

202100607

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

RE: CONFEDERATE MONUMENT ON ROANOKE COUNTY PROPERTY
ADJACENT TO THE ROANOKE COUNTY COURTHOUSE

ORDER

In accord with the original correspondence of the Court on this matter, attached hereto as Exhibit A and made a part hereof, and the response of the Roanoke County Board of Supervisors, hereafter "The Board," attached hereto as Exhibit B and made a part hereof, and in an effort to maintain clarity and continuity in this process, and further as the Court speaks only through its orders, this Order is entered.

The Court is charged with the administration of justice. In this instance, the Court certifies that the continued presence of the confederate monument, in its present location on Roanoke County property, and with its present content, obstructs the proper administration of justice in the Roanoke County Courthouse, the same is ORDERED.

Consequently, either the Court must be removed to an appropriate location or the monument must be removed during the operation of Court, the Court so finds, and the same is ORDERED.

The lesser hardship of these two options is the removal of the confederate monument, particularly as Roanoke College has consented to undertake the financial costs of such removal, the Court so finds and the same is ORDERED. The Court further finds that any inconvenience in accomplishing this goal is small compared to the rights involved in the administration of justice, the same is ORDERED.

lcc:
Petars
O'Donnell
Lvbeck
Maxey
Swanson
Curson
Clemens
Ware
7-8-2021

CND

The Court further finds, as set out more completely in Exhibits A and B, that The Board would prefer to address this issue, pursuant to law governing the scope and manner of The Board doing so, a conclusion with which the Court concurs, the same is ORDERED.

Consequently, the Court defers taking any other formal action in this matter until 2 January, 2022, unless addressed by intervening court order, the same is ORDERED.

The Clerk is to certify a copy of this Order to Chairman P. Jason Peters of the Roanoke County Board of Supervisors, Mr. Daniel R. O'Donnell, the Administrator of Roanoke County, Peter Lubeck, Counsel for Roanoke County, President Maxey of Roanoke College, and the other judges of this circuit.

Enter this 8TH day of July, 2021.



Charles N. Dorsey, Judge

TWENTY-THIRD JUDICIAL CIRCUIT
OF VIRGINIA

CHARLES N. DORSEY, JUDGE
ROANOKE COUNTY COURTHOUSE
305 EAST MAIN STREET
SALEM, VIRGINIA 24153
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CIRCUIT COURT FOR THE COUNTY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF SALEM

COMMONWEALTH OF VIRGINIA

23 June 2021

P. Jason Peters, Chairman
Roanoke County Board of Supervisors
P.O. Box 29800
Roanoke, VA 24018-2006

Re: Roanoke County Confederate Statue

Dear Chairman Peters,

I very much appreciate your time and interest in speaking with me recently regarding the removal of the Confederate statue on Main Street in Salem. As we discussed, judges cannot ordinarily speak in an official capacity save for actual cases and controversies. However, judges are ethically permitted to consult with legislative bodies or officials on matters concerning the administration of justice. Finally, I speak only for myself as one of the five judges of the 23rd Judicial Circuit of Virginia, presiding in the Roanoke County Courthouse.

The presence of the Confederate statue on the old courthouse lawn interferes with the administration of justice in Roanoke County. While the Court has the authority to order it removed, your statement that you and the Board of Supervisors agree it ought be removed and prefer to effectuate the removal yourself is a conclusion with which I agree and fully support.

Roanoke College remains committed to the removal of the statue and offers to pay for the cost of such removal. As you noted, there remains the question of where the statue should be relocated or stored, which is clearly a decision for you and the Board of Supervisors, not the Court. You also stated that the removal of the statue should be conditioned upon installation of another monument on the same small portion of Roanoke County real property on which the statue presently sits.¹ In that regard, Roanoke College also offers to lend the assistance of the college in providing you with options regarding the monument that you may wish to place on that land. The Roanoke College historian is willing to do research on the site and its significance, including background information regarding the original Roanoke County Courthouse, the history of that location as a site for enlisting soldiers during the Civil War, the history of the construction and

¹ This Roanoke County property is in front of West Hall (the old Roanoke County courthouse) and is surrounded by Roanoke College's lawn and the municipal property of the City of Salem.

presence of the present statue, and historical context regarding enslaved persons. Roanoke College is willing to work with a consultant about ways to have any replacement monument be historically and aesthetically appropriate and is willing to provide a report to you and the County Board for your use. The issue of what any such monument should be, contain, or look like, is also clearly a decision for the Board of Supervisors, not the Court.

To paraphrase Judge Clark,² it may be important to mention my roots in the South and my pride in this region. I am proud of our geography, our ecology, our music, our food, our literature, our accomplishments in every possible field, our manners and traditions, our sense of connection with our neighbors, our quiet sacrifices, our grit and courage through generations, our savvy and intelligence, and the rhythms, feel and strength of this slice of the world. I am especially proud of our people. We are all radically gifted, and we are all radically flawed. I am proud of the way we tell stories and the stories we tell. And even though it is frustrating more often than not, I am proud of the innate stubbornness that we all tend to have on matters that are near and dear to us. But that stubbornness must yield to reason, conscience, and consideration of fairness for all of us. My heritage is defined by what I'm proud of, not having ancestors in the Confederate Army.

Approximately two weeks ago I looked out my window in the courthouse and saw a young woman, who appeared to be African American, walk by the statue of the armed Confederate on Main Street. She turned right onto College Avenue, and without breaking her stride, looked up at the statue, looked down immediately, and began shaking her head. While I could not accurately describe her reaction as anger, disgust, bewilderment, confusion, or any other emotion, given the brief nature of the observation, almost any emotion encompassed within her reaction had to be a response to the simple question of "Why?" The same question of "Why?" is one that I have had put to me frequently by the public, lawyers, and members of other constituencies working within the Roanoke County Courthouse. A decent respect for you and the Board of Supervisors requires an explanation of my conclusion that the continued presence of this Confederate statue in its present location interferes with the administration of justice in Roanoke County. Though understanding that you and the Board may have other, appropriate, reasons for the removal and relocation of the statue, mine are limited solely to the detrimental impact that the continuing presence of the Confederate statue has on the administration of justice.

"Slavery was, by a wide margin, the single most important cause of the Civil War."³ That simple, but profound, statement is at the center of most of the present discourse surrounding Confederate monuments. Virginia Tech historian and Civil War authority, James "Bud" Robertson taught students that "slavery was unquestionably the primary cause of the war."⁴

² Martin F. Clark, Jr., *Full Statement from Judge Martin Clark*, MARTINSVILLE BULLETIN (Sep. 2, 2015), https://martinsvillebulletin.com/news/full-statement-from-judge-martin-clark/article_64b4324e-5188-11e5-ab3f-ebd59f1b26bf.html.

³ TY SEIDULE, ROBERT E. LEE AND ME 1 (2020). Mr. Seidule is the head of the Department of History at the United States Military Academy West Point, a native of Virginia, and a graduate of Washington and Lee.

⁴ Clark, *supra* note 2; *see also* CLINT SMITH, HOW THE WORD IS PASSED (2021) ("To look at primary source documents and convince yourself that the central cause of the war was anything other than slavery requires a remarkable contortion of history.").

CND

In 1866, Edward Alfred Pollard, a southern partisan, published a book titled “The Lost Cause: A New Southern History of the War of the Confederates.” Pollard, and later others, argued that the Civil War “did not decide negro equality; it did not decide negro suffrage; it did not decide State Rights. . . . And these things which the war did not decide, the Southern people will still cling to, still claim and still assert them in their rights and views.”⁵ The continuing argument over Confederate memorials is tied to the mythology of the Lost Cause – the way many white Americans have chosen to view history following the Civil War. That history has been described as “a history manipulated to make the unspeakable palatable.”⁶

The Lost Cause led to a continuing effort to “decide” those issues in a way contrary to the results of the war. Immediately following the end of the Civil War there was Reconstruction; followed by the Jim Crow era; followed, in Virginia, by the Virginia Constitutional Convention of 1902 that stripped black citizens of their Reconstruction era rights,⁷ including significant restrictions on the right to vote. Of course, these events did not occur in sequence but many were going on at the same time. The Ku Klux Klan, for example, was in every southern state by 1870, and its goal of death and terror lasted well until the 20th Century. Formerly enslaved people, and their families, found “freedom” too often broken and destroyed by night riders, lynchings, cross burnings, murder, and death. Formerly enslaved persons and generations that followed learned that the cherished “rule of law” too often did not apply to them. Even as physical violence receded, economic violence was being wrought by discriminatory banking practices, including discrimination in home and business loans. Segregation of public facilities including public transportation, dining, lodging, and even entertainment, gave the lie to any substantive equality for most African Americans.

Education, which had been legally forbidden to slaves, suffered under the “separate but equal” Plessy doctrine. Photographs of local public school facilities for African American children in Virginia in the years immediately after World War II are repulsive.⁸ Even after *Brown v. Board of Education* in 1954, much of the South, including Virginia, embarked on “Massive Resistance.” There was, in fact, an additional spike of Confederate memorials in the 50’s and 60’s as the Civil Rights Movement began and grew.⁹

My entire secondary education was in Roanoke County Public Schools. I benefitted from gifted teachers, coaches, and administrators. But they, and all of us students, were lied to. “[N]ot just . . . in a moral sense, . . . but . . . factually, whether through deception, denial, or willful ignorance. . . . Because the myths I grew up with have caused such lasting damage . . . I feel comfortable calling them lies.”¹⁰

⁵ Jon Meacham, *The South’s Fight for White Supremacy*, N.Y. TIMES (Aug. 23, 2020), <https://www.nytimes.com/2020/08/23/books/review/lost-cause-meacham.html> (citing Pollard’s arguments).

⁶ *Id.*

⁷ Michael Paul Williams, *Resistance to Change is the Virginia Way. Now is No Time for a Victory Lap*, RICHMOND TIMES-DISPATCH (June 9, 2020), https://richmond.com/news/local/williams-resistance-to-change-is-the-virginia-way-now-is-no-time-for-a-victory/article_6370f6db-4652-568f-9c6e-0bacd2d90ec6.html.

⁸ See MARGARET EDDS, *WE FACE THE DAWN* 160-61 (2018) (providing a photo of Bethel School facilities in Gloucester, Virginia, in 1946-47).

⁹ See SMITH, *supra* note 4 (providing a history of Confederate memorials and noting the effect of the passage of the Civil Rights Act of 1964).

¹⁰ SEIDULE, *supra* note 3, at 7-8.

This all deserves to be told in more detail by those more knowledgeable. Fortunately for those interested, libraries have been written on all of these topics.

However, even for those who argue with the inescapable conclusion about the origins of the Civil War, or the consequences that followed for the formerly enslaved individuals, their families, and descendants, it is certain that African American “men and women have a bona fide, objective, fact-based, historically grounded reason to find Confederate glorification offensive.”¹¹

“The creation of these [Confederate] monuments was not a harmless commemoration or merely an attempt to remember fallen Americans. The creation of any monument sends a message, whether intentional or not.”¹² Many have noted the cruelty inherent in erecting monuments to those who fought to maintain oppression, rather than erecting monuments to those who were oppressed. Though speaking of the Lee Monument in Richmond, in a quote that can just as easily apply to any Confederate monument, counsel to the Governor of Virginia said “[t]he purpose of this monument was to recast Virginia’s history; to recast it to fit a narrative that minimized a devastating evil perpetrated on African Americans during the darkest part of our past.”¹³ It does not matter the number of African Americans in Roanoke County; it does not matter whether any citizen is offended; it only matters that this monument’s message, in its present location¹⁴, is offensive to the appearance of judicial fairness and neutrality, without a hint of prejudice.¹⁵

Symbols convey the power of meaning.¹⁶ No one would suggest a Confederate flag or monument has any place in a courtroom. The meaning conveyed by this statue due to its proximity to the Roanoke County Courthouse and being on Roanoke County property is, likewise, completely antithetical to the proper administration of justice. The court system receives the service of a number of very professional and committed individuals in the employment of Roanoke County and also in the constitutional offices of Sheriff, Circuit Court Clerk, and Commonwealth’s Attorney. It is shameful that we expect all of those persons to continue that service to the public in the shadow of a Confederate monument that is not 40 yards from the exterior wall of the present courthouse.¹⁷ There is a legal, intellectual, and moral imperative to move this statue with all deliberate speed. That is an all too brief summary of the historical, legal, cultural, and ethical response to “Why?”

¹¹ Clark, *supra* note 2.

¹² SMITH, *supra* note 4.

¹³ Williams, *supra* note 7; *see also* E-mail from Bruce C. Sams, President, Old Dominion Bar Ass’n, to Members of Old Dominion Bar Ass’n (June 18, 2021, 12:34 EST) (on file with author) (noting that it was an affront to many to honor generals who fought to suppress the freedom of African American slaves).

¹⁴ Notably, its presence is on government property constituting an official endorsement of the Confederate message or an official position of Roanoke County.

¹⁵ “No Current-day adult will be alive in a year in which African-Americans as a group will have been free for as long as they had been enslaved. That will come in the year 2111.” ISABEL WILKERSON, *CASTE* 47 (2020).

¹⁶ Clark, *supra* note 2; *see also* Va. Code Ann. § 17.1-118 (mandating national and state flags in Circuit Court courtrooms).

¹⁷ Indeed, closer to the exterior wall of the present courthouse than it was to the rear wall of the former courthouse.

In addition to the collective analysis, it is often instructional to focus on exemplary individuals. We both serve individuals as well as the community. Again, much too briefly, I would like to highlight three heroes whom I have met in Virginia courthouses.

Oliver White Hill, Sr.¹⁸

Grew up in Roanoke. Was counsel for the Virginia case that was consolidated with *Brown v. Board of Education*. Served as counsel with Thurgood Marshall and a team of historic lawyers successful in having the United States Supreme Court reverse the *Plessy v. Ferguson* doctrine in 1954. Elected to and served on Richmond City Council. Received the Presidential Medal of Freedom from President Bill Clinton in 1999. Civil Rights Pioneer. The Roanoke City Courthouse was renamed The Oliver W. Hill Justice Center in recognition of his lifelong pursuit of justice.¹⁹

Onzlee Ware

A colleague on the bench of the Twenty-Third Judicial Circuit of Virginia after having previously served as a judge of the Juvenile and Domestic Relations District Court and, prior to that, as a delegate to the Virginia General Assembly. He has already performed distinguished service on the bench with the distinction of being the first African American Circuit Judge west of Richmond.²⁰

William Garfield Dabney²¹

A Roanoke native who enlisted in the military before he was of draft age. Returned from the Second World War to finish his last year of high school and started his own business, Dabney Floors, Inc. He continued in business for more than 40 years. He was a member of the 320th Anti-Aircraft Barrage Balloon Battalion, the only all black unit that landed at Normandy on D-Day. On the 65th anniversary of that landing Mr. Dabney was honored with the French Legion of Honor and the next day was honored by President Obama at the American Cemetery overlooking Omaha Beach.

Following a courthouse ceremony honoring him, Mr. Dabney told his son and me that programs such as Drug Court had done more for the Constitution than he had ever done. His words shook me. Not because they were true – they clearly weren't – but they were an inspirational reminder that all of us should focus on achieving equal justice under law.

None of these men, or any other, need to be “protected” from the offensive message of this Confederate statue. They have faced, and handled with aplomb, much more serious issues. None

¹⁸ See OLIVER W. HILL, SR., *THE BIG BANG* (Jonathan K. Stubbs ed., 2000) (accounting Oliver W. Hill's life in his own words); see also EDDS, *supra* note 8 (providing a detailed account of the life of Oliver Hill and Spottswood Robinson). There are numerous other publications that give account of the life and work of Oliver Hill.

¹⁹ Jonathan Stubbs his biographer and professor at the University of Richmond Law School, an impressive talent in his own right, has spoken to local lawyers at Roanoke College in the Roanoke College Colket Center.

²⁰ Judge Ware was brought up by a wonderful single mother, Edna Ware, sometimes described as a “force of nature,” and whom I also had the privilege of meeting in the Oliver W. Hill Justice Center.

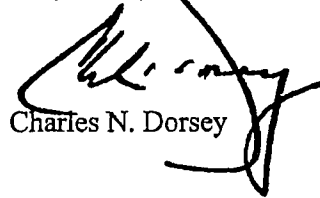
²¹ See S. Rotan Hale, *Decorated WWII Vet Bill Dabney Dies at 94*, ROANOKE TRIBUNE (Dec. 20, 2018), <https://theroanoketribune.org/decorated-wwii-vet-bill-dabney-dies-at-94/>; see also LINDA HERVIEUX, FORGOTTEN: THE UNTOLD STORY OF D-DAY'S BLACK HEROES, AT HOME AND AT WAR (2015). Bill Dabney's son, Vinnie, also an exceptional person in his own right, was instrumental in the nurturing and maintenance of the first Drug Court in Virginia founded in 1995 in this judicial circuit.

of us want to be the one who is asked the unanswerable "Why?" by any of these men. But in order to make this part of the judicial system of Virginia more legitimate to all of those whom we serve, this small statue with its large, ugly message must be removed. For all these reasons, and many more, the Confederate statue casts a literal and metaphorical pall on the administration of justice here in Roanoke County. Again, I appreciate you and the Board of Supervisors having this Confederate statue removed as soon as possible. I appreciate and commend your "getting it done" attitude.

Please consider this letter the formal notification that you requested, for you and the Board of Supervisors to act, with dispatch, to remove the statue. Realizing that the other actions regarding relocation or storage of the statue and the design and content of the new monument will certainly take longer, I expect the removal to be effected quickly.

With kindest personal regards, I am

Very truly yours,



Charles N. Dorsey

CND/dco

c: President Michael C. Maxey
Daniel R. O'Donnell, Roanoke County Administrator
Peter Lubeck, Counsel for Roanoke County
Twenty-Third Judicial Circuit Judges
Chief Judge Talevi, General District Court
Chief Judge Griffith, Juvenile & Domestic Relations District Court
Honorable Brian Holohan, Commonwealth's Attorney
Honorable Steve McGraw, Clerk of Court
Sheriff Joseph E. Orange
Mayor Renée F. Turk, City of Salem



County of Roanoke

Board of Supervisors

P. O. BOX 29800
5204 BERNARD DRIVE
ROANOKE, VA 24018-0798

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JUL - 7 2021

P. Jason Peters, Chairman
Vinton Magisterial District
David F. Radford, Vice Chairman
Windsor Hills Magisterial District

June 29, 2021

Martha B. Hooker
Catawba Magisterial District
Paul M. Mahoney
Cave Spring Magisterial District
Phil C. North
Hollins Magisterial District

The Honorable Charles N. Dorsey
Roanoke County Courthouse
305 East Main Street
Salem, Virginia 24153

Re: Monument to the Confederate Soldiers of Roanoke County

Dear Judge Dorsey,

Thank you for speaking with me recently regarding the monument to the Confederate soldiers of Roanoke County, located in close proximity to the County courthouse in Salem. I appreciate the concerns that you shared in our telephone conversations, as well as in your thoughtful letter of June 23rd. Since receiving your letter, I have had the opportunity to share it with my fellow members of the Board of Supervisors, and have had telephone conversations with each of them, individually, to discuss its contents. I am writing to you at their request, to share the position of the Board regarding the monument. I will share a copy of this letter with each of the individuals who received a copy of your letter, so that they, too, will know of the Board's position. I have again reviewed, with the County Attorney, the legal framework that must guide the Board's actions. I will below share some of these guiding principles (as they have been explained to me by Mr. Lubeck), not to presume to teach you anything you may not already know, but simply in order to explain the Board's present position.

At this time, the Board has not concluded on a course of action regarding the monument. The recently amended Section 15.2-1812 of the Code of Virginia empowers localities to "remove, relocate, contextualize, or cover" certain monuments for war veterans, including Confederate monuments, through prescribed steps, which must include public involvement in the decision-making process. It would be improper and unlawful for the Board to decide upon a course of action without first holding a public meeting at which interested persons may present their views. Further, the Board is authorized to seek additional citizen input on the issue by petitioning the Court to order a referendum on the issue.

The Board would like to be able to fully consider, with the public, all potential options before deciding on a course of action. This includes the option of contextualizing the monument. In the 2020 Acts of Assembly (Chapter 1100, paragraph 4), the General Assembly directed the Board of Historic Resources to "promulgate regulations governing the manner in which such historical monuments may be contextualized..." The Board of Historic Resources has not yet promulgated such regulations and it is our understanding that such regulations may be forthcoming in September 2021. Again, the Board would prefer that these regulations be available for consideration before holding a public meeting on the matter.

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EXHIBIT

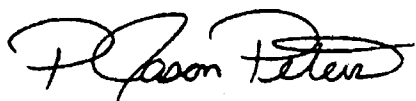
"B"

A.V.D

During these turbulent times, the Board aspires to respect and honor the viewpoints of Roanoke County citizens, and to act in a manner so as to best achieve unity.

With kindest personal regards, I am

Very truly yours,

A handwritten signature in black ink that reads "P. Jason Peters". The signature is written in a cursive style with a large, stylized initial "P".

P. Jason Peters

c: President Michael C. Maxey
Daniel R. O'Donnell, Roanoke County Administrator
Peter Lubeck, Roanoke County Attorney
Twenty-Third Judicial Circuit Judges
Chief Judge Talevi, General District Court
Chief Judge Griffith, Juvenile & Domestic Relations District Court
Honorable Brian Holohan, Commonwealth's Attorney
Honorable Steve McGraw, Clerk of Court
Sheriff Joseph E. Orange
Mayor Renee F. Turk, City of Salem

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