

The Case Against Thomas Jefferson

A Trial Analysis of the Evidence on Paternity

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Thomas Jefferson, the President of the United States and owner of the Virginia plantation Monticello, was accused in the Federalist press in the early 1800's of fathering children by his slave Sally Hemings. Jefferson did not issue a public denial, and the allegations did not affect his election to a second term in 1804. The rumor was resurrected just before his death and later, in 1873, when one of Sally Hemings' sons, Madison, claimed in a newspaper interview that he and his sister Harriet and two brothers, Beverley and Eston, were Jefferson's children. In 1998, DNA testing on the descendants of Jefferson's uncle, Field Jefferson, identified a distinct chromosome Y haplotype, which was also identified by DNA tests in a single descendant of Eston Hemings. The scientific probability is that Thomas Jefferson also had this haplotype.

The issue presented for analysis is whether the results of the DNA tests and any relevant historical evidence establish that Thomas Jefferson was the father of one or more of the children of Sally Hemings.

Historians are not bound by the legal rules of evidence, of which the most striking example in the Jefferson case is the creditability given the initial newspaper charges, to obscure comments in third party letters, and to the later Madison interview. Various historical treatments of whether Jefferson could be the father of slave children generally manipulate the facts and inferences to achieve a desired conclusion. The claim of the descendants of Sally Hemings does not rest on how many historians find Jefferson's paternity plausible, but whether potential claimants are able to establish that they are lineal descendants of Thomas Jefferson. That is a legal question and must be tested by legal rules of evidence, irrespective of the passage of time.

After the DNA tests, the Thomas Jefferson Memorial Foundation, the corporation which owns Monticello, set up a research committee, selected from its staff members, which produced a report (the "Committee Report") that there was a "strong likelihood" Thomas Jefferson fathered six children by Sally Hemings. Because of the prominence Monticello has achieved, the Committee Report was anticipated as a definitive treatment of the available evidence. Instead, it is a serious example of an assault on historical truth. Not only is the evidence manipulated, but unsupported postulates are created to fill the evidentiary gaps toward an apparently desired conclusion.

This analysis will review the information known about the relationship of Thomas Jefferson and Sally Hemings on the basis of legal principles of evidence and determine what evidence would be admissible in a legal proceeding to test paternity. It is not the purpose of this analysis to prove who was the father (or fathers) of Sally Hemings' children, but to see whether the evidence will prove the paternity of Thomas Jefferson.

There have been a number of writers who have examined the character and conduct of Jefferson and concluded that he could not have maintained a relationship with one of his slaves, secret even from the closest members of his family. His granddaughter called it a "moral impossibility." Whether the "inner Jefferson" could have maintained such a relationship is not an element in this analysis; only his actual conduct and that of Sally Hemings is material to the issue.

Perhaps the lure of historical writing is to answer the unknown what and why of great events, but it is not the role of historians to decide questions which affect legal rights. That is a function of legal analysis and ultimately of the court system. If the children of Sally Hemings were fathered by Thomas Jefferson under the paternity laws of Virginia, the descendants of these children, are entitled to certain rights. If they are not descendants of Thomas Jefferson, they are not entitled to those rights.

Legal Principles of Proof

The issue of parentage arises in two main instances: (1) descent and distribution, i.e., whether the child shall inherit from the father, or the father from the child, in the case of a child dying and possessed of an estate, and (2) support, i.e., whether a man denies he is the father and refuses to support his child. Prior to 1952, in Virginia, there was no obligation on a father to support an illegitimate child, so dictum on the nature of proof to establish paternity addressing this issue is slight. There are cases in which the issue of proof of paternity arose because a father denied parentage of a child born during the term of marriage and presumptively legitimate. Although some treatise writers conclude that the earlier standard of proof was preponderance of the evidence, a 1988 case indicated that proof was beyond a reasonable doubt. At the present time, it is clear that the standard to establish parentage for support (*Va. Code* §20-49.4) and for descent and distribution (*Va. Code* § 64.1-5.2) both require "clear and convincing evidence."

BURDEN OF PROOF

One charging paternity has the burden of proving it. The burden of proof refers to the party that must present the evidence to meet the applicable standard of proof. Since paternity is claimed by the descendants of the illegitimate children of Sally Hemings, the burden rests on them to prove paternity. This burden would shift to Jefferson, if the evidence presented by the descendants establishes a prima facie case that Jefferson was the father of Sally Hemings's children, or any of them.

STANDARD OF PROOF

This is the test against which the evidence is measured. The standard in Virginia requires

the evidence to establish paternity to be “clear and convincing.” To understand the meaning of “clear and convincing” as a test of the evidence, a review of the standards in Virginia law is helpful. The three standards in the order of difficulty are:

By the greater weight of the evidence. This is sometimes called “by the preponderance of the evidence.” It is that evidence which the trier of fact finds most convincing. Testimony of one witness who is believed by the fact finder can be the greater weight of the evidence. *Smyth Brothers - McCleary - McClellan Co. v. Beresford*, 128 Va. 137, 104 SE 371 (1920); *Matthews v. LaPrade*, 144 Va. 795, 137 SE 788 (1925).

Clear and convincing evidence. This has been defined as that measure or degree of proof which will produce in the mind of the trier of fact a firm belief and conviction to the allegation sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal. *Walker Agcy Aetna Cas. Co. v. Lucan*, 215 Va. 535, 540, 211 S.E. 2d 88 (1975); (note that the word “unequivocal” does appear frequently in other cases). The requirement of proof by clear and convincing evidence is limited to cases equitable in nature, although many of the cases confuse the standard by the use of differing language (Friend, *The Law of Evidence in Virginia*, § 9.9, p. 298).

Beyond a reasonable doubt. This is the test used in a criminal proceeding meaning proof to a certainty. “It is not sufficient to create a suspicion or probability of guilt, but the evidence must establish guilt beyond a reasonable doubt. It must exclude every reasonable hypothesis except that of guilt. *Allen v. Commonwealth*, 211 Va. 805, 808, 180 S.E. 2nd 513 (1971). Before the issue of parentage was a statutory procedure, this was the standard of proof for both civil and criminal cases involving parentage.

ADMISSIBILITY

This is the test which determines whether the evidence may be considered i.e., it is information from a source which the law permits in a legal proceeding and is material and relevant to the issues presented, and because of the nature of the evidence, whether greater or lesser weight should be accorded to it.

Evidence to Establish Parentage

COMMON LAW PROOF

The common law is that body of principles and rules of action which derived their original authority from usages and customs and provided a basis for the judgments and decrees of the early courts.

Illegitimate Children. It is interesting to note that the Hemings children did not have a right to establish paternity under Virginia law during their life time. See, *Brown v. Brown*, 183 Va. 353, 355, 32 S.E. 2nd 79 (1944). The obligation for support of illegitimate children existed in Jefferson’s time, but not for slave women. The purpose of the statute was to allow the county to

seek reimbursement for any expense incurred to support illegitimate children. *Fall v. The Overseers of the Poor of Augusta County*, 3 Munf. (17 Va.) 495; *Acts*, 1972, § 18. Actions for support for illegitimate children were enacted in 1952. During their lifetime, the Hemings children could only have inherited from their mother, *Revised Code of 1919* c.96. Illegitimate children now have rights equivalent to children born within a marriage.

Non-Access. Prior to the statutory change that permitted illegitimate children to inherit, there were no cases to establish paternity for such children. There were instances where a father might deny paternity of a child born to the mother during a valid marriage. In a case where a child born during a marriage is claimed to be the child of another, the presumption of the law is that it was legitimate, *Cassady v. Martin*, 220 Va. 1093, 266 S.E. 2d 104 (1980). “The presumption of legitimacy is not rebutted by proof of circumstances, which only create doubt and suspicion. To repel the presumption of legitimacy in any case, the evidence must be clear and positivethroughout the investigation the presumption in favor of legitimacy is to have weight and influence, and the evidence against it ought to be strong, distinct, satisfactory and conclusion...non access of the husband to the wife must be proved beyond all reasonable doubt” *Scott v. Hillenberg* 85 VA 245, 7 S.E. 377(1888). This principle of “non-access” to deny legitimacy is an important concept. Without access to the mother, paternity is not possible. Modern scientific tests have largely eliminated access as an issue. Where tests do not reveal the identity of the father, the issue of cohabitation between the mother and father becomes important as an element to prove paternity. *T... v. T...*, 216 Va. 867, 868, 224 S.E. 2nd 148 (1976).

Standing. The Hemings descendants could not have made a claim to be heirs of Jefferson prior to the 14th Amendment to the U, S. Constitution. As slaves, they were not permitted to be witnesses in cases involving white people:

“... any Negro or Mulatto, bond or free, shall be a good witness in pleas of the Commonwealth for or against Negroes or Mulattos, bond or free, or in civil pleas where free Negroes or Mulattos shall alone be partners, and in no other cases whatsoever.” *Revised Code of 1819*, c 111§5.

STATUTORY PROVISIONS

There was no common law procedure available to the descendants of Sally Hemings to establish the paternity of Thomas Jefferson. If an action is now brought it must be instituted under the current statutory procedure. The rules of authenticity, materiality and relevance apply to all evidence. The hearsay rule may not be avoided unless recognized exceptions apply.

Establish Parentage. *Va. Code* § 20-49.1¹ provides parentage may be established by:

- a. Parentage of child and woman established by proof of birth.
- b. Parentage between a child and a man may be established by:
 - (i) Scientifically reliable genetic tests which affirm a 98% probability of paternity.
 - (ii) Written statement of father and mother under oath.

Proceeding to Determine Parentage. In the event parentage is not established under *Va Code* § 20-49.1, then proceedings may be filed under §20-49.2. Jefferson and Hemings are not

available for blood tests (§20-49.3), so evidence must be presented. *Va Code* §20-49.4 sets the standard of proof as “clear and convincing” evidence, and provides “all relevant evidence” is admissible, which may include, but not be limited to:

- a. Evidence of open cohabitation
- b. Medical or anthropological evidence
- c. Scientifically reliable genetic tests, including blood tests
- d. General course of conduct to use parent’s surname by the child
- e. Claiming child on income tax returns or other documents
- f. Written acknowledgment

Descent and Distribution. *Va. Code* § 64.1-5.1 provides rights to property. The purposes of determining rights in and to property pursuant to any “deed, will, trust or other instrument,” requires that a relationship of parent and child must be established to determine succession through or from a person. It is assumed that any claim of the Hemings descendants will fall under this section.

- a. Adopted child
- b. Child resulting from assisted conception
- c. . Child born out of wedlock is a child of the mother, and of the father if ;
 - (i) Parents participate in a marriage ceremony before or after birth, even if attempted
marriage was prohibited by law, deemed null and void or dissolved by a court,

or;

- (ii) Paternity is established by clear and convincing evidence, including scientifically reliable genetic testing, or
- (iii) No claim of succession based upon the relationship between a child born out of wedlock and a parent of such child, shall be recognized unless an affidavit by such child or someone acting for such child is filed within one year of the death of such parent in the circuit court of the jurisdiction where the property affected by the claimant is located and an action seeking adjudication of parenthood is filed in an appropriate circuit court within said time. One year period shall run notwithstanding the minority of the child. This limitation does not apply where the parent in question is established by a birth record, by admission of the parent before a court or in writing under oath, or by a previously concluded proceeding to determine parentage.

Burden of Proof for Child Born out of Wedlock. *Va. Code* § 64.1-5.2 provides that the burden to establish the father of a child born out of wedlock shall be clear and convincing, and evidence may include:

- a. Cohabitation openly with the mother during all of the 10 months immediately prior to the time the child was born.
- b. Gave physician consent to put his name on a birth record of a child.
- c. Allowed as a general course of conduct common use of his name by the child.
- d. Claimed the child as his child on any statement filed with a government agency.
- e. Admitted before a court having jurisdiction he was the father of the child.
- f. Voluntarily admitted paternity in writing under oath.
- g. The result of scientifically reliable genetic tests, including DNA tests.

h. Other medical, scientific or anthropological evidence based on test performed by experts.

SPECIAL EVIDENTIARY RULES

Hearsay. Hearsay is testimony offered by someone who does not have personal knowledge that the testimony is true. Such a witness cannot be cross-examined on hearsay because the witness only knows what he has been told. *Greenland Corp. V. Allied, etc. Co.*, 184 Va. 588, 601, 35 S.E. 2d 801 (1945). For that reason, hearsay is inadmissible unless it falls within certain exceptions.

Pedigree Rule. Testimony concerning pedigree is well recognized as an exception to the hearsay rule, provided that no other better evidence can be obtained, and that the declarant or source of the witness's information was a member of the family or related to the family, whose history the fact concerned, and was deceased or out of the state. *Gregory v. Baugh*, 4 Rand (25 Va.) 611 (1827); *Gregory v. Baugh*, 2 Leigh (29 Va.) 665; *Rawles v. Bazel*, 141 Va. 734, 755, 126 S.E. 690 (1925); *Smith v. Givens*, 223 Va. 455, 459, 290 S.E. 2d 844 (1982); *Union Central Life Ins. v. Pollard*, 94 Va. 146, 155, 26 S.E. 421 (1896).

Dead Man's Statute. Admissions and declarations of deceased person, where not supported by other proof, especially when not against proprietary interest, are regarded as of little probative value. The public policy underlying *Va. Code* § 8.01-397 provides that no judgment shall be rendered against an adverse party founded on uncorroborated testimony. *Cooper v. Cooper*, 249 Va. 511, 515, 457 S.E. 2d 88 (1995).

Ancient Documents. This rule merely dispenses with the authenticity of a document. The question of relevancy and admissibility as evidence is not affected by the fact the paper offered is an "ancient document." It is no more admissible on that ground than if it were a newly executed document. There is no hearsay exception for ancient documents. *Robinson v. Peterson*, 200 Va. 186, 90, 104 S.E. 2d 788 (1958); 7B Michie's Jurisprudence. *Evidence*, § 11; See also, Federal Rules of Evidence 803(16) and 901(b)(8).

Oral History Syndrome. There is no provision in Virginia evidence law for admission of "oral history." Oral history is inherently hearsay and therefore inadmissible. It compounds the inherent objection to the testimony of dead men, by offering testimony through a living witness who has received testimony passed down over several generations. Courts do not lend willing ears to what dead men have said. *Sutton v. Sutton*, 194 Va. 179, 188, 72 S.E. 2d 275 (1952). Even under the Pedigree Rule exception to hearsay, it would not relieve one presenting such event or statement as historical truth from showing the time, place and circumstances of the initial witness's statement. Contrary to the proponents of oral histories, the passage through generations does not strengthen the validity of the event or statement, but offers greater opportunities for its distortion.

Evaluation of the Evidence

Based on the rules of evidence which would control a suit to establish paternity under

Virginia Law, the evidence advanced in support of Jefferson's paternity can now be considered. This trial analysis evaluates the available information on the issue whether Thomas Jefferson fathered any children with his slave Sally Hemings. It examines the admissibility of the evidence offered from witnesses, documents and expert witnesses.

NATURE OF THE EVIDENCE.

Witnesses. This is the testimony offered by a person in court and offered for the truth of the statement. The test of truth is cross examination, which is not possible in a case where the parties and those having personal knowledge are dead. Evidence in such cases will generally be restricted to documents, but it is instructive to examine what the participants reportedly said, or whether they remained silent on the issue. Merely because a statement is in a document does not make it evidence. The sources of statements attributed to the witnesses must still be examined for admissibility and weight.

Documentary Evidence. These are documents prepared at the time by someone having personal knowledge of the truth of the statements in the document. Documents which contain information not within the knowledge of the writer are hearsay and inadmissible. Subject to certain exceptions for records, if the document is offered for the truth of its contents, the writer of the document would normally be subject to cross examination. Where cross examination is not possible, a document is generally inadmissible. Certain documents may avoid the hearsay objection and be admitted under the Pedigree Rule.

Experts. An expert may be defined briefly as one who is qualified to draw an opinion which the trier of fact, i.e., the jury, or the judge sitting without a jury, would not be qualified to draw because of the nature of the subject discussed, e.g. DNA testing. The expert is subject to cross examination and the evidence must be material and relevant.

WITNESSES

Sally Hemings. Sally was born in 1773 and she traveled to Paris at about age 14, as a companion for Jefferson's youngest daughter, Mary (Polly). She returned to Monticello with Jefferson when she was about sixteen and she may have given birth shortly after the return to a son Tom, who later took the name Tom Woodson. She was the daughter of Betty Hemings, who was the slave of John Wayles. She was left with her mother under the will of John Wayles to his daughter, Martha Jefferson. It has been noted by Jefferson biographers that John Wayles may have been Sally's father, based on an article in the *Washington Federalist* of June 19, 1805, which stated she was the "natural daughter of Mr. Wales (sic) who was the father... of Martha Jefferson,"ⁱⁱⁱ and the 1873 interview with Madison Hemings.ⁱⁱⁱ If correct, that would make her the half sister to Martha Wayles Skelton Jefferson, the wife of Thomas Jefferson. Sally had six children, Harriet 1795 (d. 1797), Beverley 1798, a daughter in 1799 (d. in 1800), Harriet in 1801, Madison in 1805, and Eston in 1808. Except for Tom, all of the births are recorded, one in a letter and the rest in Jefferson's Farm Book.^{iv} There is some dispute, however, whether Hemings gave birth in 1799.

Area of Testimony. Sally Hemings never uttered a public or private statement of an affair

with Jefferson which produced all or some of her six children over a period of some thirteen years. She lived at Monticello over thirty-five years, which was occupied by Jefferson's daughters and grandchildren, and visited by his brother, sister, nephews and other assorted relatives, not to mention countless visitors from the outside.^v No documents exist which record a statement made during her lifetime that Thomas Jefferson was the father of any of her children.

Admissibility and Weight. The 1873 interview of Madison Hemings does not state the source of his information, and an assumption that Sally Hemings told her son would not be admissible as clearly within the hearsay rule. If admissible, under the Pedigree Rule, it would be entitled to little weight because it is not corroborated by any other statements made by Sally Hemings or any of her children or relatives. There is no evidence she ever supported the claim of Jefferson paternity.

James Thomson Callender. Callender came from Scotland in 1792, experienced in scandal writing. He was in Philadelphia for about three years where he wrote anti-federalist articles for the Philadelphia *Gazette* and *Aurora*. He became the editor of the *Richmond Recorder* and wrote a series of articles in September - December, 1802, which claimed that Jefferson was the father of several children by his slave Sally Hemings and identified one a boy, Tom, about 12 years old.⁶

Area of Testimony. A number of excerpts from Callender's articles in the *Richmond Recorder* were identified in the Committee Report of the Thomas Jefferson Memorial Foundation. These summarize the Callender allegations of a Jefferson paternity. The article in which the quote appears is reprinted in full as an appendix, with the entire quoted portion underlined.

a. *Richmond Recorder*, article of September 1, 1802:⁷

“It is well known that the man, whom it delighteth the people to honor, keeps, and for many years past has kept, as his concubine, one of his own slaves. Her name is SALLY. The name of her eldest son is TOM.”

“ By this wench Sally, our President has had several children.”

b. *Richmond Recorder*, article of September 22, 1802:⁸

“Sally's business makes a prodigious noise here. You may save yourself the trouble of a moment's doubt in believing the story. But what will your pious countrymen upon the Connecticut say to such African amours?”

c. *Richmond Recorder*, article of November 10, 1802:⁹

“It is said, but we do not give it as gospel, that one of her daughters is a house servant to a person in this city. This wench must have been by some other father than the President.”

d.. *Richmond Recorder*, article of December 8, 1802:¹⁰

“Other information assures us, that Mr. Jefferson’s Sally and their children are real persons that the woman herself has a room to herself at Monticello... Her son, whom Callender calls President Tom, we also are assured, bears a strong likeness to Mr. Jefferson.”

Admissibility and Weight. Disgruntled because Jefferson would not appoint him to a government position, Callender’s bias greatly affected his credibility. Aside from that, his writings would not be admissible under the common hearsay rule. He makes no pretense of having first hand information, but clearly relied on “our correspondent,” “other information,” “it is said,” “we are assured.” Callender may have picked up this rumor in an earlier newspaper article,¹¹ but he is the principal source of the public rumors about Jefferson and Hemings, and his writings cannot constitute any evidence for paternity of any of the Hemings children since he had no personal knowledge. The rumor reported by Callender that Jefferson was the father of the boy, Tom, has been shown not to be true through the recent DNA tests. The Tom in the Callender article supposedly is the common ancestor of the Woodson family, who claim to be descendants of Thomas Jefferson. According to family tradition, Tom was conceived in Paris and born after Hemings returned to Monticello.

Beverley Hemings. He was the oldest child who survived and Sally Hemings' first son, born in 1798. Jefferson recorded in his Farm Book that Beverley ran away in 1822. His racial mix is not known, but he is assumed to have been legally white.¹² It is likely he married a white woman and after that passed for white. His descendants have not been located.

Area of Testimony. There is no known statement that he ever claimed to be the son of Thomas Jefferson.

Admissibility and Weight. There is no evidence he ever supported the claim of Jefferson paternity.

Harriet Hemings. She was the only surviving daughter of Sally Hemings, born in 1802. She left Monticello in 1822. Jefferson recorded in his Farm Book that Harriet ran away. Jefferson’s overseer, Edmund Bacon, denied that Jefferson was her father. He apparently knew that Jefferson gave her funds to assist her in leaving.¹³ She married into a white family and after that passed for white. Her descendants have not been located.

Area of Testimony. There is no known statement that she ever claimed Jefferson as her father.

Admissibility and Weight. There is no evidence that she ever supported the claim of Jefferson paternity.

Eston Hemings. The youngest child of Sally Hemings was born in 1808 and was freed by Jefferson’s will in 1826. He is assumed to have been legally white, and married a free woman of color, who probably was also legally white. They lived for a time as blacks in Ohio, then moved to Wisconsin and passed into white society.

Area of Testimony. The oral tradition in the Eston Hemings family was that Eston was descended from Thomas Jefferson's uncle or a nephew. There is no evidence he ever claimed paternity of Jefferson, but his descendants have raised the claim since the DNA tests. A reference to his resemblance to Jefferson was mentioned in a newspaper article in the *Daily Scioto Gazette*, August 1, 1902.¹⁴

Admissibility and Weight. Eston Hemings had the Jefferson haplotype, but rumors of his resemblance to Jefferson are hearsay and inadmissible. There is no evidence that he ever supported the claim of a Jefferson paternity.

James Hemings. Brother of Sally Hemings, he accompanied Jefferson to Paris in 1783 and returned with him in 1790. He would have been witness to Sally's pregnancy which occurred in Paris and which may have resulted in the birth of the boy Tom upon their return to Monticello. He was freed by Jefferson in 1796.

Area of Testimony. James never claimed that Jefferson was the father, either of Tom or subsequent children born to Sally before James' death, i.e., a daughter who did not survive in 1795, Beverley in 1798, a possible daughter who did not survive in 1799, and Harriet in 1801.

Admissibility and Weight. There is no evidence that he ever supported the claim of Jefferson paternity.

Tom Woodson. According to the oral history of the Woodson family, he was the child born to Sally Hemings shortly after her return from Paris. DNA evidence has shown that he was not the son of Thomas Jefferson. There are no records of his birth at Monticello. It is not known why he believed he was the son of Thomas Jefferson.¹⁵

Area of Testimony. The DNA evidence proves that he was not the son of Thomas Jefferson.

Admissibility and Weight. It is not material to the issue of Jefferson paternity whether Tom Woodson was the son of Sally Hemings. The oral history of the Woodson family would not be admissible to contradict the DNA evidence.

DOCUMENTARY EVIDENCE

Letters of Thomas Jefferson. A series of articles authored by James T. Callender appeared in the *Richmond Recorder* in 1802 which charged that Jefferson had a slave mistress who produced five children.¹⁶ The articles were repeated by other papers sympathetic to Federalist policies. There is no record of Jefferson ever mentioning Sally Hemings by name other than in his farm accounts. His conviction to resist response to personal attacks was well known. He did, however, issue a number of denials which would be inclusive of these allegations. The authenticity of these letters is not disputed. *Va. Code* § 8.01-279.

a. Letter from Jefferson to John Tyler, June 28, 1804. Tyler was a judge of the General Court at this time and later governor of Virginia. He had been a friend of Jefferson since they

were students at William & Mary.¹⁷

“Amidst the direct falsehoods, the misrepresentations of truth, the calumnies and the insults resorted to by a faction to mislead the public mind, and to overwhelm those entrusted with its interests, our support is to be found in the approving voice of our conscience and country, in the testimony of our fellow citizens, that their confidence if not shaken by these artifices. When to the plaudits of the honest multitude, the sober approbation of the sage in his closet is added, it becomes a gratification of an higher order. It is the sanction of wisdom superadded to the voice of affection. The terms, therefore, in which you are so good as to express your satisfaction with the course of the present administration cannot but give me great pleasure.”

Admissibility and Weight. Written to a close friend about two years after the Callender allegations, this is one of the first expressions by Jefferson that truth will overcome the “direct falsehoods” directed to him. This is a statement which encompasses the Callender allegations and would be admissible.

b. Letter from Jefferson to James Sullivan, May 21, 1805. Sullivan later became Governor of Massachusetts.¹⁸

“If we suffer ourselves to be frightened from our post by mere lying, surely the enemy will use that weapon; for what one so cheap to those whose system of politics morality makes no part? The patriot, like the Christian, must learn that to bear revilings & persecutions is a part of his duty; and in proportion as the trial is severe, firmness under it becomes more requisite and praiseworthy. It requires, indeed, self command.”

Admissibility and Weight. The personal attacks against Jefferson, revived in 1804, were apparently sparked by his election, prompting a number of statements from Jefferson that revealed the pain he felt from the charges. Since the 1802 charges by Callender continued to be a part the of the Federalist assault on Jefferson’s character this letter would encompass Callender’s charges, and would be admissible.

c. Cover letter from Jefferson to Secretary of the Navy, Robert Smith, July 1, 1805.¹⁹

“You will perceive that I plead guilty to one of their charges, that when young and single I offered love to a handsome lady. I acknowledge its incorrectness. it is the only one founded in truth among all their allegations against me.”

Admissibility and Weight. This cover letter apparently was attached to a more detailed private letter of denial which has not survived. It is almost a direct statement to the Callender claims by the principal party to the case who denies the allegations in issue and would be admissible.

d. Letter from Jefferson to William Duane, March 22, 1806. Duane was the publisher of the Philadelphia newspaper, *Aurora*.²⁰

“Instead of listening first, then doubting, _ lastly believing anile tales handed round without an atom of evidence, if my friends will address themselves to me directly, as you have done,

they shall be informed with frankness and thankfulness. There is not a truth on earth which I fear or would disguise. But secret slanders cannot be disarmed, because they are secret.”

Admissibility and Weight. This letter was written several years after the Callender articles, by the party charged. It must be taken as a denial of the accusations in the articles as Jefferson never admitted or acknowledged their validity, and is here saying he would not disguise the truth.

e. Letter from Jefferson to George Logan, June 20, 1816. Logan had released some of Jefferson’s correspondence to him, which caused a new flurry of attacks on Jefferson:²¹

“As to federal slanders, I never wished them to be answered, but by the tenor of my life, half a century of which has been on a theater at which the public have been spectators and competent judges of its merit. Their approbation has taught a lesson, useful to the world, that the man who fears no truths has nothing to fear from lies. I should have fancied myself half guilty had I condescended to put pen to paper in refutation of their falsehoods, or drawn to them respect by any notice from myself.”

Admissibility and Weight Written about the midpoint of his retirement from public life, it was prompted by political criticism, but sounds again the consistent theme of Jefferson’s **“repugnance to take any part in public discussions”** to respond to the charges made against him.

Interview of Madison Hemings. A son of Sally Hemings, born in 1805, he was freed by Jefferson’s will in 1826. His racial mix is not known, but he married a black woman and lived as a black.

Area of Testimony. He claimed in an interview in 1873 that Thomas Jefferson was his father. There is no record of his exact words, only as they were represented in a newspaper article in the *Pike County (Ohio) Republican* edition of March 13, 1873, by the reporter who interviewed him at that time. He stated that all the children of his mother had the same father. He is also the source of the “treaty legend” that Jefferson made a treaty with Sally to free her children.²²

“Soon after their arrival [from Paris], she gave birth to a child, of whom Thomas Jefferson was the father. It lived but a short time. She gave birth to four others, and Jefferson was the father of all of them. Their names were Beverley, Harriet, Madison (myself), and Eston - three sons and one daughter. We all became free agreeably to the treaty entered into by our parents before we were born.”

Admissibility and Weight. This statement has been euphemistically termed “memoirs” or “reminiscences.” They are not Madison’s words, but the result of an interview with Samuel Wetmore which became a newspaper article. Wetmore was a printer or newspaperman by trade. He became a census taker in the 1870 Census in Ohio, and in 1873 founded the newspaper, *The Pike County Republican* in southern Ohio. He published a series of remembrances of former slaves who were living in the area. The series was entitled, “Life Among the Lowly” (a phrase created by Harriet Beecher Stowe as the subtitle to her book, *Uncle Tom’s Cabin*). The article

does not pretend to be a record of Hemings' exact words and contains no quotes. There is no evidence that Madison ever read the article and adopted it as his "memoirs." He acknowledged that his information on the paternity issue was told to him, since he was born in 1805, as the sixth child, and would have no personal knowledge of the events leading to the births of the first five, and would only have been three years old when the youngest child, Eston, was born in 1808. This is the first mention of a "treaty" between Sally Hemings and Jefferson.²³ Madison Hemings cannot attest to the truth of his statement, so this is double hearsay, and would not be admissible. There is no basis on which to assert that Sally Hemings is the source of his information. It is not admissible under the Pedigree Rule, because it cannot be established that the statement in the article was adopted by him or by any other family members. The Pedigree Rule exception to hearsay does not apply if better evidence is available, so DNA tests would have to be conducted on the remains of Madison's son, William Hemings, as a negative test rules out a Jefferson paternity for the Madison Hemings descendants.²⁴

Journal of John Hartwell Cocke. He was acquainted with Jefferson and implied in his journal in January 1853 that Jefferson had illegitimate slave children. He wrote in his journal again in April 1859 that bachelors kept slave women as substitutes for wives and cited Jefferson as an example.²⁵

a. January 26, 1853:

"The Reverend Lemuel Hatch of No. Carolina informed me, that two wealthy friends of his of the old No State has lately each sent away from their premises a slave woman with quite a large number of children the illegitimate [spawn?] of the Institution. Begotten in social contract with their lawful wives and white children...I can enumerate a score of such cases in our beloved Ant. Dominion that have come my way thro' life, without seeking for them--were they enumerated with the statistics of the state--they would be found by the hundreds--nor is it to be wondered at, when Mr. Jeffersons notorious example is considered."

Admissibility and Weight. The "notorious example" is open to interpretation. Did it mean Jefferson had slave children, or permitted miscegenation at Monticello? It also seems clear that his information on his first example of illegitimate slave children is hearsay ("**Hatch of No. Carolina informed.**"). His reference to the "notorious example" also seems to be the product of information or rumor and not direct knowledge ("**I can innumerate a score of such cases in our beloved Ant. Dominion that have come in my way thro' life..**"). He cites no incident of Jefferson's cohabitation with Sally Hemings. His journal in the first person is probably authentic under the ancient document rule. It would have to sustain an objection as to hearsay to be admissible.

b. April 23, 1859:

"...all Bachelors - or large majority - at least - keep as a substitute for a wife - some individual of their our own slaves. In Virginia, this damnable practice prevails as much as anywhere - and probably more - as Mr. Jefferson's example can be { } for its defense."

Admissibility and Weight. Cocke was a member of the Board of Visitors at the

University of Virginia and assisted Jefferson in the lottery designed to sell some of Jefferson's lands to pay off his debts. It is not known how close their relationship was. These statements are from Cocke's private diary. Cocke does not claim to have observed "Jefferson's example," and it is unclear whether he was assuming that allegations made by others half a century earlier were true. The diary is admissible as an ancient document but the entries would be objectionable on the grounds of hearsay.

Letter from Ellen Coolidge to her husband Joseph Coolidge, October 24, 1858.

Ellen Coolidge was the daughter of Martha Jefferson Randolph and granddaughter of Thomas Jefferson, born in 1796, and visited and lived at Monticello.²⁶

"He lived, whenever he was at Monticello, and entirely for the last seventeen years of his life, in the midst of these young people, surrounded by them, his intercourse with them of the freest and most affectionate kind. How comes it that his immoralities were never suspected by his own family - that his daughter and her children rejected with horror and contempt the charges brought against him. That my brother, then a young man certain to know all that was going on behind the scenes, positively declares his indignant belief in the imputations and solemnly affirms that he never saw or heard the smallest thing which could lead him to suspect that his grandfather's life was other than perfectly pure. His apartment had no private entrance not perfectly accessible and visible to all the household. No female domestic ever entered his chambers except at hours when he was known not to be there and none could have entered with out being exposed to the public gaze."

"One woman known to Mr. J. Q. Adams and others as "dusky Sally" was pretty notoriously the mistress of a married man, a near relation of Mr. Jefferson's, and there can be small question that her children were his. They were all fair and all set free at my grandfather's death, or had been suffered to have absent themselves permanently before he died."

Admissibility and Weight. Her comments on the layout of Monticello would be admissible. Her references to her brother's "indignant belief" and his confiding in her the comments of Peter Carr would be hearsay. It is unclear whether she had personal knowledge that Sally Hemings was "**notoriously the mistress of a married man, a near relation of Mr. Jefferson's...**" and that comment may be subject to a claim of hearsay. Cohabitation is a crucial element in this claim and her personal observation that no "domestic ever entered" Jefferson's chambers would be admissible.

Letter from Henry S. Randall to James Parton, June 1, 1868. Randall had written a *Life of Jefferson* in 1858, but did not include this conversation with Thomas Jefferson Randolph. About ten years later, Randall included the conversation in a letter to James Parton, who used some of the information in his *The Life of Thomas Jefferson* in 1874.²⁷

"Col. Randolph (grandson of Mr. Jefferson) informed me at Monticello that there was not the shadow of suspicion that Mr. Jefferson, in this or any other instance had any such intimacy with his female slaves. At the period when these children were born, Col. Randolph, had charge of Monticello. He gave all the general directions, gave out all their clothes to the slaves. He said Sally Hemings (sic) was treated and dressed just like the rest. He said Mr. Jefferson never locked the door of his room by day: and that he, Col.

Randolph, slept within sound of his breathing at night. He said he had never seen a motion, or a look, or a circumstance which led him to suspect for an instant that there was a particle more of familiarity between Mr. Jefferson and Sally Hemings than between him and the most repulsive servant in the establishment, and that no person living at Monticello ever dreamed of such a thing.”

Admissibility and Weight. The excerpt quoted from the Randall letter was written about ten years after the conversation between Randall and Randolph. The letter is hearsay and it would not be admissible. The passage in the letter that Sally Hemings “**had children which resembled Mr. Jefferson so closely that it was plain that they had his blood in their veins...**” is often quoted out of context as evidence of Jefferson’s possible paternity. The clear position of Randolph, is that “**there was not the shadow of suspicion...**” of a Jefferson-slave relationship.

Interview of Edmund Bacon. Bacon was an overseer at Monticello beginning about 1806 before Sally Hemings last child was born.²⁸

“He freed one girl some years before he died, and there was a great deal of talk about it. She was nearly as white as anybody and very beautiful. People said he freed her because she was his own daughter. She was not his daughter; she was _____ ‘s daughter. I know that. I have seen him come out of her mother’s room many a morning when I went up to Monticello very early.”

Admissibility and Weight. Bacon gave this interview in 1862. His chronology appears faulty as Harriet (the girl referred to) was born about 5 years before Bacon came to Monticello. It is possible that Bacon worked at Monticello before he became overseer in 1806, and would have known that Sally Hemings had a lover. The original manuscript has been lost and there are objections to authenticity unless the copy now extant can be proved to be a true copy of the original. The interview would be hearsay unless Bacon read it and adopted it as his words.

Interview of Israel Jefferson. Israel Jefferson was born at Monticello.²⁹

“I also know that his servant, Sally Hemmings, (mother to my old friend and former companion at Monticello, Madison Hemmings), was employed as a chamber-maid, and that Mr. Jefferson was on the most intimate terms; that, in fact, she was his concubine. This I know from my intimacy with both parties, and when Madison Hemmings declares he is a natural son of Thomas Jefferson, the author of the Declaration of Independence, and that his brothers Beverley and Eston and sister Harriet are of the same parentage, I can as conscientiously confirm his statement as any other fact which I believe from circumstances but do not positively know.”

Admissibility and Weight. This interview was published in the *Pike County (Ohio) Republican*, December 25, 1873, as part of the Wetmore series. Israel Jefferson was seventy six years old and relates incidents that took place before he was eight years old (he was eight years old at the time of Eston Hemings birth). He could not have known that Jefferson was on the “intimate terms” with Sally Hemings from his own “intimacy with both parties...” There are no quotes or any device to indicate these are Israel’s words. There is no proof he ever read this article or adopted the words as his own. This interview is hearsay and inadmissible.

Letter of Thomas Jefferson Randolph to the Pike County (Ohio) Republican, c. 1874.

Thomas Jefferson Randolph was the grandson of Thomas Jefferson and lived many years at Monticello. He was manager at Monticello in the last ten years of Jefferson's life and one of the principal Executors of his will.³⁰

“He is thus made to recollect distinctly events occurring a month before his birth”

“Israel was never employed in any post of trust or confidence about the house at Monticello.”

“To my own knowledge and that of others 60 years ago the paternity of these parties were admitted by others.”

Admissibility and Weight. This letter was written by Randolph as a reply to the statements attributed to Israel Jefferson in the Pike County Republican. He points out that Israel remembered the departure of Jefferson for Washington to assume the duties of President in 1800, before Israel was born. His comments demonstrate that Israel Jefferson's memory was either faulty or he was dependent on information told him by others. The importance of the letter is the denial of Jefferson's paternity. Randolph's letter would be admissible.

Jefferson's Farm Records.

Area of Testimony. Jefferson kept accounts and records in a farm book, account book and garden book. These show the births and deaths of both his family and his slave family, as well as the times he left and returned to Monticello.

Admissibility and Weight These books have been edited and qualify both as ancient documents and records kept in the regular course of business. They are generally accepted as authentic records of Jefferson and are admissible.

EXPERT TESTIMONY

The DNA tests. DNA tests on five male line descendants of two sons of Thomas Jefferson's paternal uncle, Field Jefferson, and five male line descendants of two sons of Thomas Woodson, and one male line descendant of Eston Hemings, and three male line descendants of three sons of John Carr (grandfather of Samuel and Peter Carr) were conducted by Eugene A. Foster as reported in the November 5, 1998, issue of *Nature*. There was a subsequent test on another Woodson male line descendant.

Area of Testimony. The expert who performed the DNA tests would be allowed to testify to the results. It cannot be determined whether the methodology used in conducting the tests would survive a challenge. The tests were conducted by Foster without any independent controls. There is no explanation of how the samples were taken to England for testing, and it does not appear that the results were subject to any peer review. It is not known what information was provided to the experts questioned by the Research Committee whose responses were recorded in the Committee Report.

- a. The tests do not support the paternity of Thomas Jefferson for the claimant Thomas Woodson.
- b. There are no tests to establish a DNA match for the claimants Beverley, Harriet, or Madison.
- c. There is a match for the claimant Eston Hemings. His Y chromosome haplotype is identical to the male line descendants of Field Jefferson.
- d.. There is no match between any of the claimants and Samuel or Peter Carr.

Admissibility and Weight. The DNA tests would have to pass a rigorous cross examination before they could be admitted. If admitted, the weight to be given to them would be accorded by the trier of fact. Jefferson's Farm Book may establish his presence at Monticello during each of Sally Hemings's conceptions, but it does not establish Sally's presence. There is no evidence of access to her, so the DNA can establish nothing more than the possibility of Thomas Jefferson's paternity of Eston Hemings.

William and Mary Quarterly, January 2000: The Coincidence of Sally Hemings Conceptions. Jefferson's Farm Book provides the dates that he was at Monticello, and it appears he was present in the nine month period prior to each of the births of Sally Hemings' children.

Area of Testimony. This study by Frazier D. Neiman of the statistical relationship between Thomas Jefferson's visits to Monticello and Sally Hemings's conceptions was to establish a probability that only Thomas Jefferson could be the father.

Admissibility and Weight. The problem with the study is acknowledged by Neiman. The study no more establishes the probability of Jefferson being the father of Sally Hemings' children, than it does of any other children born at Monticello within the nine month period after his visits and would not be admissible. The evidence of Jefferson's presence at Monticello is circumstantial evidence of paternity and admissible, but it must be supported by evidence of cohabitation between Jefferson and Sally Hemings. Records must also establish that Sally Hemings was present at Monticello during her periods of conception for each of the six children. There are too many factors that must be assumed or are unknown to support expert testimony on the statistical "odds" of paternity.

Summary of the Evidence of Jefferson's Paternity of the Hemings Children.

There is no burden on Jefferson to disprove the claimed paternity. The burden of proof is on those who claim paternity. The standard is clear and convincing evidence.

The "proximity argument" must be examined. The records kept by Thomas Jefferson may demonstrate that he was present at Monticello at the times that Sally Hemings conceived. There also must be a methodology to establish that Sally Hemings was there at the same time.

Cohabitation must be proved. There is no contemporaneous statement by the daughters and grandchildren who occupied Monticello, by Jefferson's brother, sister, nephews or other assorted relatives who visited Monticello, or by the numerous visitors, that contact of an intimate

or personal nature occurred between Jefferson and Hemings, an event that could not have escaped their scrutiny.³¹ Ellen Coolidge, a granddaughter of Jefferson who visited and lived at Monticello denies any such conduct. Although Sally Hemings lived at Monticello for 36 years, there is not a scintilla of proof of any intimate conduct between her and Jefferson, or, any demonstrations of affection or commerce of any kind. Presence is not equivalent to cohabitation. Inferences that Jefferson had intercourse merely because he was the master and Hemings was a slave may not be drawn without some proof of a physical relationship.

The claim must originate from the mother. The Madison Hemings interview does not claim his mother told him Jefferson was the father of her children. Even if he had been told by someone of these events which occurred before his birth, these claims in the newspaper article would be hearsay. There is no such claim by his sister Harriet or his two brothers, Beverley or Eston. There is no other source to support Madison that Sally Hemings made such a claim. If Sally had been Jefferson's "concubine," and had borne him six children over a period of thirteen years, her status at Monticello would have been unique and known. She lived for eight years as a free woman. No one in the entire thirty-six year span of her time at Monticello reports a claim by her that Jefferson was the father of any of her children.

Sally Hemings' family did not claim Jefferson paternity. Two brothers of Sally Hemings, James and Robert, were freed by Jefferson in the 1790's³². James was with Jefferson when Sally arrived in Paris at the age of fourteen and would have observed their relationship. He returned from Paris with Jefferson and Sally at the time she would have been pregnant with Tom Woodson. He was freed by Jefferson in 1796 and lived until 1801, and during that time never accused Jefferson of fathering any of the four children of Sally Hemings, who were born prior to his own death. Another brother, John, was freed by Jefferson's will, as were two of Betty Hemings's grandsons, Joe Fossett and Burwell. There is no record that any of them claimed Jefferson was the father of any of the children of Sally Hemings.

Oral history is not evidence. The Woodson family has maintained an oral history that their ancestor was the Tom born to Sally Hemings after her return from Paris. Recent DNA evidence indicates that their ancestor was not the son of Thomas Jefferson. The fallacy in the Woodson oral history demonstrates the reason that oral history is not evidence and not admissible. The Madison Hemings family claim an "oral history" as proof that Jefferson was father to Sally's children. There is no original source for their belief other than the Callender articles and the Madison Hemings interview. The Eston Hemings family had a tradition they were descended from a Jefferson relative, which was confirmed by the DNA tests. Now, to claim descent from Thomas Jefferson, they must revise their oral history.

The "single father postulate." is a product of the imagination. The claim that Sally's children had a single father based on the "closeness of the family" as established by her children naming their children after their siblings, is a postulate unsupported by any empirical studies. It is an opinion which could only be advanced through expert testimony, which had been reached by the expert through the evaluation of data and information. No study or expert has been identified that supports such a view.

No factual basis can be shown for the "resemblance claim." The claim that the

children of Sally Hemings bore a likeness to Jefferson started with the Callender article of December 8, 1802, referring to Tom Woodson, who, if he did exist, had no Jefferson blood. Later, a letter from Henry Randall to the Jefferson biographer James Parton alleged that his source was Jefferson's grandson, Thomas Jefferson Randolph. This letter was written in 1868, ten years after the conversation, in which Randall has Randolph say "**she had children which resembled Mr. Jefferson,**" and that a dinner guest was "**startled**" at the resemblance of a servant. The children who resembled Jefferson are not identified, nor is the one who "**startled**" the guest, but the point of Randolph's observation is to deny Jefferson is the father. Moreover, the letter is hearsay and inadmissible. Anecdotal stories that Eston bore a "likeness" to a statue of Jefferson are not evidence, but rather stories that have become part of local lore. A slave who looked like Jefferson would have been the most startling circumstance at Monticello, but not a single record survives contemporary with the years the Hemingses lived at Monticello that asserted any of them had a likeness to Jefferson.

The age difference and strange birth pattern. Jefferson's wife died in 1782. There is no evidence that his affair with Maria Cosway in France was sexual. After his return to the U. S. in 1789 there is no evidence of any sexual liaisons. If the claimed relationship of Hemings and Jefferson started in Paris, it was strangely barren for five years, although clearly Hemings was fecund, producing a child in 1795 and five more over the next 13 years, an average of one every two years. Jefferson had six children by his wife in a ten year marriage. This relationship would have started when Jefferson was 52, his age at the first birth, and continued until he was 65, his age at the last. It is likely expert medical testimony would characterize sexual activity at this age as statistically low. The children were born while Jefferson was one of the best known figures in the country, vice-president from 1796 to 1800 and as president from 1801 to 1809.³³

No source exists for the "treaty legend." Although Sally could remain free in France, she agreed to return from Paris upon Jefferson's promise that he would free her yet unknown children when they reached 21 years. Jefferson did grant freedom in his will³⁴ to Madison and Eston, Sally Hemings's two youngest sons, when they reached 21. Jefferson had previously recorded in his Farm Book that the two other children, Beverley and Harriet, had "run away." Ellen Coolidge thought they were allowed to leave because they were able to pass into white society. The claim that Jefferson assisted Harriet to leave comes from the Edmund Bacon interview. The origin of the "treaty legend" between Jefferson and Sally Hemings to free her children is the 1873 interview of Madison Hemings which is hearsay and inadmissible. The favored treatment of the Hemings family appears more to relate to Betty Hemings rather than her daughter Sally Hemings, as Jefferson let two of Betty's sons go in the 90's, and freed another, plus four of her grandsons (two were Sally's children) in his will.³⁵ The status of the Hemings as household servants and artisans - rather than field hands - began when Sally was a small child.

Historical Evaluation of Jefferson Paternity

Influenced by the 1974 Brodie book (Fawn Brodie, *Thomas Jefferson: An Intimate History*), there have been three significant evaluations of the historical evidence which have concluded that Jefferson's paternity of the Hemings' children was likely.³⁶

It is not the purpose of this analysis to argue the issue on the basis of the methodology

used in those evaluations. These are some brief observations on their conclusions tested against a legal evidentiary standard.

Thomas Jefferson and Sally Hemings: An American Controversy. Annette Gordon-Reed, 1997. This book by a lawyer recognized the legal insufficiency of the evidence, and used an historical approach in the form of a lawyer's brief. This permitted her to compile all the evidence, whether or not legally admissible, in an argument that Jefferson's paternity, while not proved, was plausible. She acknowledges in the updated printing that "the DNA test does not prove that the descendant of Eston Hemings was a direct descendant of Thomas Jefferson."

Her thesis of paternity relies heavily on the Madison Hemings "memoirs" which she mistakenly terms "direct evidence," and on the Callender articles, which she believes have enough correct details to show that Callender was picking up on believable gossip.

She accepts the validity of the "resemblance claim," and never questions why such a dramatic circumstance is not mentioned for forty-five years, and only then by Jefferson's grandson, Thomas Jefferson Randolph, who supposedly has related in confidence this information, which would be obvious to the hundreds of persons who passed through Monticello. She is no more critical of the number of times that the canard passed from mouth to mouth that Eston Hemings resembled Jefferson before it found its way some seventy years later into the *Daily Scioto Gazette* in 1902.

Nature Journal: "Jefferson Fathered Slave's Last Child," November 5, 1998. This issue featured the DNA results that showed Thomas Jefferson had the same haplotype as descendants of Eston Hemings.³⁷ The magazine overreached with its headline which relied on what it termed "three pieces of evidence," i.e., the "resemblance claim," the Madison Hemings "memoirs," and the "proximity argument."

A revisionist analysis in the same issue by Eric Lander and Joseph Ellis was triggered by the DNA tests. Ellis, in his book *American Sphinx*, denied the Jefferson paternity and acknowledged that so did most of the "Jefferson specialists." Why these three items of "evidence" suddenly became persuasive of paternity after the DNA test results is unclear. The analysis does not pretend, as Gordon-Reed did, to be a "legal" review, and the methodology and standard of proof followed by Lander and Ellis is not explained.

*Thomas Jefferson Memorial Foundation Report of the Research Committee on Thomas Jefferson and Sally Hemings.*³⁸

Methodology. It is clear from the Committee Report that the Monticello staff did not have a test which it applied evenly to all the available information. In some cases it argued away or failed to acknowledge Jefferson's denials in various letters, while at the same time placing extraordinary reliance on a reporter's version of what Madison Hemings said he was told about his paternity. The lack of controls or methodology to weigh the information is contrary to the statement following the Committee Report that his appointed staff committee evaluated the scientific results and other relative evidence "in a systematic and comprehensive way . . ." No such system for evaluation of the evidence is explained, nor does the Committee appear to

follow a deductive approach to its result but, in fact, manipulates the evidentiary sources.³⁹

New Conclusion. The Committee Report appears to follow the same thematic formula employed by Gordon-Reed to marshal support for Jefferson's paternity. Other than the DNA tests, it does not present new information, and relies on "birth pattern," the Madison Hemings "memoirs," the "resemblance claim," the "proximity argument," and surprisingly, the "oral history" of the Woodson and Hemings families. The Report uncovers nothing new, but makes the same reversal from the former position of the Monticello staff on the probability of Jefferson's paternity as did the Lander-Ellis analysis.

The "single father postulate." This postulate was devised by the Monticello Research Committee to extend the DNA test results to all the Hemings children. Since the DNA tests eliminated Tom Woodson from the Jefferson haplotype, although the DNA tests did not change the evidence on which Monticello has long supported the Woodson, he was also dismissed as a son of Sally Hemings, and he was eliminated as a prospective son. The Committee then concluded that the remaining Hemings siblings had a "closeness" that could only come from a single father. Since Jefferson was present during Sally's conceptions, and Eston had the Jefferson haplotype, Jefferson must be his father, and since they all had the same father, Jefferson is the father of them all. The "closeness" is supposedly demonstrated by siblings naming their children after each other. This is a dubious assertion, complicated by name manipulation. The Report ignores the lack of any evidence of cohabitation or access by Jefferson to Hemings, nor does it cite any statistical or empirical support for the closeness syndrome that justifies the single father postulate.

Conclusion

Under Virginia law, unless there is an admission of paternity by the father, a claim must be pursued under the statutory procedure. Evidence to establish paternity means oral testimony or documents that pass the legal test of admissibility. The case against Thomas Jefferson is devoid of admissible evidence.

There is no direct evidence from any source during Jefferson's life that he was the father of any of the children born to Sally Hemings between 1790 and 1808. Although Jefferson may have been present at Monticello during each of Sally's conceptions, there is no proof that she was at Monticello during these periods. There is also not a scintilla of proof of any cohabitation or physical intimacy between Jefferson and Hemings during the approximate thirty-seven years she resided at Monticello after her return from Paris until Jefferson's death.

The two prominent documents written long after Jefferson's death and relied on as paternity evidence are hearsay and inadmissible. These are the 1868 Parton letter, which is the basis for a "resemblance claim" against Jefferson, and the 1873 Madison Hemings interview which created the "treaty legend."⁴⁰

The 1998 DNA test results identify a chromosomal link between Eston Hemings and the male Jefferson line. Thomas Jefferson is included among the twenty-five possible fathers, but he is eliminated because of the lack of admissible evidence. The unproved single father postulate is a device that substitutes imagination for verifiable evidence.

It is surprising that the sources and the nature of the information that make up the "Tom and Sally myth" in the Committee Report has put the academic community into such a quandary. It is a tale which should return to its status as no more than a footnote to the Jefferson legacy, based on unproved allegations and fueled by the imagination.

ENDNOTES:

- i. All references to statutes are from the current Virginia Code.
- ii. *Washington Federalist*, article of June 19, 1805, *Callender, Jefferson and the Sally Story: The Scandalmonger and the Newspaper Wars of 1802*, Rebecca McMurry and James F. McMurry, Jr., Old Virginia Books, Edinburg, VA, (2000), pp. 65-67. See also, *Anatomy of a Scandal*, Rebecca L. McMurry and James F. McMurry, Jr., White Mane Books (2002), p.118. An 1847 interview with a former Monticello slave, has Isaac Jefferson repeating the rumor that, "folks said that these Hemings were old Mr. Wayles children." *Jefferson at Monticello*, James A. Bear, Jr., The University of Virginia Press (1967), p. 4.
- iii. *Thomas Jefferson: An Intimate History*, Fawn M. Brodie, W. W. Norton & Co. (1974), pp. 447-482.
- iv. See *Report on Thomas Jefferson and Sally Hemings*, Thomas Jefferson Memorial Foundation Research Committee, 2000, Appendix F., p. 1 (hereafter, as Committee Report).
- v. Sally Hemings is an historical cipher. There are some physical descriptions of her, but even in the 1873 interview, the reporter does not relate any statements by Madison Hemings describing his mother's personal characteristics. In fact, information about her is so slight, one would conclude she was a person of no importance at Monticello.
6. The only source of the Callender articles in typescript is the booklet by Rebecca L. McMurry and James F. McMurry, *Callender, Jefferson and the Sally Story - The Scandalmonger and The Newspaper War of 1802*, Old Virginia Books, Edinburg, VA, 2000. It also contains an excellent short biography of Callender.
7. *Richmond Recorder*, article of September 1, 1802, *Callender, Jefferson and the Sally Story: The Scandalmonger and the Newspaper Wars of 1802*, pp. 12-13.

8. *Richmond Recorder*, article of September 22, 1802, *Callender, Jefferson and the Sally Story: The Scandalmonger and the Newspaper Wars of 1801*, pp. 36-37.

9. *Richmond Recorder*, article of November 10, 1802, *Callender, Jefferson and the Sally Story: The Scandalmonger and the Newspaper Wars of 1802*, p.48.

10. *Richmond Recorder*, article of December 8, 1802, *Callender, Jefferson and the Sally Story: The Scandalmonger and the Newspaper Wars of 1802*, pp. 55-56.

11. *Thomas Jefferson: An Intimate History*, p. 323.

12. The lineage is based on the 1805 Thomas Turner claim that John Wayles was Sally Hemings' father, and that her mother, Betty Hemings, was half-white. If the father of Sally Hemings were white, then under Virginia law at the time, her son with 1/8 Negro blood would be legally white (Revised Code of 1819, c.111 § 11).

13. *Jefferson at Monticello, Recollections of Edmund Bacon*, Hamilton Wilcox Pierson, edited by James A. Bear, University Press of Virginia (1967), pp. 102-103.

14. This reference to an event some sixty years old, the source long obscured, was cited as "unquestioned" evidence in the Committee Report. (Committee Report Appendix F, p.1) The article is noteworthy, however, because it purports to quote Eston who does not claim Jefferson parentage. *Thomas Jefferson and Sally Hemings: An American Controversy*, Annette Gordon-Reed, University Press of Virginia (1997), p. 15.

15. The Woodson family has an "oral history" of a Jefferson ancestry. Although the recent DNA test was conclusive that no Jefferson was the father of Tom, many of them press on in their belief. According to the Madison Hemings interview, Sally arrived at Monticello pregnant, but the child "lived but a short time." Whether Callender was given information by someone, or whether he made it up is not known, so he remains the only source for the mysterious Tom. See *Fame and the Founding Fathers*, Douglas Adair, Institute for Early American History and Culture, Williamsburg, Chapter VIII.

16. References to the number of Sally's children can be confusing. She had six births recorded at Monticello. Two died in infancy and four, Beverley, Harriet, Madison and Eston survived to adulthood, including the doubtful 1799 child.. If Tom existed, he would have been the first birth, for a total of seven children.

17. See letter from Thomas Jefferson to Judge John Tyler, June 28, 1804, *Thomas Jefferson, Writings*, Merrill D. Peterson, Library of America (1984), p. 1146.

18. See letter from Thomas Jefferson to James Sullivan, May 21, 1805, *The Works of Thomas Jefferson*, edited by Paul Leicester Ford. The attacks on Jefferson in the northeast are discussed in *Jefferson the President: Second Term*, Dumas Malone; Little, Brown & Company (1974), pp. 11-17.

19. Because Hemings is not named, some have argued that the charges involving her are not

included in Jefferson's denial. A review of the June 19, 1805 issue of the *Washington Federalist* reveals the letter from Thomas Turner which repeats the Callender charges, so this was again at issue during the furor over the Walker Affair.

20. See letter from Thomas Jefferson to William Duane, March 22, 1806, *The Works of Thomas Jefferson*, edited by Paul Leicester Ford. For a description of the controversy that preceded this letter, see *Jefferson and His Time: The Sage of Monticello*, Dumas Malone, Little, Brown & Co., (1981) pp. 114-117.

21. See letter from Thomas Jefferson to George Logan, June 28, 1816, *The Works of Thomas Jefferson*, edited by Paul Leicester Ford.

22. *Thomas Jefferson: An Intimate History*, pp. 471-476.

23. The treaty legend is unsupported. Those who accept it stumble badly when they try to explain why Sally Hemings, pregnant with Tom, and knowing she could stay in France as a free woman, returned to the U. S. on the promise her future children would grow up as slaves, but be freed at their adulthood. She lived all but the last few years of his life as a slave at Monticello.

24. For those who wish to prove a Jefferson paternity, there is no case unless this interview can be portrayed as more than an unsupported belief by Madison Hemings. To that end, Annette Gordon-Reed calls them "memoirs," to Fawn Brodie they are "reminiscences," and the Committee Report implies it constitutes "testimony" of Sally Hemings. (Committee Report Appendix F, p.2)

25. See Journal of John Hartwell Cocke, January 26, 1853 and April 23, 1859, original University of Virginia Library, with typescript of extract, *Report on Thomas Jefferson and Sally Hemings*, Thomas Jefferson Memorial Foundation Research Committee, 2000.

26. Ellen Coolidge was two years older than Beverley Hemings and would have grown up with her 11 brothers and sisters and the Hemings children. Madison Hemings supposedly was able to name them in his interview in 1873. They were often at Monticello and a relationship between Thomas Jefferson and Sally Hemings could not have escaped the scrutiny of Jefferson's grandchildren. See the correct typescript of this letter in *The Jefferson-Hemings Myth: An American Travesty*, edited by Eyler Robert Coates, Sr., The Thomas Jefferson Heritage Society (2002), pp. 193-196. The letter is altered in *Thomas Jefferson and Sally Hemings: An American Controversy*, Annette Gordon-Reed, (University Press of Virginia, 1997), pp. 258-260. Inexplicably, the altered letter is used as an exhibit in the Committee Report. For a family memoir, printed in 1871 by a great granddaughter, see *The Domestic Life of Thomas Jefferson*, Sarah N. Randolph, University Press of Virginia (1978).

27. *Life of Thomas Jefferson*, University Press of Virginia, James Parton, Houghton, Mifflin and Company (1887), pp. 569-70. It would have been possible for Parton, dubbed the "Father of Modern Biography," to have corresponded directly with Thomas Jefferson Randolph at the time of the Randall letter. The comments of Randolph are consistent with every expressed opinion of the Jefferson family. The entire letter was later printed in a biography of Parton. See *James Parton: The Father of Modern Biography*, Milton E. Flower, Durham (1951), pp. 236-239.

28. Bacon was interviewed in Kentucky, where he was then living, by the Reverend Hamilton W. Pierson. *Jefferson at Monticello, Recollections of Edmund Bacon*, Hamilton Wilcox Pierson, edited by James A. Bear, University Press of Virginia (1967), pp. 102-103.

29. *Thomas Jefferson: An Intimate History*, pp. 447-482.

30. This letter was probably never sent. See letter of Jefferson's grandson Thomas Jefferson Randolph to editor of *Pike County Republican*, undated, original University of Virginia Library, Accession Number 8937 with typescript version, *Report on Thomas Jefferson and Sally Hemings*, Thomas Jefferson Memorial Foundation Research Committee, 2000.

31. The law does not conclude because there is no evidence that all participated in a grand conspiracy of silence. Of equal significance, and ignored by the Committee Report, was Jefferson's constant entreaties to his daughters to live, if not at Monticello, then close by. There is no evidence that they were aware their father was also the father of Sally Hemings' children. The only conclusion, based on the evidence, is that the liaison did not exist, and their family closeness was without hypocrisy.

32. Robert could read and write and was allowed to move around much as a free man even before manumission by Jefferson in 1795. He never raised a claim that his sister Sally was Jefferson's mistress.

33. The last two children were born in 1805 and 1808, during Jefferson's second term as President, in the face of the uproar that Callender's articles elicited in 1802. Jefferson supposedly risked his presidency and his reputation to be with Sally Hemings, yet never showed the slightest sign of affection for her and the children they produced.

34. See Will of Thomas Jefferson.

35. Jefferson's financial situation would have prevented him freeing his slaves under Virginia law. It may also be that he would have let more or all go but for the legal claim of his creditors. See Revised Code of 1819, c.111, §§ 53-54. Also, under Virginia law, he remained responsible for them, so long as they remained in the state. Jefferson expressed to the end of life concern for freed slaves who had no means of support. Those who decry Jefferson as a "slaveholder" do not offer a solution to the current laws and social conditions if he had freed them all.

36. Fawn Brodie produced a book both excellent in the details of her research but flawed in her manipulation of the evidence in which she claims possibilities as historical fact. *Thomas Jefferson: An Intimate History*, Fawn Brodie, W. W. Norton & Co. (1974). For a rebuttal to her techniques, see *The Jefferson Scandals*, Virginius Dabney; Dodd, Mead & Co., 1981.

37. There were 25 males who could have fathered Eston Hemings, and eight were in the vicinity of Monticello during Sally's various pregnancies.

38. The Report may be downloaded from http://www.monticello.org/plantation/hemings_report.html. Special attention should be given to the Minority Report. See also, *Research Report on the Jefferson-Hemings Controversy, A*

Critical Analysis, by Eyler Robert Coates at <http://www.angelfire.com/va/TJTruth>.

39. The most disturbing aspect of the Committee Report is an obvious bias toward a desired result. An example is the selective reference to Callender's comments on James Madison, who clearly denied the Sally story, but is made to appear in the Committee Report as "acquainted with it." See *Richmond Recorder*, article of September 29, 1802, *Callender, Jefferson and the Sally Story: The Scandalmonger and the Newspaper Wars of 1802*. Fawn Brodie and Annette Gordon-Reed were advancing a thesis, but the Thomas Jefferson Memorial Foundation, known ownership of Monticello, claimed to be guided by independent scholarship. The Committee had not independent scholars and the report was written by a staff historian.

40. Madison cannot know whether his claim is true. He does not relate when he was told this information or by whom. Yet, advocates of Jefferson's paternity continue to argue that this interview is evidence. The "resemblance" comments in the Randall letter to Parton are those of the writer, who cannot attest to the truth of any of them - only Randolph could do that.

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