

## ORDER AND MEMORANDUM

(Pursuant to Section 8.01-4 of the 1950 Code of Virginia, as amended, *Belvin v. Richmond*, 85 Va. 574 (1888), and Judicial Canon 3(B)(5))

TO: Tom Rose, Mayor Ray Welland, Susan Gasperini, Patrick County Bar Association President Chris Corbett, Alan Black, Sheriff Dan Smith, Board Chairman Karl Weiss, Chief Judge David V. Williams

On August 19, 2015, I personally removed General J. E. B. Stuart's portrait from the Patrick County Circuit Court's courtroom.

This will no doubt anger, perplex and disappoint many residents of our county, perhaps even the majority of people who live here. It will be an unpopular decision in many quarters, especially given that the courthouse is located in a town named in Stuart's honor. Still, it is my goal—and my duty as a judge—to provide a trial setting that is perceived by all participants as fair, neutral and without so much as a hint of prejudice. Confederate symbols are, simply put, offensive to African Americans, and this reaction is based on fact and clear, straightforward history. Bigotry saturates the Confederacy's founding principles, its racial aspirations and its public pronouncements. For instance, the Declarations of Causes—the legal and philosophical grounds recited by the Southern states for leaving the Union—could just as easily be called *The South's Demands to Mistreat Black People*. South Carolina, according to its declaration, felt wronged because of “an increasing hostility on the part of non-slaveholding states to the institution of slavery,” and, ironically, complained that the federal government had “denounced as sinful the institution of slavery.” Mississippi's main reason for leaving the Union is unmistakably framed and repeated early and often in its causes document: “Our position is thoroughly identified with the institution of slavery—the greatest material interest in the world.” The Mississippi document goes on to condemn the notion of “negro equality, socially and politically,” and finds fault with Mississippi residents being denied “the right of property in slaves.” Georgia listed its grievances “with reference to the subject of African slavery,” and insisted on its right to hold slaves. The single specific injury mentioned in Virginia's actual Secession Ordinance is “the oppression of the Southern slaveholding states.” And, finally, lest there be any doubt exactly why black Americans might legitimately find the symbols of the Confederacy unsettling, here are the words of the Confederacy's Vice President, Alexander Stephens, on the subject of slavery and race: “Our new government is founded upon exactly the opposite ideas; its foundations are laid, its cornerstone rests, upon the great truth that the negro is not equal to the white man; that slavery subordination to the superior race is his natural and normal condition.”

I have heard from several of my local friends that people—like myself—who are critical of Confederate symbols need “to read the real history.” I have. I've cited it above in black and white from the actual Confederate documents. Virginia Tech historian and Civil War authority James “Bud” Robertson taught his students that “slavery was unquestionably the primary cause of the war.” I've read how Confederate flags waved in the galleries after the Virginia legislature passed its racist, embarrassing and unconstitutional Massive Resistance scheme. When George Wallace proclaimed “segregation now, segregation tomorrow, segregation forever,” he invoked Jefferson Davis, the “Cradle

of the Confederacy" and the "great Anglo-Saxon Southland." It seems pretty apparent how Governor Wallace interpreted the Rebel past. There's only one "real" history. No group or person has somehow perverted, hijacked or misstated what Confederate emblems represent. From the creation of the Confederacy straight through until today, from Alexander Stephens to Harry Byrd to George Wallace to David Duke, these symbols have *always* been imbued with the conviction of black inferiority.

Moreover, I've never gotten more than mumbles and abstractions when I've asked apologists precisely what history I'm overlooking. While the South had other differences with the Union, slavery was at the core of the Civil War, and the South wanted to maintain the subjugation of blacks. It's a basic narrative if you choose to examine it with an open mind. There's some focus on economics and much carping about deviation from earlier, underlying Constitutional compacts, but these "states' rights" assertions by the South are mostly used as predicates to justify and maintain slavery and demand the return of Southerners' "property" when slaves are discovered in the North. Put differently, the Civil War was about finances and states' rights in the sense that the departing nation insisted it be allowed to hold and recapture slaves to support its economy. Again, a section from Mississippi's causes declaration vividly illustrates precisely what economic concerns and what states' rights were on the South's agenda: "[Slave] labor supplies the product which constitutes by far the largest and most important portions of commerce of the earth. These products have become necessities of the world, and a blow at slavery is a blow at commerce and civilization."

Additionally, in the context of the Confederacy, I'm weary of the argument that we shouldn't remove certain intrusive Civil War symbols because "everybody's too sensitive and/or everybody is offended by something." Black men and women have a bona fide, objective, fact-based, historically grounded reason to find Confederate glorification offensive, and almost all of them do in fact take offense. Me, I'd for sure take issue with the symbols of a nation that believed "slavery subordination to the superior race" was my "natural and normal condition." African Americans' distaste for Confederate symbols can hardly be described as an overreaction, contrived or in any way hypersensitive.

The courtroom should be a place every litigant and spectator finds fair and utterly neutral. In my estimation, the portrait of a uniformed Confederate general—and a slave owner himself—does not comport with that essential standard. By way of example, I'll ask my fellow white Patrick Countians how they'd respond to this scenario: Imagine walking into a courtroom, your liberty at stake, and you discover a black judge, a black bailiff, a black commonwealth's attorney, a black clerk and a black defense lawyer. You are the only white person there. You peer at the wall, and you see a picture of Malcolm X—a Nation of Islam member who preached black superiority and demeaned the white race. What assumptions would you make about that courtroom, the judicial system and the black judge who allowed that portrait to remain on the wall? Would you feel certain that you'd receive fair, unbiased treatment with Malcolm X celebrated and honored in the place where your rights are being adjudicated? I would not, and that's why General Stuart's portrait has been removed. Given how fierce and divisive the debate over the Confederate flag has become, it should be obvious that symbols convey powerful meanings to many reasonable people, and we do not need this complication in a courtroom.

This decision, however, does not address another controversial aspect of our courthouse's history and one of the town's longstanding practices. For years, various groups have asked permission to appear in the court square, outside, and celebrate certain Confederate events, most notably General Stuart's birthday. Several years ago, I told the organizers that they could continue to bring and display

any of the various Confederate flags, but they were not to fly them on the courthouse pole or leave them behind, nor were they allowed to leave behind any wreaths, objects or decorations containing Confederate themes. This rule was in place well before the horrible church shootings in Charleston, South Carolina, and has nothing whatsoever to do with that awful, heartbreaking event. Needless to say, this restriction was not well received by some members of our community, given that "we've always done it that way before." Notwithstanding how it had always been done before, there are only two flags that should ever be atop what is effectively this county's flagpole—the American flag and our state flag.

As an aside, it is important to note that both Curtis Spence and Chris Washburn, the main organizers of these events, have always been polite, professional and very courteous—the hue and cry and unhappiness about the ban on flag flying came from other members of our community and never from the organizers. As a further aside, both these men, in my dealings with them, have proven to be solid citizens and completely free of any racial biases or hostilities; their sincere and heartfelt belief is that a Confederate flag is not a racial negative and should not be seen as a racial negative. In this county, a number of other residents—including a few close friends—share that same opinion. I very much disagree with them for the reasons I've painstakingly detailed earlier. Their pure hearts and decent intentions can't trump the Confederacy's widespread, systemic mistreatment of blacks that is bound up in the flag. This flag was birthed in a nation that insisted it had the right to buy and sell black men and women as if they were doodads and chattel, and earnest, well-meant talk of valor, fate and a Lost Cause will never scrub away those hideous origins.

Despite my disdain for all versions of the Confederacy's flag, despite the patently offensive character of these flags, and despite my belief that no one will take us seriously if we continue to insist these emblems represent who we are in 2015, this particular courthouse space—the courtyard—is still the functional equivalent of the town square, a marketplace for speech, ideas and discourse. While we as a legal system and a commonwealth cannot and should not sponsor or endorse what private individuals wish to say, we should also zealously defend their Constitutional right to speak and present their positions. A public space, outside the courtroom, on a weekend or when court is not in session, is a far different creature than the formal place of business for the judiciary. We have had protesters and preachers and charities and politicians, and, yes, people dressed as Confederate soldiers waving a Civil War battle flag all utilize this area—they will all be allowed to return, with the understanding that we as a court system support only their right to speak, not their causes, beliefs, ideologies or missions. While *this* decision will be thoroughly objectionable to the anti-flag segment of our county, I would suggest to citizens who find any display or perspective troubling that they civilly and constructively stage their own events to present their viewpoints. Minds change and opinions are shaped through education, empathy and compelling argument, not by a court suppressing someone's right to speech in the most public of forums.

Of course, I realize that my decisions and the actual rulings herein—the permanent removal of the Stuart portrait from the courthouse, the prohibition against running any iteration of a Confederate flag up the courthouse pole, the ban on Confederate articles and memorials after a group has left the square, and the continued opening of the outdoor public square to all comers including those who want to feature General Beauregard's battle flag—will satisfy virtually no one but will tick off all grades of people.

Finally, I think it's important to mention my Southern roots and my pride in this region. I'm proud to live in Patrick County, proud to live in the South. I celebrate William Faulkner, Larry Brown and Eudora Welty. I listen to The Allman Brothers and miss B. B. King. I made it a point to meet Dale Earnhardt and get his autograph, I grew up next door to Leonard Wood, and my mother was a Young from Ararat—raised dirt-poor a stone's throw away from Jeb's birthplace—who became a magnificent teacher. I caught my first fish in Kibler Valley almost fifty years ago. I've had the pleasure of crossing paths with Jerry Baliles, Turner Foddrell, Sammy Shelor, John D. Hooker, Ann Belcher and Annie Hylton, Rev. R. J. Mann, Buddy Dollarhite and John Grisham. I've witnessed bake sales and fundraisers and pinto-bean suppers bring in five-figure help for Patrick County friends who happened to catch a bad break. My dad and uncle told me stories about leaving these mountains and volunteering to serve in World War II. That's the South I want to showcase. I'm proud of 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 throughout generations, our savvy and intelligence, and the rhythms, feel and strength of this slice of the world. That's *my* Southern heritage, and it's far, far distant from the battlefields of the 1860s.

Enter September 1, 2015 :

A handwritten signature in black ink, appearing to read "M. F. Clark, Jr.", written over a horizontal line.

Judge Martin F. Clark, Jr.