

To: The Monticello Association
From: John H. Works
Date: 23 December 1999
Re: DNA Testing & the Hemings

I am writing to you because The Monticello Association must soon determine its course of action in light of the results of recent DNA tests and their impact on burial in our family graveyard at Monticello and/or membership in The Monticello Association. My grandmother was Eleonora Randolph Coolidge. Several years ago I was elected to the Monticello Association's Executive Committee and also served as the Monticello Association's President. I earned a B.A. degree from the University of Kansas, a law degree from the University of Denver, and an M.A. degree from the University of Paris-IV (Sorbonne). I have worked for 2 large Wall Street law firms as well as banks J.P. Morgan and ABN Amro. Currently I am the President & Chief Executive Officer of Rompetrol, Romania's largest independent oil company. I am also the Monticello Association member that made the motion at last years' annual meeting to exclude the offspring of Sally Hemings from participating in our annual business meeting.

Sally Hemings was one of Thomas Jefferson's slaves with whom Thomas Jefferson allegedly carried on a 38-year affair. A recent DNA study conducted by retired University of Virginia pathology professor Dr. Eugene A. Foster found that there was a link to "some" Jefferson, but not necessarily Thomas, having been the father of Eston, Sally Heming's youngest son. The Eston Hemings line offers the weakest oral history (they had been told it was a nephew who was their father), and the least likely to have been fathered in Jefferson's old age (he was 66 and she was 36). However, the DNA tests also concluded that the Woodson line of Heming's offspring are not descendants, despite their strong oral history. Fortunately one of their offspring, Robert Cooley, was recently denied burial in the Monticello Graveyard by our Executive Committee. *These DNA tests indicated that any one of 8 Jeffersons could have been the father of Eston and there was nothing to indicate it was Thomas.*

On 5 November 1998 the journal *Nature* placed an inaccurate and misleading headline based on this study which read, "*Jefferson Fathered Slave's Last Child*". Most of the mass media and many others assumed the headline to be correct. At the time Daniel P. Jordan, Ph.D. and President of the Thomas Jefferson Memorial Foundation (TJMF) stated that "Dr. Foster's DNA evidence indicates a sexual relationship between Thomas Jefferson and Sally Hemings." Subsequently Mr. Jordan admitted that "after the initial rush to conclusions came another round of articles explaining that the study's results were less conclusive than had earlier been reported." Dr. Foster also later admitted that "it is true that men of Randolph Jefferson's family could have fathered Sally Hemings' later children. The title assigned to our study was misleading in that it represented only the *simplest* explanation of our molecular findings: namely, that Thomas Jefferson, rather than one of the Carr brothers, was likely to have been the father of Eston Hemings Jefferson. *We know from the historical and the DNA data that Thomas Jefferson can neither be definitely excluded nor solely implicated in the paternity of illegitimate children with his slave Sally Hemings.*"

In response to this controversy The Monticello Association formed a committee to further investigate these new findings and to determine their impact on burial in the family graveyard at Monticello and/or membership in The Monticello Association. The committee intends to have a report by the time of our 2000 Annual Meeting. Similarly, the TJMF formed a committee of researchers, archeologists, and interpreters to evaluate the DNA story and all relevant evidence, to assess its impact on historic interpretation at Monticello, and to recommend a course of action. The

TJMF soon plans to communicate its findings to multiple audiences, including its staff, visitors, scholars, and the media as well as to possibly revise its interpretive programs at Monticello.

The questions before us are simple and straightforward: *Can the Hemings offspring be buried in the graveyard at Monticello and/or admitted to The Monticello Association? What standards should we use to decide these questions?*

The governing documents of The Monticello Association provide that we are an “association of lineal descendants of Thomas Jefferson”. Members are to defend the property rights of the lineal descendants of Colonel Thomas Jefferson Randolph as owners of the original Monticello Graveyard as well as the addition to the graveyard as provided in the covenant under which this property was deeded. (We also are charged to defend the “reputation and fame” of Thomas Jefferson). The current graveyard was given to Thomas Jefferson’s descendants, and each of us own an undivided interest in the graveyard by means of various deeds, wills, and other transactions. The original section was given to T.J. Randolph’s descendants under a restrictive covenant deed and will, and the newer section given to all of the descendants of Thomas Jefferson under a restrictive covenant deed and subsequent land swap with the TJMF. From its inception, however, our graveyard has been available to all descendants of Thomas Jefferson and together with the newer section has been managed and cared for by the Monticello Association as a single unit.

Therefore, we are a group of descendants with inherited legal rights in the graveyard. The Monticello Association is a graveyard association, which protects the rights of Thomas Jefferson’s descendants. (In fact, until 1919, we were called the Monticello *Graveyard* Association). We are not just another social club that may not want to admit blacks (when clearly the membership in those cases could vote to do just that if they wanted), so racism is not an issue for us.

When there are paternity disputes the law, over many years, has provided the means to determine this question. Of course, there is no issue if the father acknowledges paternity. This is not an issue for us because in addition to maintaining and defending our rights of burial in the graveyard at Monticello, genealogy has been a preoccupation of The Monticello Association from its beginnings and we have meticulously kept records of all of Thomas Jefferson’s descendants. In addition blood and DNA tests can only be carried out on samples of the male Y chromosome because it passes unchanged from father to son. Since Thomas Jefferson’s son died in infancy and he only had daughters who lived to maturity, no acknowledged descendant of Thomas Jefferson need be tested. Recent DNA researchers of the Hemings line have sampled only direct male line descendants of persons who have descended from a common male line with Thomas Jefferson (e.g. grandfather).

Please note that the only standard to determine paternity is the rule of law, in this case the Code of the Commonwealth of Virginia, which sets forth clearly how one determines paternity, even long after the fact. *In the absence of the father acknowledging paternity, the law has determined that the most reliable way of determining paternity is blood and DNA testing, and there are clear rules one must follow to establish paternity.* The responsibility for obtaining these rights and providing appropriate legal evidence belongs solely to the Hemings descendants and the burden of proof lies with them, not us. The person requesting the genetic test must provide a written report prepared and sworn to by a duly qualified expert, as well as verified documentary evidence of the chain of custody of the blood specimens. The expert who made the analysis must appear as a witness and be subject to cross-examination if requested by the other party. The person requesting the genetic test also must pay the costs of the test. Paternity must be established by “*clear and convincing evidence*”, and not by lesser standards such as “preponderance of the evidence” or “probable cause”. (The standard is even higher when establishing a parent-child relationship, where DNA tests must demonstrate at least a 98% probability of paternity).

The current DNA testing does not rise to the level of "clear and convincing evidence". While there was a link to "some" Jefferson having been the father of one of Sally Heming's children, the father was not proven to be Thomas Jefferson, since any one of 8 Jeffersons could have been the father of Eston and there was nothing to indicate it was Thomas. The Y chromosome is only a tiny part of an individual's DNA. In ordinary DNA paternal testing of living persons, the entire DNA of the alleged father and son is compared, and the likelihood of there being an exact random match is in the order of 1 out of trillions. However, this kind of DNA testing cannot be used beyond the first generation, because the mix of DNA becomes more and more diffuse with each new generation, except for the Y chromosome. Because the Y chromosome determines the male sex, only males have it, and it is passed intact from father to son. However, the tests are fairly accurate for excluding someone as a father of a male child and his male descendants, with a random match on the order of 1 out of 67-100. Therefore, it is reasonably certain that the Woodson line are not descendants of Thomas Jefferson (absent new DNA evidence to the contrary).

Since the law recognizes blood or DNA tests as the most reliable method in order to determine paternity in case of disputes, oral history plays no part and most other information is irrelevant as to whether someone is a lineal descendant for purposes of the right of burial in our graveyard. While interesting, the oral history promoted by the Hemings' plays absolutely no part when it comes to determining their rights as heirs of Thomas Jefferson. Family oral history may be useful in a scientific investigation to suggest lines of inquiry, or to support other, more substantial evidence. After all, the DNA tests indicated that that Sally Hemings was not truthful about the paternity of at least one of her children (the Woodson line), telling them Thomas Jefferson was their father when the DNA evidence has shown that no one with the Jefferson Y chromosome could have been the father. It is easy to believe that she may have stretched the truth, and elevated her other children's father from a President's brother or cousin to the President himself. The only other information that might possibly be considered admissible evidence includes evidence that would support acknowledgment of the offspring by the suspected father, such as open cohabitation, medical or anthropological evidence, or claiming the child as his own on any official document filed with a governmental authority.

Even this DNA evidence, while definitely scientific, is not at all conclusive, since it does not specifically identify Thomas Jefferson as the only possible father. *Since the only available DNA evidence comes from direct male line descendants of persons who have descended from a common male line with Thomas Jefferson (father, grandfather, etc.), the test is inherently imprecise.* The same Y chromosome existed in Mr. Jefferson's brother Randolph, who lived 20 miles from Monticello, and in 5 of Randolph's sons, who were in their teens or 20s when Sally Hemings was having children. The genetic trail also could have been broken in subsequent generations if any of the mothers in the presumed chain actually had her son by a man outside the Jefferson line. Some of the Hemings' lines cannot be tested, as there are no male line descendants.

Nevertheless the attitude of some seems to be that this is good enough since "this DNA from more distant relatives is the only DNA evidence available to us." Well, if the only evidence does not meet the minimum legal standards, then the case must fail. We are not justified in making assumptions just because this is the best we have been able to find. This is tabloid journalism, not real scientific investigation. It may be useful for selling movies and books, and the more daring and outrageous the accusation, and the greater the character of the person being assailed, the more notoriety gained and the more movies and books sold. But drawing conclusions from the evidence in an important case like this requires much, much more than mere possibilities to be believable and lawful.

These legal rules are used all the time (and were begun in Thomas Jefferson's lifetime) when contesting wills or determining property rights. Otherwise, think of the practical difficulties one would have. For example, assume you are a legitimate heir and are entitled to an inheritance.

Someone comes along and claims they, too are an heir and want a portion of the distribution that would otherwise go to you. Absent legal rules and precision your executor would be in a real bind as to what to do. Plus you might receive less than what you were entitled which would not make you very happy unless that third person could prove paternity in accordance with the law.

It appears that some want us to accept the Hemings into our family without realizing that to do so would be to overturn our long and proud history of defending the rights of proven lineal descendants of Thomas Jefferson to burial in the Monticello Graveyard (protecting his “reputation and fame”), as well as long-established concepts concerning inherited rights, paternity, and the definition of family. *These are predominately legal issues and an instance which there are practically no gray areas.* Laws are written by elected officials who presumably are aware of all other sources of information, including oral histories. Our legislatures have almost unanimously concluded that the most reliable way of determining parentage, absent acknowledgement of the father, is blood and DNA testing.

Therefore, the right to burial in our graveyard passes to all who are descendants of Thomas Jefferson. This is an inherited right and therefore purely a legal definition. This right has been passed to us through various wills, deeds, and the laws of the Commonwealth of Virginia. In fact, because this is a legal definition and right, it takes it out of the hands of The Monticello Association to determine. *Put another way, it is not the responsibility of The Monticello Association to determine who is a “real” descendant of Mr. Jefferson for the purposes of burial in our graveyard.* In fact, for us to do this would be to usurp the authority properly granted by the legislature to the courts of the Commonwealth of Virginia who have been duly empowered to render such decisions of paternity.

Therefore, we cannot “declare” someone to be a descendant or change our definition of “lineal descendant”. Further, it is hard to imagine a scenario where the descendants could broaden possession of the graveyard to a wider class of persons without the consent of those whose rights that would be affected (what about our dead cousins who are buried in the graveyard and those who are not yet born?). Since those rights belong to acknowledged, lineal descendants, there does not appear to be any legal or practical way to waive those rights, absent probably involving the Attorney General of the Commonwealth of Virginia who is charged in certain circumstances with representing beneficiaries of property and other assets in *cy pres* or related procedures.

Even if this happened to be legally possible but because not every descendant of Thomas Jefferson is a member of The Monticello Association, specific and cumbersome legal provisions probably would have to be followed to protect the rights of the acknowledged descendants of Thomas Jefferson, irrespective of an affirmative vote (probably 2/3 required) of the then-current members of The Monticello Association. This means all members, not just those who might attend an annual meeting. We found this out the hard way several years ago when a simple and noncontroversial land swap with the TJMF was undertaken in order to expand our graveyard. Despite the consensus of *all* then-current members of The Monticello Association, the law required a very complicated procedure so that adequate due process was afforded to all acknowledged descendants. *Ultimately this simple transaction took several years to complete and certainly something as controversial and complicated as attempting to broaden the definition of lineal descendant to include the Hemings (assuming this is even legally possible) would most certainly face significant resistance.*

Of course, The Monticello Association also should be interested in supporting those who believe that their rights in this area have been abridged, i.e. the Hemings. If they truly are descendants of Mr. Jefferson and have been denied these rights over 200 years, this wrong must be righted. (Since no one has ever denied that it was likely that “some” Jefferson fathered at least one of Sally Heming’s children, these recent DNA tests only provide more certainty to what we already knew or suspected). Therefore, we should do all that we can to see that those rights are determined and protected. We should support them in their quest by informing them of these requirements. To

obtain these rights (burial in the graveyard) is simply a matter of proving paternity according to the rules of the Commonwealth of Virginia and is not a matter for The Monticello Association to decide.

However, the Hemings should be made aware that given the results of recent DNA tests and under current conditions and law it is highly unlikely that they could prove a clear and convincing case for membership. If at some point in the future the Hemings can prove their case, then of course they should be welcomed into The Monticello Association. But this is simply not yet possible. Unfortunately, some in our organization have been party to giving them hope which cannot be realized in the short term.

According to a recent press release from Herbert Barger, a respected Jefferson family genealogist (who has concluded that Thomas Jefferson did not father any of Sally Hemings' children), the Madison Hemings branch recently decided not to press forward with DNA testing on a male child of Madison Hemings. Their decision might be due to that family's unfamiliarity with the legal requirements to prove paternity. The Monticello Association must clearly inform all members of the Hemings family (and any other group who might believe they are descendants of Thomas Jefferson) precisely what is needed under the laws of the Commonwealth of Virginia in order to preserve any potential inherited rights they might have as descendants of Thomas Jefferson.

This particular scientific inquiry on the Madison Hemings would be interesting because results from the DNA tests should confirm 1 of 3 things: (i) if there is no match then their claim that Madison is a descendant of Thomas Jefferson would be invalid (and then this would fall into the same category as the Woodson oral history which DNA indicated there was no Jefferson/Woodson match), (ii) it could show a Carr/Madison descendant match, thus our claim would be valid that one of the Carr brothers is the father of Sally's children (at least for Madison), or (iii) as in the case of Madison's brother, Eston, who was found to have a match with "some" Jefferson descendant (not necessarily Thomas), this match could repeat that finding. (However and as discussed before, such finding would not rise to the level of "*clear and convincing evidence*" since any one of 8 Jeffersons could have been the father of Madison and there would be nothing to indicate it was Thomas).

Therefore, the Hemings cannot be given the right to burial in our graveyard. In light of this a claimant has one of two choices – prove that they are descendants by following the requirements of the law (which may not be possible at this time), or petition the state legislature to have the law changed.

Some want us to open up our family graveyard not only to the Hemings, but also to all black slaves that labored for Mr. Jefferson at Monticello. Theoretically one could attempt to broaden the purpose of The Monticello Association (and those who are entitled to become members) to ignore acknowledged paternity or DNA testing and include those with oral histories. However, this act still would not determine who is a lineal descendant for purposes of burial in the graveyard because the law only recognizes acknowledged paternity or DNA testing. Further, The Monticello Association would no longer be an "organization of lineal descendants of Thomas Jefferson". Why would anyone want to be a member of The Monticello Association if they could not be buried in our graveyard? Why would we want people in The Monticello Association and why would others want to become members when we discuss burials, painting the fence, etc. when they would not have their own right to burial there? Why should we agree to a lesser standard than what the law requires? Even if that approach would be politically correct to some, what would the criteria be that everyone could agree on? As unfair as it may seem to some, it appears that we are stuck with what the law requires unless it is changed.

The Monticello Association needs to be very clear what the unintended consequences of its actions are likely to be. If we decide on anything but the specific grounds and criteria set forth in the law, we will be violating someone's rights to burial in the Monticello Graveyard. This is a very

serious matter. The right to burial in the graveyard is a legal right of all acknowledged descendants and proper legal formalities must be followed. *Most of us will insist on strict compliance with these requirements.* Many professional genealogists and other experts are alarmed that such non-factual, non-scientific, and non-legal approaches are being put forward by some to bulldoze a kinship where it simply cannot be substantiated under current conditions and law.

All members of the Monticello Association should be encouraged to bring their families to next year's annual meeting activities due to the importance of these matters. However, the Woodson line should not be invited to our annual meeting (since the DNA test came out negative) and the Eston line should not be invited either because they have not yet followed the appropriate legal procedures concerning DNA tests nor established clear and convincing evidence of paternity. (As far as the Madison Hemings are concerned we will have to wait to see the results of their DNA tests if they agree to have them performed, but again these results would not be "clear and convincing"). It is not appropriate in any organization to have prospective members participate with current members in discussions about membership. Again, if at some point in the future the Hemings can prove their case, then of course they should be welcomed into The Monticello Association.

It is important for The Monticello Association to take a leadership role in these issues. After all, it was Thomas Jefferson who said to William Roscoe on December 27, 1820, "for here we are not afraid to follow truth wherever it may lead, nor to tolerate any error so long as reason is left free to combat it". Please know that many are watching our actions and they will form opinions based upon our actions. Therefore, let us take action based upon the facts and law, and not on "politically correct" and "diversity" motivated agendas by others.

I would welcome any comments on these issues so please feel free to contact me at Rompetrol, 222 Calea Victoriei, 71104 Bucharest, Romania, phone (011) 4094-377-722. I am also reachable via e-mail at johnworks@hotmail.com. Please also visit The Monticello Association's home page on the world wide web at www.monticello-assoc.org.