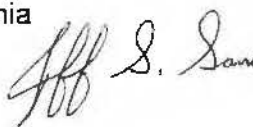




State of West Virginia  
**OFFICE OF THE SECRETARY**  
**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**  
Building 1, Suite W-400  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305  
Telephone: (304) 558-2930  
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**JEFF S. SANDY, CFE, CAMS**  
CABINET SECRETARY

**THOMAS L. KIRK**  
DEPUTY SECRETARY

**Date:** December 27, 2019  
**To:** Honorable Jim Justice, Governor of West Virginia  
**From:** Jeff S. Sandy, CAMS, CFE, Cabinet Secretary   
**Re:** Conduct Unbecoming of Division of Corrections and Rehabilitation Employees

On Wednesday, November 27<sup>th</sup>, 2019 following the Corrections Academy graduation of Class 18 in Glenville, West Virginia, we received information about "unbecoming conduct" on the part of two staff members and cadets from Basic Class 18. These individuals failed to maintain the high level of professionalism demanded by your administration.

Per your orders, attached is Commissioner Betsy Jividen's transmittal memorandum and the Executive Report. Based on the report, I recommend the following:

(1) Termination of one additional Academy staff member who failed to report the content of the class photograph, the substance of conversations with Instructor Byrd regarding the practice and the photograph, and also her knowledge of the ongoing conduct, thereby contributing to the negative perception and indelible harm that has resulted from the incident. This brings the total number of Academy staff terminations to three at this point in time.

(2) Suspension without pay for four Academy Instructors who are currently known to have seen the photograph and failed to report its content, or to have witnessed Instructor Byrd and her class participating in this conduct and while making attempts to stop it, failed to take the necessary steps to report the conduct and to ensure that it was,

in fact, no longer occurring, thereby contributing to the negative perception and indelible harm that has resulted from the incident.

(3) I am further recommending the termination of all cadets participating in the open-handed salute and the closed fist salute in the class photograph. As the Executive Summary also reflects, some other cadets stated variously that they were aware of the connotations associated with the gesture, that they were uncomfortable with the practice, that they did not participate in its use during class, and/or that they only followed what they perceived to be an order from Instructor Byrd to do the "Hail Byrd" for the photograph because they feared they would not graduate, or would be disciplined for failure to follow the order of a superior. Nonetheless, their conduct, without question, has also resulted in the far-reaching and harmful perceptions that are the antithesis of the values we strive to attain. The inevitable consequence of the conduct has not only damaged the reputation of the Division of Corrections and Rehabilitation, but also negatively impacts morale across the workforce.

I concur with the Commissioner's actions to date and her recommendations for addition training. Although, it would have been best for the state had this event never happened; the event showed that your mandate of having a transparent Department of Military Affairs and Public Safety has worked. The citizens of West Virginia should be proud of the transparency exercised in the handling of this unfortunate event and how the Commissioner and Inspector General have worked to bring this matter to a quick conclusion.

During this highly publicized event, I have personally received communications from domestic and international law enforcement; federal authorities; and domestic political figures praising the transparency and expediency with which this matter was handled.

If you have any questions about my recommendations, the Commissioner Jividen, the Inspector General, the DMAPS Legal Team, and I are available to provide any additional information.



**STATE OF WEST VIRGINIA**  
**DEPARTMENT OF MILITARY AFFAIRS & PUBLIC SAFETY**  
**DIVISION OF CORRECTIONS**  
**AND REHABILITATION**



**BETSY C. JIVIDEN**  
**COMMISSIONER**

**JEFF S. SANDY, CFE, CAMS**  
**CABINET SECRETARY**

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Office of the Commissioner  
1409 Greenbrier Street  
Charleston, WV 25311  
304-558-2036 – Telephone  
304-558-5367 – Fax

December 27, 2019

Jeff Sandy, Cabinet Secretary  
Department of Military Affairs and Public Safety  
Building 1, Room W400  
Charleston, WV 25305

Dear Secretary Sandy,

In accordance with the most recent directive, the Executive Summary Report of the investigation into DCR Academy Class 18 is attached hereto, setting forth findings regarding the remaining class members, as well as identified members of the Academy staff.

The investigation to this point reflects that, with some possible exceptions, participation in the conduct was largely based on ignorance, along with a remarkable and appalling lack of judgment among the cadets, and some members of the Academy staff. Nonetheless, we expect and demand that our employees act in a way that contributes to an environment of respect and professionalism among our ranks. Messages that reflect hate, intimidation, and discriminatory beliefs have no place in our workplace, and are incompatible with our mission to protect both our incarcerated population and the citizens of West Virginia.

This event has saddened, disappointed, and embarrassed DCR leadership and membership, and we deeply regret the incident. We have engaged with faith leaders and anti-defamation representatives to enhance and enrich our training opportunities in order to guard against future incidents such as this one. I will await further direction.

Respectfully,

Betsy Jividen  
Commissioner



**STATE OF WEST VIRGINIA**  
**DEPARTMENT OF MILITARY AFFAIRS & PUBLIC SAFETY**  
**DIVISION OF CORRECTIONS**  
**AND REHABILITATION**



**BETSY C. JIVIDEN**  
**COMMISSIONER**


**JEFF S. SANDY, CFE, CAMS**  
**CABINET SECRETARY**

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Office of the Commissioner  
1409 Greenbrier Street  
Charleston, WV 25311  
304-558-2036 – Telephone  
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**MEMORANDUM**

**TO:** Jeff Sandy, Cabinet Secretary  
Military Affairs and Public Safety

**FROM:** Betsy Jividen, Commissioner   
Division of Corrections and Rehabilitation

**DATE:** December 27, 2019

**RE:** Executive Summary Report of Investigation

**The Investigation:**

Investigator Berthiaume was directed by Deputy Commissioner Mike Coleman and Inspector General Gary Johnson to utilize CID staffing to whatever level necessary to ensure that an expeditious investigation surrounding the events of the class photograph and use of the hand gesture by Academy Class 18, could be completed while maintaining ongoing priority investigations and responding to any other serious incidents within the facilities. The investigation was conducted within the realm of EEO policy, and the Department of Military Affairs and Public Safety assigned EEO Counselors to pair with the CID Investigators and assist them in conducting interviews.

The investigation to this point has utilized 14 CID Investigators and 20 EEO Investigators, who have conducted 58 interviews covering 18 facilities. This does not include fact-finding interviews conducted by Scott Patterson, Assistant Commission for the Bureau of Training and Staff Development, or the Superintendents of the of the affected facilities. The combined total of interviews stands at 75.

**Classroom Behavior:**

The hand gesture was found to have started in the second or third week of the Academy session as one that the cadets have described as a “sign of respect for Byrd.” The gesture was started by one of the class members, and other class members began using it as well. Several cadets recognized it for its historical implications and refused to go along with the class. Others who knew the implications of the gesture felt

pressure to fit in and joined in. Some of these class members voiced their concerns to classmates. Those voicing concerns were assured by those comfortable with the gesture, that since there was no racial motivation on their part, the gesture was acceptable.

Instructor Byrd stated she was completely unaware of the historical or racial implications of the gesture and reported it was simply a greeting. Byrd said many at the Academy witnessed the gesture and never made any comments or told them to stop. The statement Byrd provided during her interview was heavily contradicted by multiple sources during the investigation.

Two instructors reported independently seeing the gesture performed in the classroom during the sessions. These instructors who observed the gesture were unaware the other had also witnessed it. These instructors immediately told Byrd and the class of the connotations associated with the gesture and the fact it was highly inappropriate. One of these instructors was rebuked by a student who stood up in defense of himself and the other cadets making the gesture and said, "Look at me I am black, and I am doing it..." This student was recognized as one of the informal class leaders; in fact, eighteen fellow cadets identified him as the cadet responsible for starting use of the gesture. No other cadets were identified as the source, and fifteen cadets stated they did not recall who started the gesture. Both instructors, who reportedly reprimanded the class, stated that they believed their discussions stopped the inappropriate behavior, and each reported they did not see it again during the session. The investigation revealed that Byrd told the class, apparently in response to these admonishments, she saw nothing wrong with the gesture and allowed it to continue.

The gesture was done with Byrd's knowledge. The investigation disclosed that she encouraged it, reveled in it, and at times reciprocated the gesture. Additionally, Byrd appeared to overrule the corrective actions taken by others and assured the cadets the behavior was acceptable.

#### **Class Photo and Participation:**

The "Hail Byrd" picture was taken by and at the direction of Instructor Byrd. Multiple cadets reported the photo was taken several times due to not everyone participating in the gesture. Ten of the cadets reported they did not make the gesture until Byrd told them to. These cadets stated that they only did it at that time due to fear of not graduating for disobeying the direction of an instructor. Seven of those cadets, in order to comply with Byrd's direction but not make the gesture, held up a closed fist.

#### **Distribution of the Picture:**

The class photographs, including the "Hail Byrd" picture, were forwarded to a member of the secretarial staff as is the normal procedure. The secretary reported asking Byrd "What are you all doing in the picture?" Byrd responded with "look there is nothing wrong with it, we have people of all colors and backgrounds in the picture and every one of them are participating." The secretary stated that Byrd directed her to caption the picture "Hail Byrd." The secretary remarked that Byrd told her "that's why they do that because I'm a hard-ass like Hitler."

The secretary, who was concerned because she found the photo offensive, showed it to Captain Daniels-Watts. The secretary reported Watts stating, "Oh, I should just pull it, but since you have them all already printed you might as well go ahead and stuff them into the packets."

Two other instructors independently saw the "Hail Byrd" picture while the graduation packets were being compiled and found the photo inappropriate. Each separately brought their concerns to Daniels-Watts, and one of the instructors recalled Daniels-Watts saying, "Well that is going to bite us in the ass."

Daniels-Watts, by her own admission, found the picture to be “horrible.” She said upon seeing the picture, it reminded her of a picture from a couple years ago where a college team or fraternity took a similar picture and it was all over the news because it came across as anti-Semitic.

Despite her own feelings of the picture, as well as those shared by the secretary and the two instructors, Daniels-Watts never addressed Byrd, had the pictures pulled from the packets, or reported the situation to her supervisor.

When the meeting for Academy Staff was called regarding the picture, Daniels-Watts’ response was “Do I resign now or what...” and “I saw the picture and did nothing...”.

**Hand to face gesture:**

During the course of the investigation, additional photographs were found on social media depicting members of Class 18, as well as Instructor Byrd. In one such picture, Byrd is surrounded by some class members, and all in the picture are holding their hands horizontally below their nose. The Investigator immediately recognized this gesture as one, which has been used to satirically reference Hitler.

Investigation into these additional pictures is ongoing.

**Investigations Overview:**

There is no dispute that the “Hail Byrd” gesture and photograph were highly offensive and egregious in appearance, but the investigation did not reveal any overt motivation or intent that this was a discriminatory act towards any racial, religious, or ethnic group. Rather, contributing factors included poor judgment, ignorance, peer pressure, and fear of reprisal.