where they still face "pervasive"

84. *United States v. Virginia*, 44 F.3d 1229, 1243 (4th Cir.1995) (Phillips, J., dissenting) (citing *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 725 n.10 (1982)); *see also* *United States v. Virginia*, 52 F.3d 90, 92 n.3 (4th Cir. 1995) (Motz, J., dissenting) ("Single-gender education" is not an educational method at VMI, "it is, at best, a stratagem to achieve the Commonwealth's real objective—preservation of VMI . . . from the unwelcome intrusion of women.") (citing *Faulkner v. Jones*, 51 F.3d 440, 451 (4th Cir. 1995)).

85. *See* Valorie K. Vojdik, *At War: Narrative Tactics in The Citadel and VMI Litigation*, 19 HARV. WOMEN'S L.J. 1, 3 (1996).

discrimination.⁸⁶ Like mistaken beliefs about racial difference, beliefs about gender differences have been used throughout our nation's history to privilege men and treat women as second class citizens, relegating women to a separate and inferior position in our society and denying them equal access and opportunity in our nation's political, social, and economic life. In *Hogan v. Mississippi University for Women* ("MUW"), the Supreme Court in 1982 held that Mississippi could not exclude men from admission to its female-only nursing program.⁸⁷ The exclusion of Joe Hogan, the Court held, was based upon and reinforced traditional gender stereotypes and thus violated his right to equal protection.⁸⁸ Shannon Faulkner's lawsuit against the Citadel mirrored Joe Hogan's suit against MUW.⁸⁹ Both admissions policies were based on outdated and erroneous gender stereotypes. Given the similarities between the two cases, surely the federal court would grant summary judgment in our favor.

I quickly learned that I had seriously miscalculated. Rather than concede defeat, the Citadel waged a scorched earth battle to preserve its all-male tradition, litigating up and down to the United States Supreme Court, fighting every step of the way to keep women out.⁹⁰ Shortly after we joined the female veterans' suit, the Citadel abruptly closed the Veterans' Day Program, telling the seventy-eight male veterans enrolled that the program would close the next semester.⁹¹ The Citadel claimed that it had satisfied the Equal Protection Clause because now neither male or female veterans could attend. The lawsuit, it argued, was moot.

In the midst of arguing the issue of mootness, Shannon Ritchey Faulkner joined the lawsuit, seeking admission to the Corps of Cadets itself.⁹² She had applied for admission to the Citadel and it had accepted her within ten days.⁹³ The Citadel's application at that time did not ask for the applicant's gender. When the college learned that Shannon was female, it sent her a letter revoking her admission.⁹⁴ The lawsuit for women at the Citadel intensified as the

86. See *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 136 (1994) (citing *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973)); *Mathews v. Lucas*, 427 U.S. 495 (1976) (citing *J.E.B.*, 511 U.S. at 684–86).

87. *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 733 (1982).

88. *Id.* at 729.

89. See generally *Vojdik*, *supra* note 85.

90. See generally *id.*

91. *BLACK*, *supra* note 81, at 72, 76.

92. *Faulkner v. Jones*, 10 F.3d 226, 236 (4th Cir. 1993).

93. *Id.* at 228.

94. *Id.*

prospect of women in the Corps of Cadets became very real. Shannon's fight became visible for all to see, as the local and national media followed every step of the battle.⁹⁵

The more I litigated the Citadel case, the more I came to realize that its exclusion of women was not merely a mistake in classification, but the defining feature of the institution, which "not only practices discrimination, but celebrates it."⁹⁶ The notion that most women cannot succeed at the Citadel is not merely a "mistaken belief" or an "outdated generalization about men and women," as the Supreme Court held in *VMI*.⁹⁷ The exclusion of women from the Citadel was deeply misogynistic, branding women as inferior and not entitled to full citizenship status. By reserving the benefits of the Citadel's unique education for men only, South Carolina sought to preserve the privileges of civil leadership and the public sphere to men. The prediction that women would destroy the institution was not merely an outdated stereotype but was rooted in the desire to preserve the state college as an all-male bastion of power and privilege.

The Citadel considered itself a proving ground for real men to demonstrate their manhood. Its goal is to create "the Whole Man."⁹⁸ Its spokesperson, Major Rick Mill, explained, "We know how to train young men to be men. We don't know how to train young women to be men. We don't even know how to train young women to be women."⁹⁹ The exclusion of women was part and parcel of a system that defined and created manhood and men in opposition to women.

To preserve its 152-year tradition, Citadel alumni mobilized its power and political influence to bolster its defense. Although it argued to the court that South Carolina had a policy of offering

95. See Michael Janofsky, *Citadel, Bowing to Court, Says It Will Admit Women*, N.Y. TIMES, June 29, 1996, at 6, <https://www.nytimes.com/1996/06/29/us/citadel-bowing-to-court-says-it-will-admit-women.html>; Mike Clary, *Faulker Takes Her Place As Citadel Knob*, WASH. POST, Aug. 13, 1995, https://www.washingtonpost.com/archive/politics/1995/08/13/faulkner-takes-her-place-as-a-citadel-knob/9b49dbeb-d41a-4fc4-ae4b-53de02f7f681/?utm_term=.a484463cd4f5.

96. See *Faulkner v. Jones*, 10 F.3d 226, 234 (4th Cir. 1993) (Hall, J., concurring).

97. See generally *United States v. Virginia*, 518 U.S. 515 (1996).

98. The 1995–96 Guidon, the regulation handbook issued by the Citadel to incoming freshmen states that the purpose of its cadet system "is to develop and graduate the 'whole man.'" CITADEL, THE GUIDON 1995–96, at 23 (1995). The "'whole man' concept" aims to mature and to educate "the totality of a young man's character," academically, physically, militarily, and spiritually. *Id.*; see also Defendants' Proposed Findings of Fact and Conclusions of Law, at 68 (stating that the Citadel's holistic educational system "is designed to develop the 'whole man.'").

99. Manegold, *supra* note 80.

single-gender education, the Citadel was the only state institution of higher education that was single-gender and there were no governmental statements reflecting any such policy.¹⁰⁰ To fill the gap, Citadel alumni mobilized in 1993 to attempt to create such a policy post-hoc by lobbying the South Carolina legislature.¹⁰¹ Prominent Citadel alumni contacted the Speaker of the South Carolina House of Representatives and provided him a copy of what ultimately was adopted as Concurrent Resolution 4170, which purported to express a state policy of providing single-gender education as part of a diverse range of educational opportunities.¹⁰² The federal court judge, C. Weston Houck, subsequently found that “[t]he conclusion is inescapable that the said Concurrent Resolution was prompted by this litigation and the Fourth Circuit’s decision in VMI.”¹⁰³

Rather than admit women, South Carolina proposed to create and fund a separate and deliberately unequal program for women, the South Carolina Institute for Leadership (“SCIL”), at Converse College, a private women’s college in upstate South Carolina.¹⁰⁴ SCIL was modeled after the VWIL program created by Virginia.¹⁰⁵ The lower federal courts held that the VWIL program satisfied equal protection, even though it differed substantially from VMI and lacked “those intangible qualities of history, reputation tradition, and prestige that VMI has amassed over the years.”¹⁰⁶ The court of appeals affirmed, refusing to apply the test for intermediate scrutiny applicable to gender classifications. The remedial plan need not be equal to VMI, the court held, as long as the benefits provided were “substantively comparable” and the program did not tend “by comparison to the benefits provided to the other, to lessen the dignity, respect, or societal regard of the other gender.”¹⁰⁷

South Carolina’s remedial choice to preserve the exclusion of women through the creation of an intentionally different and inferior educational program was based upon generalizations and stereotypes expressly prohibited by the Supreme Court in a host of

100. *Faulkner v. Jones*, 858 F. Supp. 552, 556, 559–60 (D.S.C. 1994).

101. *Id.* at 559 n.8.

102. *Id.*

103. *Id.*

104. *Vote May Let the Citadel Stay All Male*, N.Y. TIMES, May 19, 1995, at A18.

105. *The MBU Story: Empowering Tomorrow’s Leaders to Pursue Lives of Purpose and Professional Success*, MARY BALDWIN U., <https://marybaldwin.edu/about/> (last visited Apr. 19, 2019).

106. *United States v. Virginia*, 852 F. Supp. 471, 475 (W.D. Va. 1994).

107. *United States v. Virginia*, 44 F.3d 1229, 1237 (4th Cir. 1995).

decisions striking down laws denying equal opportunities based upon sex. The proposed SCIL program at Converse College was a pale shadow of the Citadel—a deliberately non-military program that would not offer females access to the Citadel alumni network. Even if it were somehow equal, the United States held in *Brown v. Board* that separate educational programs are inherently unequal.¹⁰⁸ Separating students by sex, we argued, is just as pernicious as separating them by race. Admitting women, we argued, would not “destroy” the institution, but strengthen it, making it more inclusive for all students, male and female.

In seeking to preserve the Citadel’s males-only tradition, South Carolina advanced a defense that sent an unmistakable message to its citizens: women are inherently different and inferior to men, unworthy of the leadership training reserved for men only. Their very presence, the Citadel argued, will contaminate men’s experience. During discovery, the Citadel offered the superintendent of VMI, Josiah Bunting, as an expert witness. Bunting testified in his deposition that women were like a “toxic virus” that would destroy VMI and the Citadel.¹⁰⁹ His testimony reflected the hostility and animus that Citadel alumni and supporters directed against Shannon Faulkner and women. Alumni organized and raised millions of dollars to defend their alma mater from the onslaught of women.¹¹⁰ They sold T-shirts proclaiming, “1,952 Bulldogs and One Bitch.”¹¹¹ The proceeds went to the Citadel Defense Fund.¹¹² In one of the men’s bathrooms on campus, someone had scrawled on a stall, “Let her in, then fuck her to death.”¹¹³ Before Shannon was admitted, a billboard along Highway 17 in Charleston read “DIE SHANNON.”¹¹⁴ The hostility and threats against Shannon were so great that the federal district court judge called in federal marshals to accompany her on campus to protect her.

As Judge K.K. Hall wrote, given the widespread integration of women into the U.S. military and service academies, the notion that women would “destroy” the Citadel was based not on fact or reason,

108. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

109. Michael Kimmel, *Janey Got Her Gun*, NATION, (June 1, 2000), <https://www.thenation.com/article/janey-got-her-gun/>.

110. Geraldine Baum, *Storming the Citadel*, L.A. TIMES, Feb. 13, 1994, <https://www.latimes.com/archives/la-xpm-1994-02-13-vw-22453-story.html>.

111. Rupert Cornwell, *Knives Sharpen for Haircut of the Century*, INDEPENDENT (London), Aug. 12, 1994, at 9.

112. Baum, *supra* note 110.

113. SUSAN FALUDI, STIFFED 119 (1999).

114. *Id.* at 114.

but upon demeaning beliefs about the proper role and interests of women that are “relic[s] of the nineteenth [century].”¹¹⁵ The Citadel’s defense reinvoked paternalistic rationales for denying women equal opportunity for employment and public service, once recognized by courts to exclude women from full citizenship. In *Muller v. Oregon*, for example, the Supreme Court in 1908 upheld a state law that limited women, but not men, from working more than eight hours a day.¹¹⁶ The Court reasoned that women who work long hours on their feet suffer “injurious effects, upon the body” and that “their well-being is an object of public concern and care.”¹¹⁷ In *Mississippi v. Hall*, the Mississippi Supreme Court in 1966 upheld the exclusion of women from juries “to protect them . . . from the filth, obscenity, and noxious atmosphere that so often pervade a courtroom during a jury trial.”¹¹⁸ The Citadel’s defense similarly claimed that women would be harmed by exposure to its rigorous, military-style education. Young men needed the discipline of a taskmaster, young women would benefit from support of a gentler leadership style.

Like the military, the Citadel was organized around a culture of traditional masculinity that celebrates certain assumed masculine norms while denigrating women and social notions of femininity.¹¹⁹ Within these institutions, masculinity is created by and between men, through a range of homosocial interactions that challenge men to prove they are not women.¹²⁰ Under this view of masculinity, Kenneth Karst has argued, there is “one categorical imperative: don’t be a girl.”¹²¹ This association of the military with masculinity serves to justify the exclusion of women.¹²² During a hearing before the district court in that case, a former cadet testified that “[w]hen you make a mistake, you are either a faggot, a queer, weak, a woman, and then the terms just go right down into the gutter from

115. *Faulkner v. Jones*, 51 F.3d 440, 451 (4th Cir. 1995) (Hall, J., concurring).

116. *Muller v. Oregon*, 208 U.S. 412, 421 (1908).

117. *Id.*

118. *State v. Hall*, 187 So. 2d 861, 863 (Miss. 1966).

119. See Karen O. Dunivin, *Military Culture: Change and Continuity*, 20 ARMED FORCES & SOC. 531, 534–37 (1994) (describing the “cult of masculinity” in military culture).

120. See Michael Kimmel, *MANHOOD IN AMERICA: A CULTURAL HISTORY* 8 (1st ed. 1996).

121. Kenneth L. Karst, *The Pursuit of Manhood*, 38 UCLA L. REV. 499, 503 (1991) (analyzing the exclusion of women from the U.S. military).

122. See Dunivin, *supra* note 119, at 534–37.

there.”¹²³ These terms were used so frequently that the former cadet could not estimate how many times he had heard those words.¹²⁴ Sexualized and physical abuse of cadets at the Citadel during that period was documented by press reports.¹²⁵ The toughness and rituals translated into a form of masculinity marked by violence and hostility toward women and some men.

The admission of women profoundly threatened the all-male institution and the men who sought its exclusive benefits. The school newspaper, “The Brigadier,” featured an anonymous column called “The Scarlet Pimpernel” which called Shannon Faulkner “the divine bovine” and speculated as to which cadet “would be the first to mount the cow.”¹²⁶ Women also organized to oppose the admission of Shannon Faulkner. Sally Baldwin, a Charleston resident, formed a group called Women in Support of The Citadel and distributed blue bumper stickers and buttons labeled, “Save the Males.”¹²⁷ By challenging this deeply entrenched masculine institution, Shannon Faulkner threatened traditional gender norms and masculinized power in South Carolina.¹²⁸ In refusing to admit women, the Citadel mounted a legal defense that revealed the structures of gender subordination that South Carolina sought to preserve. In *J.E.B. v. Alabama*, the Supreme Court held that a state may not permit peremptory challenges to jurors based on gender, explaining that “[a]ll persons, when granted the opportunity to serve on a jury, have the right not to be excluded summarily because of discriminatory and stereotypical presumptions that reflect and reinforce patterns of historical discrimination.”¹²⁹ Striking individual jurors on the assumption that they hold particular views simply because of their race, the Supreme Court held in *Strauder v. West Virginia*, is “practically a brand upon them, affixed by law, an assertion of their inferiority.”¹³⁰ It denigrates the dignity of the excluded juror, and

123. Transcript of Trial, vol. IX at 53–55, *Faulkner v. Jones*, D.S.C. No. 2-93-488-2 (“Faulkner trial transcript”), Direct Examination of Ronald Vergnolle, May 20, 1994.

124. *Id.*

125. See Susan Faludi, *The Naked Citadel*, NEW YORKER, Sept. 5, 1994, at 62, 67–68, 70 (discussing the adversative method); Rick Reilly, *What Is the Citadel?*, SPORTS ILLUSTRATED, Sept. 14, 1992, at 72–74 (analysis of the adversative method).

126. CATHERINE S. MANEGOLD, IN *GLORY’S SHADOW: SHANNON FAULKNER, THE CITADEL, AND A CHANGING AMERICA* 21 (2001).

127. *Id.*

128. See Valorie K. Vojdik, *Gender Outlaws: Challenging Masculinity in Traditionally Male Institutions*, 17 BERKELEY WOMEN’S L. J. 68, 69, 95–100 (2002).

129. *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 141–42 (1994).

130. *Strauder v. West Virginia*, 100 U.S. 303, 308 (1880).

reinvokes a history of exclusion from political participation. In *J.E.B.*, the Supreme Court recognized that the same is true for the exclusion of women jurors: “The message it sends to all those in the courtroom, and all those who may later learn of the discriminatory act, is that certain individuals, for no reason other than gender, are presumed unqualified by state actors to decide important questions upon which reasonable persons could disagree.”¹³¹

The exclusion of qualified women from the Citadel had the very same effect. It sent an official message from South Carolina that women, for no reason other than their gender, are presumed unqualified to be Citadel cadets, branding them as different and inferior, unworthy to sit beside male cadets as equals. As David Riesman, one of VMI’s experts, observed,

The pluralistic argument for preserving all-male colleges is uncomfortably similar to the pluralistic argument for preserving all-white colleges The all-male college would be relatively easy to defend if it emerged from a world in which women were established as fully equal to men. But it does not. It is therefore likely to be a witting or unwitting device for preserving tacit assumptions of male superiority—assumptions for which women must eventually pay.¹³²

In 1994, the district court ruled that the Citadel’s exclusion of Shannon Faulkner violated her right to equal protection. Judge Houck wrote,

Not once has a defendant done anything to indicate that it is sincerely concerned to any extent whatsoever about Faulkner’s constitutional rights. The most revealing fact of all, however, is that defendants have continued to defend this case at a cost of millions of dollars to the taxpayers of South Carolina when they do not have a single case to offer 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.¹³³

131. *J.E.B.*, 511 U.S. at 142.

132. *United States v. Virginia*, 518 U.S. 515, 535 n.8 (1996) (citing CHRISTOPHER JENCKS & DAVID RIESMAN, *THE ACADEMIC REVOLUTION* 297–98 (1st ed. 1968)).

133. *Faulkner v. Jones*, 858 F. Supp. 552, 567 (D.S.C. 1994).

He also held that “the only adequate remedy available is [Faulkner’s] immediate admission to the Corps of Cadets at The Citadel.”¹³⁴ Although the court of appeals stayed the remedial order, it subsequently upheld the district court’s judgment finding the Citadel’s males-only policy violated the Fourteenth Amendment.¹³⁵ The court of appeals remanded the case to allow the defendants the opportunity to propose a parallel program for women rather than admit Shannon.¹³⁶ However, if the district court had not approved such a plan by the date in August when cadets were to report to the Citadel to begin the fall semester, the Citadel must admit Shannon.¹³⁷

Judge K.K. Hall issued a concurring opinion, noting, “[I] am convinced that we have embarked on a path that will inevitably fall short of providing women their deserved access to important avenues of power and responsibility.”¹³⁸ In a powerful passage that situated the lawsuit within the historical exclusion of women from power and opportunity, he concluded:

[T]hough the Citadel, VMI, and their advocates have ceaselessly insisted that education is at the heart of this debate, I suspect that these cases have very little to do with education. They instead have very much to do with wealth, power, and the ability of those who have it now to determine who will have it later. The daughters of South Carolina and Virginia have every right to insist that their tax dollars not be spent for what amount to fraternal organizations whose initiates emerge as full-fledged members of an all-male aristocracy. Though our nation has, throughout its history, discounted the contributions and wasted the abilities of the female half of its population, it cannot continue to do so. As we prepare, together, to face the twenty-first century, we cannot afford to preserve a relic of the nineteenth.¹³⁹

With the clock ticking, the Citadel engaged in a last-ditch effort to preserve its males-only tradition. In the midst of legal wrangling, it filed a motion claiming that Shannon’s weight exceeded the

134. *Id.* at 568.

135. *Faulkner v. Jones*, 51 F.3d 440, 442 (4th Cir. 1995).

136. *Id.*

137. *Id.*

138. *Id.* at 450.

139. *Id.*

acceptable range for cadets, even though it had never developed weight guidelines for women. At a court hearing, records showed that the Citadel had admitted male cadets who weighed far in excess of the Army weight guidelines for men. Judge Houck denied the Citadel's motion, observing that at least one of the instances where the Citadel overlooked the weight of a male cadet was "nearly unbelievable."¹⁴⁰ Chief Justice Rehnquist denied the Citadel's last-minute request for a stay, paving the way for Shannon's admission.¹⁴¹

On August 12, 1995, Shannon Faulkner became the first woman to enter the gates of the Citadel as a cadet. As the prospect of her admission drew closer, Shannon and her family received death threats, her family home was vandalized, and angry bumper stickers proliferated throughout Charleston, demanding to "Shave the Whale," referring to the Citadel's proposal to give her the same first day buzz cut as freshman male cadets.¹⁴² In the days before her admission, Judge Houck had ordered federal marshals in to protect her from potential violence.¹⁴³ Accompanied by federal marshals, she walked through the gates of the Citadel on August 12, 1995, and became its first female cadet.¹⁴⁴ Unfortunately, Shannon withdrew a few days later. She had fallen ill but, as she explained later, she felt compelled to resign to protect her family and herself from the stress and threats of violence.¹⁴⁵ When she resigned from its Corps of Cadets, male cadets celebrated, fists pumping, some surfing the quad with mattresses, others singing, "[h]ey, hey, the witch is dead."¹⁴⁶

The lawsuit, however, continued on. Another young woman from South Carolina, Nancy Mellette, came forward to join the lawsuit

140. BLACK, *supra* note 81.

141. Deval L. Patrick, *Statement by Assistant Attorney General for Civil Rights Deval L. Patrick on Today's Supreme Court Decision Not to Block Shannon Faulkner from Becoming a Cadet at the Citadel*, U.S. DEPT JUSTICE (Aug. 11, 1995), http://www.usdoj.gov/opa/pr/Pre_96/August95/442.txt.html.

142. Mike Clary, *The Citadel Surrenders Its All-Male Tradition*, L.A. TIMES (Aug. 13, 1995), <https://www.latimes.com/archives/la-xpm-1995-08-13-m-34740-story.html>.

143. BLACK, *supra* note 81, at 259–60.

144. Kevin Sack, *A Woman Reports for Duty As a Cadet at The Citadel*, N.Y. TIMES, Aug. 13, 1995, at 14, <https://www.nytimes.com/1995/08/13/us/a-woman-reports-for-duty-as-a-cadet-at-the-citadel.html?>

145. Deana Pan, *Shannon Faulkner Says, 'I Do Consider Myself a Citadel Alumni' During Her Historic Return*, POST & COURIER (Mar. 3, 2018), https://www.postandcourier.com/news/shannon-faulkner-says-i-do-consider-myself-a-citadel-alumni/article_2a51c556-1e47-11e8-beea-4f0b27568b0c.html.

146. MANEGOLD, *supra* note 126, at 275–76.

days after Shannon withdrew.¹⁴⁷ Nancy was the daughter of a Citadel alum and retired Army Lt. Col. Bland Mellette and her brother was enrolled as a cadet at the Citadel.¹⁴⁸ She was a senior at the Oak Ridge Military Academy in North Carolina. A high school ROTC second lieutenant and member of the cadet battalion officer's staff, Nancy explained that she wanted to attend the Citadel since she was "a little girl."¹⁴⁹ She persuaded her parents to allow her to enroll at the military prep school to prepare herself.¹⁵⁰ "Attending The Citadel was my daughter's dream long before anyone thought it could be a possibility," Bland Mellette said.¹⁵¹

A year later, the United States Supreme Court held that VMI's males-only admission policy violated the right to equal protection of those women who were qualified and interested in its unique educational program. In its opinion, the majority highlighted these undisputed facts: (1) VMI's "implementing methodology" is not "inherently unsuitable to women," (2) "some women, at least, would want to attend [VMI] if they had the opportunity," and (4) "some women are capable of all of the individual activities required of VMI cadets," and "can meet the physical standards [VMI] now impose[s] on men."¹⁵²

Justice Ginsburg wrote, "Neither the goal of producing citizen soldiers nor VMI's implementing methodology is inherently unsuitable to women. . . . Nevertheless, Virginia has elected to preserve exclusively for men the advantages and opportunities a VMI education affords."¹⁵³ She explained that "[i]nherent differences" between men and women, we have come to appreciate, remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual's opportunity.¹⁵⁴

Sex classifications may be used to compensate women 'for particular economic disabilities they have suffered,' to 'promote equal employment opportunity,' [and] to advance full development of the talent and capacities of our

147. Manegold, *supra* note 80.

148. Christina Sanz, "Eye on The Citadel," PEOPLE, Oct. 16, 1996, <https://people.com/archive/eye-on-the-citadel-vol-44-no-16>.

149. *Id.*

150. *Id.*

151. Bland Mellette, *Barriers to Women at Citadel Must Fall*, STATE, Jan. 1996.

152. United States v. Virginia, 518 U.S. 515, 540-41 (1996).

153. *Id.* at 520.

154. *Id.* at 533.

Nation's people. But such classifications may not be used, as they once were, to create or perpetuate the legal, social, and economic inferiority of women.¹⁵⁵

In dismissing Virginia's proffered justifications, the Court rejected its arguments as outmoded stereotypes and predictions "hardly proved," no different than other similar predictions made throughout history to rationalize the exclusion of women from other all-male preserves, including higher education, the military, and the law.¹⁵⁶ For those women who are qualified and interested in a VMI education, the only possible remedy was for Virginia to admit them to VMI.¹⁵⁷ Although noting that some accommodations would be required, Ginsburg rejected Virginia's argument that the admission of women would require major changes to its program and culture.¹⁵⁸ The Supreme Court held that court of appeals thus erred when it gave Virginia its choice of either admitting women to VMI, going private, or creating a parallel program for women.

On June 29, 1996, two days after the Supreme Court announced its decision in VMI, the Citadel announced it had abandoned its males-only admission policy and would admit women.¹⁵⁹ After a three-and-a-half-year legal battle, it was a stunning victory for the women and the state of South Carolina. Although I was optimistic that the Citadel would become a better place with women in its ranks, the admission of women was just the first step in a long journey to fully include women as equals in this traditional all-male institution. Simply opening the doors to women would not guarantee equal protection. Like the *de jure* systems of racially segregated public education, gender segregation at these institutions was not merely a mistaken belief about the abilities or interests of men and women. The Citadel's males-only tradition instead was rooted in the institutionalized practices of masculine power that privileged men and denigrated women.¹⁶⁰ To provide women with gender equality required that these institutions eliminate all vestiges of their formerly all-male policies, to eliminate "root and branch" those policies and social practices that assumed that cadets and the

155. *Id.* at 535 (citations omitted).

156. *Id.* at 542–43.

157. *Id.* at 557.

158. *Id.* at 550.

159. Bruce Smith, *Citadel Opens Gates to Women*, BOSTON GLOBE, June 29, 1996, at 3.

160. See generally Vojdik, *supra* note 85.

colleges were male and masculine. That task, it turned out, was much more difficult than the simple decision to open the doors.

III. THROUGH THE GATES: THE FIGHT FOR GENDER EQUALITY CONTINUES

After the Citadel opened its doors to women, the focus of the lawsuit shifted to the remedial plan for assuring their integration and inclusion into the Corps of Cadets. On August 14, 1996, the district court entered an order declaring the SCIL program unconstitutional and enjoining the Citadel defendants (1) to adopt a policy requiring the admission of women to the Corps of Cadets, and (2) to adopt a remedial plan for the assimilation of women.¹⁶¹ The plan must “eliminate [so far as possible] the discriminatory effects of the past and to bar like discrimination in the future.”¹⁶²

The Citadel resisted. It appealed the district court order, contending that it had voluntarily admitted women after the Supreme Court’s VMI decision, and that the court order was moot and unnecessary.¹⁶³ It also sought to vacate the earlier orders by the district court from 1994 to 1995 holding the Citadel’s males-only policy unconstitutional, postponing discovery and trial of the SCIL program, resulting in the admission of Shannon into the Corps of Cadets, and permitting the intervention by Nancy Mellette after Faulkner withdrew.¹⁶⁴ By seeking dismissal of the lawsuit and/or vacatur of the previous orders, the Citadel in effect sought to avoid continuing judicial oversight of its assimilation of women, as well as liability for attorneys’ fees. Ultimately, its strategy failed. The court of appeals did not dismiss the case for mootness or vacate the earlier orders, but instead affirmed the district court’s remedial order requiring an assimilation plan.¹⁶⁵

161. See generally *United States v. Jones*, 136 F.3d 342 (4th Cir. 1998).

162. *Case Summaries: United States & Mellette v. Jones*, U.S. DEP’T JUSTICE, <https://www.justice.gov/crt/case-summaries> (last visited Oct. 13, 2019); *Nancy Mellette and the United States v. Jones Consent Order*, U.S. DEP’T JUSTICE, <https://www.justice.gov/crt/united-states-district-court-district-south-carolina-charleston-division> (last visited Oct. 13, 2019).

163. See *Jones*, 136 F.3d at 344.

164. *Id.* at 346.

165. *Id.* at 344, 347–49. The court of appeals vacated the portions of the order declaring the SCIL program unconstitutional and enjoining the Citadel from excluding women. *Id.* at 348–49. It also held that the Nancy Mellette lacked standing at the time of the remedial order because she had accepted an offer in April 1996 to attend West Point Preparatory Academy and, at the time the court of appeals rendered its decision, she was enrolled in West Point. *Id.* at 348.

In its haste to admit women and declare the case moot, the Citadel had left itself just two months to recruit and admit women before the 1996 fall semester started. For years, the school and its supporters had stroked the anger and resentment of its male cadets and alumni towards women. The Citadel had no time to recruit a critical mass of female students or to prepare its male students for a coeducational Corps of Cadets. In contrast, VMI chose to delay the admission of women for one year, which enabled it to devote substantial time and resources to develop a plan for the assimilation of women.¹⁶⁶ The risks of the Citadel's strategy were quickly realized. In December, two of the four female cadets withdrew, alleging that male cadets had subjected them to harassment and abuse, including pouring nail polish on one of the women's clothing and lighting it on fire.¹⁶⁷ Concerned, the district court conducted three days of hearings in January 1997.¹⁶⁸ To deter hazing and harassment, I recommended to Judge Houck that the Citadel revise its cadet system to require company commanders to report incidents of hazing and harassment. Having delegated control over freshmen students to its upperclassmen, I explained, the Citadel needed to ensure their accountability. The Citadel, however, opposed any suggestion that it alter its Corps of Cadets system. The district court did not make any findings but ordered the Citadel to submit a revised assimilation plan and appointed a court expert to assist him in evaluating the plan.¹⁶⁹

At this point, the Citadel and the Justice Department negotiated a consent agreement concerning the assimilation plan. In the spring of 1997, the district court entered a consent order requiring the Citadel to commit resources for the recruitment and assimilation of women and to report regularly to the court on its progress.¹⁷⁰ The order required it to hire an Assistant Commandant to coordinate the assimilation of women, a Dean of Women, and a full-time recruiter for females. It also required the Citadel to institute mandatory sexual harassment training of students and staff, undertake efforts to recruit women, establish a female assimilation study group to evaluate and report on the assimilation process, complete

166. See Kimmel, *supra* note 109.

167. Adam Nossiter, *Woman Who Left the Citadel Tells of Brutal Hazing Ordeal*, N.Y. TIMES, Feb. 18, 1997, <https://www.nytimes.com/1997/02/18/us/woman-who-left-the-citadel-tells-of-brutal-hazing-ordeal.html>.

168. See *Case Summaries*, *supra* note 162; *Consent Order*, *supra* note 162.

169. *Id.*

170. *Jones*, 136 F.3d at 346; *Case Summaries*, *supra* note 162; *Consent Order*, *supra* note 162.

modifications of its facilities to accommodate women in all of its barracks, revise its publications to eliminate sex-restrictive language, and provide regular reports to the district court.¹⁷¹ But the plan did not require the Citadel to dismantle or significantly modify its Corps of Cadets system, nor address the rituals and practices that celebrated a violent form of masculinity.

The assimilation plan did little or nothing to eliminate the hostility of male cadets, alumni, and the public toward female cadets or coeducation. Nancy Mace was the first woman to graduate from the Citadel in 1999. She was one of the first four women to enter in 1996. Her father was a member of the Citadel administration, a retired Army brigadier general. She endured taunts by male cadets, who called her “dyke,” “bitch,” and “slut.”¹⁷² Several of her professors called her “Mr. Mace” in class.¹⁷³ Mace said, “It was so hurtful If you think it’s hard for women to break the glass ceiling, try doing it at a traditional southern military school.”¹⁷⁴ A female alumna who graduated in 2002 explained, “The majority of [male cadets] just didn’t want us here. They were like, my daddy, uncle, brother, grandfather said you shouldn’t be here, so obviously, you shouldn’t be here. . . . And those were the hardest minds to change, because they were getting it from all sorts of places that we shouldn’t be here.”¹⁷⁵ Another female alumna who graduated in 2011 complained of hostility by many, but not all, alumni: “You’d have alumni that would buy you dinner if they saw you in uniform, and then you had alumni that would glare at you from across the room.”¹⁷⁶ More than a decade after women joined the Corps, a woman screamed at her in the middle of a store saying, “I can’t believe you go to The Citadel. That’s just a disgrace and no southern woman should do that.”¹⁷⁷

According to recent news reports, Citadel officials “acknowledge today that the ugly reaction to Ms. Faulkner, which made international headlines, was a deep embarrassment to the

171. *Consent Order*, *supra* note 162.

172. *In the Company of Men*, GUARDIAN (Feb. 10, 2002), <https://www.theguardian.com/world/2002/feb/11/gender.uk1>.

173. *Citadel Set to Graduate Its First Female Cadet*, BALTIMORE SUN, May 3, 1999.

174. *In the Company of Men*, *supra* note 172.

175. Transcript of Interview with Clarissa Lugo, May 18, 2010, at 21, <https://citadeldigitalarchives.omeka.net/items/show/145>.

176. Transcript of Interview of Jessica Maas, March 14, 2011, at 14, http://www.3.citadel.edu/archivesguide/index.php/MAAS,JESSICA_-_INTERVIEWEE.

177. *Id.* at 14–15.

institution.”¹⁷⁸ Officials concede that the Citadel “moved too slowly” to accommodate female cadets.¹⁷⁹ “I don’t think our story was good for the first—I’m just going to throw it out there—10 years or so,” said Geno F. Paluso II, a 1989 Citadel graduate and retired Navy captain who serves as the Commandant of Cadets.”¹⁸⁰

Since Shannon entered the Citadel, 497 women have graduated from its Corps of Cadets.¹⁸¹ In 2018, women constituted nine percent of its undergraduate students. Female cadets maintain a higher grade point average than males; the overall retention rate for females is 75%, which exceeds the rate for male cadets.¹⁸² The percentage of women, however, still lags behind the nation’s service academies, where in 2016 the percentage of females matriculating ranged from 22% in the Army to 38% in the Coast Guard.¹⁸³

There are recent indications that the Citadel has taken steps to recognize and promote women as equals. In 2018, the college selected senior Sarah Zorn as its first female regimental commander of the Corps of Cadets—its top cadet.¹⁸⁴ When Zorn entered the Citadel, “she had not heard of the story of Shannon Faulkner . . . [or] about the two-and-a-half year legal battle that forced the college to accept her, or the death threats, or the sexist epithets spray-painted on her parents’ house, or the federal marshals who escorted Ms. Faulkner to campus”¹⁸⁵ The selection of Sarah Zorn as regimental commander is a critical and visible symbol that women belong at the Citadel, that women can succeed as cadets, and that women are just as able to lead as men. Zorn herself believes that “women are fully embraced as cadets” and reports that many cadets and even alumni admit that having women has improved the school.¹⁸⁶ During her time as regimental commander, Zorn “pushed openly for the inclusion of women and minorities in leadership

178. Richard Fausset, *The Citadel Fought the Admission of Women. Now a Female Will Lead the Corps of Cadets*, N.Y. TIMES (May 4, 2018), <https://www.nytimes.com/2018/05/04/us/citadel-woman.html>.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. Michael Melia, *Coast Guard Academy Sets Record for Female Enrollment*, NAVYTIMES (June 27, 2016), <https://www.navytimes.com/news/your-navy/2016/06/27/coast-guard-academy-sets-record-for-female-enrollment/>.

184. Fausset, *supra* note 178.

185. *Id.*

186. See Alyssa Schukar, *I Serve As a Stepping Stone*, N.Y. TIMES, May 16, 2019, <https://www.nytimes.com/interactive/2019/05/17/us/sarah-zorn-citadel-commander.html>.

positions,” demonstrating the impact that women’s leadership can exert on existing structures of power.¹⁸⁷ There are other hopeful signs of a more inclusive culture, including the inclusion of Safe Zones on campus for LGBT students.¹⁸⁸ In 2018, Citadel cadets for the first time marched in the Charleston Pride Parade, challenging the social construction of Citadel cadets as heterosexual, male, and stereotypically masculine.¹⁸⁹

Another positive step toward transformation of its masculinized identity is the Citadel’s decision to modify its haircut policy for entering freshmen. In 2018, it eliminated its prior requirement that female cadets cut their hair to three inches or shorter.¹⁹⁰ When Shannon was admitted in 1996, the Citadel required her to have the same “buzz cut” that it gave its male freshmen on their first day at the Citadel.¹⁹¹ The Citadel claimed that equal treatment mandated the same haircut for men and women, and that its extreme haircut was intended to eliminate differences between cadets. We objected, arguing that the Citadel’s intention was punitive and would chill the admission of women. Public debate over “the haircut” raged throughout the nation. In Charleston, Citadel supporters displayed bumper stickers emblazoned with “SHAVE SHANNON” and “SHAVE THE WHALE.”¹⁹² They claimed that if Shannon wanted equal treatment, she should be treated exactly the same as male cadets. The district court refused to enjoin the haircut, reasoning that there was no biological difference between men and women’s hair that would justify different treatment.¹⁹³ In 1997, one year after it opened its doors to women, the Citadel changed its policy to be even more stringent, requiring cadets to wear the buzz cut for the entire freshman year.¹⁹⁴

The Citadel’s new policy changed haircut requirements for both females and males. Incoming female freshmen will no longer receive the initial freshman haircut and instead will follow the standards for

187. *Id.*

188. Fausset, *supra* note 178.

189. *Id.*

190. *Id.*

191. Vojdik, *supra* note 128, at 70–72.

192. MANEGOLD, *supra* note 126, at 203.

193. Vojdik, *supra* note 128, at 71.

194. Noah Feit, *The Citadel Wants More Female Cadets, So It’s Changing the Rules to Entice Them*, CHI. TRIB. (Nov. 5, 2018), <https://www.chicagotribune.com/news/nationworld/sns-tns-bc-citadel-femalecadets-20181105-story.html>.

females in the U.S. Army set by the Department of Defense.¹⁹⁵ Freshman males will receive the initial freshman haircut but will not be required to wear it during the entire freshman year. Citadel Commandant Paluso explained, “I don’t think The Citadel should have a stricter grooming standard than the Department of Defense—the very people defending our nation, our freedom and our right have this institution.”¹⁹⁶

The Citadel’s willingness to revisit and abandon one of the most visible symbols of its hostility toward women is a promising step toward the full inclusion of women. As Sarah Zorn explained, “[s]ubconsciously, somewhere in the deepest, darkest layers of Citadel history, [the haircut] was an underlying symbol of oppression of women on the Citadel campus.”¹⁹⁷ Requiring women to shave their heads like male cadets as the price of admission does not make them look like male cadets, but stigmatizes them as outsiders or gender outlaws. As Michael Kimmel explains, shaving a man’s hair “takes away their individuality, but not their manhood,” while saving a woman’s hair “takes away their femininity and exaggerates their individuality.”¹⁹⁸ Female cadets are not male, yet they no longer fit traditional social expectations for women. The Citadel’s president, General Glenn M. Walters, stated, “To be competitive as a college, we need to be current, and hairstyles should not define who we are.”¹⁹⁹ Rather than chill women’s admission, the new haircut regulation sends the message that the Citadel genuinely seeks and values female students.

The transformation of traditionally masculine institutions like the Citadel and VMI requires strong leadership that demands equal dignity and respect as the foundation of inclusion. It is difficult to change institutional cultures deeply rooted in traditional gender norms. A recent study of VMI cadets, for example, showed that hostility toward the presence of women still lingers, more than twenty years after the college admitted women in 1997. With the permission of VMI, Abigail Perdue conducted an anonymous online survey of VMI cadets, published in 2014.²⁰⁰ Of the VMI male

195. *Id.*

196. *Id.*

197. Schukar, *supra* note 186.

198. Kimmel, *supra* note 109.

199. Feit, *supra* note 194.

200. Abigail Perdue, *Transforming Shedets into Keydets: An Empirical Study Examining Coeducation Through the Lens of Gender Polarization*, 28 COLUM. J. GENDER & L. 371 (2014). Perdue received permission from VMI to survey its entire

students who responded to the survey, 75.6% believed that VMI should not have become coeducational.²⁰¹ Approximately 82% of male cadets believed that coeducation has a negative impact on the school; approximately 44% described the impact as “very negative.”²⁰² Among female cadets who responded, 73.5% reported experiencing sex discrimination and harassment, including being called “sluts,” “corps whores,” and “shedets.”²⁰³

To begin the process of transformation, one of the most important steps is to admit and acknowledge the legacy of the past. The Citadel recently celebrated its twentieth anniversary of the admission of women and its fiftieth anniversary of the admission of African-Americans.²⁰⁴ Twenty-two years after it opened its doors to all women, the college invited Shannon Faulkner back to its campus to speak about her experience breaking the college’s gender barrier. In so doing, it seems to have begun to confront the legacy of its past resistance to the presence of women in its Corps of Cadets. Sarah Zorn agrees: “We want to make sure that people are aware of what happened here at the Citadel . . . [s]o that we can understand and make sure we don’t repeat it.”²⁰⁵ Hopefully these positive changes manifest a genuine and enduring commitment to creating a truly gender inclusive culture, with dignity and respect for all students. Only time will tell.

CONCLUSION

Like the Grimke sisters, Shannon Faulkner challenged male power and privilege and bore the brunt of the storm to secure women equal rights, dignity, and power in South Carolina. She was fierce and optimistic, trusting that a single person can change the world. In the face of incredible hostility and public censure, she nevertheless persisted. Her courage and persistence opened the doors of the Citadel to women, forever changing this traditional male institution. Like many trailblazers, the qualities that she drew upon to wage a public battle against a powerful social institution denied

study body using an anonymous online survey. Of the 1,569 students, 364 students responded. *Id.* at 373.

201. *Id.* at 401, 403.

202. *Id.* at 402.

203. *Id.* at 430.

204. See *Celebrating Citadel Diversity Milestones in the 50th and 20th Years*, CITADEL NEWSROOM (Nov. 2, 2016), <http://www.citadel.edu/root/celebrating-citadel-diversity-milestones-in-the-50th-and-20th-years>.

205. Schukar, *supra* note 186.

her the ability to do what the Citadel advises its incoming cadets—keep your head down, and don't draw attention to yourself. Having waged this very public war, Shannon Faulkner had little chance of blending in. While many male cadets also left that first week, Shannon's departure was the one publicly (and infamously) celebrated by her fellow cadets.²⁰⁶

Yet Shannon shown a bright light on the path for other young women, inspiring them to demand a place in the Citadel's long grey line of cadets. Her tenacity and belief that South Carolina's daughters deserved the same opportunities as its sons helped transform beliefs about what women can and should do. She stepped down, but Nancy Mellette took her place as the private plaintiff in the lawsuit.²⁰⁷ Nancy Mace, the first woman to graduate from the Corps of Cadets, entered politics, winning a seat in the South Carolina House of Representatives in 2018.²⁰⁸ As regimental commander, Sarah Zorn organized an event on sexual assault where students could talk openly about the topic; she is now serving as a commissioned officer in the U.S. Army.²⁰⁹

The story of Shannon Faulkner's lawsuit is a story of profound courage by many women whom I am proud to know. Since this Nation's founding, generations of women have dared to challenge the laws and institutions that have subordinated women: the Grimke sisters and those who fought for women's right to vote; Shannon Faulkner and Nancy Mellette, who dared sue the Citadel; Sarah Zorn and those young women who are leading the mixed-gender Corps of Cadets; and a host of many others who participated in this lawsuit in countless ways, large and small.

The story of the Citadel's fight to remain all-male, and its reluctance to afford equal dignity and respect to South Carolina's daughters, reminds us that the battle for gender equality and inclusion is far from over. As formal barriers to women's equality

206. See MANEGOLD, *supra* note 126, at 262–65, 268–70, 276–77.

207. During the pendency of the suit, Nancy Mellette, who was a senior in high school, enrolled in the United States Military Academy Preparatory School for the 1996–97 school year because the federal courts had not yet ordered the Citadel to admit women. Bruce Smith, *Young Woman Fighting Citadel to Go to Military Prep School*, AP (April 16, 1996), <https://www.apnews.com/780c3014953396713f76f28dc6ff20d0>. The following year, she accepted an appointment to attend West Point. *United States v. Jones*, 136 F.3d 342, 345 (4th Cir. 1998).

208. Caitlyn Bird, *Republican Nancy Mace Wins Statehouse District 99 Election*, POST & COURIER (Jan. 16, 2018), https://www.postandcourier.com/politics/republican-nancy-mace-wins-statehouse-district-election/article_37689baa-fb03-11e7-8ea4-6feac19bbafa.html.

209. Schukar, *supra* note 186.

have faded into the past, new challenges emerge. Institutional structures that disadvantage women or perpetuate the identity of the institution as male or masculine continue to deny women full citizenship and dignity. As we celebrate the 100th anniversary of the Nineteenth Amendment, let us celebrate all of the women whose courage, persistence, and willingness to “bear the brunt” of the battle continues to transform these institutional barriers and, slowly but surely, our Nation.