Making the Seconds of a Lawyer's Life Count: A Reflection on "The Flag Case"

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"Am I Making the Seconds of My Life Count?" – Dr. Benjamin J. Hooks

AS TRAINED attorneys at law, we are uniquely qualified not only to make the "seconds of our lives count" but also to be engaged in the civic affairs of our local, state, and national communities. In fact, it is inherent in our unique position to act in a manner that is not only consistent with the rule of law but to preserve the rule of law. We, as lawyers, must stand as vigilant custodians of truth; guardians of justice; and as a bulwark against lawlessness and chaos. Democracy is fragile, and it is the lawyers, not the military or militias, that are the first line of defense against civil chaos.

The often-misused quote from William Shakespeare's Henry VI Part 2, Act 4, scene 2—"The first thing we do, is kill all the lawyers"—is the standard clarion call for dictators and anti-democratic forces. The phrase is tossed around as an insult to lawyers, but in the context of the play itself, the notion of "killing all the lawyers" is raised because

lawyers are the defenders and protectors of an ordered society. Lawyers are necessary to preserve the freedoms and rights of everyday citizens. While lawyers may not wear capes and fly off into the atmosphere, lawyers and the judiciary can be the "heroes" keeping tyranny at bay by preserving the rule of law for all.

With all of this swirling around us, I am reminded of a case of mine from more than twenty years ago. This case serves to remind us of the importance of the law, and the power of truth over lies and deception. State legislators currently seek to enshrine a school's right to have a Confederate States of America battle flag, and even a swastika, in the classroom, but prohibit a flag with rainbows or the diary of Anne Frank from being displayed. Twenty years ago, I was involved in a fight over just the opposite. I was asked to defend an employer's policy prohibiting disruptive symbols, specifically the Confederate Battle Flag, from the workplace. This is the story about how a relatively simple private employer employment case became about so much more. In this story, the rule of law was the key to taking funding from an entity openly associated with hate groups and turning it into a significant gift to the final project in the long life of a civil rights icon.

To fully understand the case and the enlightened policy of the employer, you must first understand where the chemical plant at issue was located. The plant was located in Richmond, Virginia, the former capital of the Confederacy. The employees working there were from around that region. The plant was on Jefferson Davis Highway, a highway named after the President of The Confederate States of America. The court in which this case was filed and the courtroom where proceedings took place were in the old Confederate Treasury and Post Office building. Further, Richmond was not just the historic capital of the Confederacy. It was also the home of the "massive resistance" to school integration and civil rights integration.

Massive resistance was a political strategy adopted first by Virginia and then other southern states in an effort to prevent the federally ordered desegregation of public schools and other public services. This movement was a direct response to *Brown v. Board of Education* and the federal government's mandated integration.

Richmond led the way for the South with such formal acts as creating a "Pupil Parent Board" to assign students to specific schools; providing tuition grants to any student who did not want to go to

integrated schools; and cutting off state funds to public schools that attempted to integrate.[1] Virginia tried to undermine the rule of law by refusing to follow federal court orders. All of these activities were designed to show the rest of the country that integration was not going to be accepted in the South. While the vestiges of massive resistance lasted well into the 1970's, the tensions percolated beyond that. As recently as 2001, the Supreme Court of Virginia found that a conviction for cross burning – in the case of Barry Black, a KKK leader who was convicted of cross burning in Carroll County, Virginia – was unconstitutional. In 2003, The United States Supreme Court issued its decision overturning in part and affirming in part the decision of the Virginia Court.[2]

The United States Supreme Court upheld the ban of *cross burning used to intimidate* because "burning a cross in the United States is inextricably intertwined with the history of the Klu Klux Klan, which. . . imposed a reign of terror throughout the South, whipping, threatening and murdering blacks, southern whites who disagreed with the Klan and 'carpet bagger' northern whites."[3] The Court went on to state "to this day, however, regardless if the message is a political one or is also meant to intimidate, the burning of a cross is a 'symbol of hate.'"[4] In essence, the Court ruled you could not stop the Klan from burning crosses at its rallies—when used as rallying symbol—but you could make it unlawful to burn a cross for the purposes of intimidating another.

In contrast to the historical connection to the Confederacy and to all it stood for, Richmond was also home to historic African Americans who made tremendous contributions to the United States's economy and culture. In 1903, Maggie Walker, a famous Richmonder, was the first African-American woman to charter a

[1] James Hershman, "Massive Resistance" ENCYCLOPEDIA VIRGINIA *(*Dec. 7, 2020), available at https://encyclopedia virginia.org/entries/massive-resistance/ (last accessed June 18, 2025).

[2] Virginia v. Black, 538 U.S. 343 (2003).
[3] *Id.* at 353.
[4] *Id*.

bank and the first to serve as a bank president. That bank still exists to this day.[5]

Bill "Bojangles" Robinson was an American actor, dancer, and singer from Richmond Virginia who died in 1949. He was the highest paid Black performer in the United States during the first half of the 20th century.

Arthur Ashe was born and raised in Richmond and rose to the highest point in his sport of tennis. Ashe was an active supporter of, and an advocate for, the continuing civil rights movement, and in 1983, he formed, with others, a group called Artists and Athletes Against Apartheid. He was involved in civil protests, even being arrested for protesting apartheid and treatment of Haitian refugees.

Doug Wilder is a very accomplished and well-respected former politician from Richmond. He was the grandson of enslaved people, and he achieved many firsts. He was the first Black member of the Virginia Senate in the 20th century. He became the first African-American elected to statewide office in Virginia when he was elected Lieutenant Governor in 1985. In 1989, he was elected Governor of Virginia, becoming not only the first Black to be the governor of Virginia but also the first African-American to serve as Governor of any state after reconstruction. Later in his life, he continued to serve as he became the first directly elected Mayor of the City of Richmond to bring his political career to an end.

The Richmond area has a deep history—some connected to its Confederate past and some connected to the remarkable achievements of its African American community. It was against this sad history of slavery and segregation and proud history of Black success that we were forced to the courthouse steps.

The real history of the Confederate Battle Flag is also at the center of this matter. Some honor the Battle Flag of the Army of Northern Virginia as a symbol of a noble Southern heritage and see it as an appropriate memorial symbol or grave marker. Such reverence in private moments was not at issue in this case. However, violent groups adopted the Battle Flag as a symbol of hate and intimidation immediately following the Civil War; during Jim Crow; and in more recent history, and this use of the flag was at the heart of the matter.[6] The Ku Klux Klan hid behind the flag as much as

[5] There is an interesting connection to West Virginia, where I now practice: Maggie Walker's Bank was merged into Adams National Bank under the ownership of Premier Bank of Huntington, West Virginia. That bank ultimately merged into West Banco, based out of Wheeling, WV.

[6] Museum of Jewish Heritage, "The Confederate Flag; The Use of a Symbol"

their white robes and hoods. The "Dixiecrats" or the "States Rights Party" of 1948 used it as a rallying point for segregationists. In the 1940's and 1950's, the flag became most overtly affiliated with the violent denial of fundamental rights to many—especially African Americans. After the United States Supreme Court decision in *Brown v. Board of Education*, which ordered the desegregation of public schools, the flag became a symbol of violent and entrenched resistance to equal rights. Through its use by organizations like the Ku Klux Klan and the Aryan Nation, the flag became a modern symbol of intimidation and terror especially for the Black community.[7]

To introduce you to the characters in this tale, I will start with myself. I have tried many cases in many jurisdictions as a lawyer for Spilman Thomas & Battle, PLLC and our clients. I am the founder and chair of the firm's "The Battle Group", a practice group devoted to trying or otherwise resolving high-risk, high-profile matters. I was also honored to be one of four members on a Fortune 100 Client's National Litigation Strike Force. Over the course of my career, I have been involved in class actions, mass torts and cases with over a billion dollars at stake. Yet this "low dollar case" stands apart as the most personally impactful of my career.

I came to this profession from humble and simple beginnings, born to two Irish immigrants who were in the United States on temporary work visas. After several years living in New York City and a couple of years in New Jersey, I moved with my family to rural Virginia. I went to an integrated elementary school in the early 70's in Virginia, the home of "massive resistance." Just years earlier, the Commonwealth of

(June 16, 2021), available at https://mjhnyc.org/blog/the-confederate-flag-the-use-of-a-symbol/ (last accessed June 18, 2025).

[7] Southern Poverty Law Center, "League of the South" (June 11, 2025, 11:24 am), available at https://www.splcenter.org/resources/extremist-files/league-south/ (last accessed June 18, 2025).

Virginia decided it rather shut down its public schools and/or privatize them instead of integrating them. Eventually, though, the public schools were integrated. I went to W.C. Taylor Junior High which was constructed two decades earlier – in 1952 – as the very first high school for African American students in Fauquier County. It remained a segregated school until 1969. When I attended Taylor, it had recently become a junior high and was newly integrated. The same for Fauquier High School.

Two moments from my youth in Virginia have a bearing on this story. The first is a simple message my family received. I recall it was in the form of a flier in our mailbox, but I cannot be sure. What I know is that my mother made it very clear that the local sheriff had informed her that the Ku Klux Klan was a real thing, and they were "anti-Jew", "anti-Catholic", and most obviously "anti-Black." This was a sentiment that hit home for this Irish-Catholic family. Message received, but it did not cause fear. Instead, it stirred something more akin to defiance.

The next event involved the local skating rink – Hugo's Skateway. My brothers and I had been to Hugo's several times but soon noticed some of our friends were never there. Hugo's pretended to be a "private club" in an overt effort to restrict admittance to those the owner declared "undesirable." The fake private club approach was nothing new in Virginia history. When my family learned that our Black and Jewish friends—the people we played sports with; who were in our house; and with whom we went to school—could not go skating due to the color of their skin or their religion, we decided that we would no longer go to Hugo's. I remember that even though I was only in the 7th or 8th grade, I was acutely aware of the injustice of Hugo's policies. I struggled to understand how some in my community continued to frequent Hugo's.

Shortly after my mother made the decision to put Hugo's off limits, the lawyers of the United States Department of Justice in 1978 used the rule of law to seek the justice only available in the courts. The DOJ sued Hugo's Skating Rink and achieved a consent decree forcing Hugo's to stop refusing admission based on race or religion.[8]

[8] Ted Gup, "Segregated Skating Rink Splits Fauquier County", THE WASHINGTON POST (Nov. 9, 1978), available at https://www.washingtonpost.com/archive/local/1978/11/10/segregated-

Just four years later, the Department of Justice had to file a second suit against Hugo's – this time because Hugo's was denying admission to their adjacent dance hall based on race. And just a few years after that, an individual plaintiff took Hugo's to the courts to sue for discriminating against him due to his race with allegations, including false imprisonment and other violations of his rights.

These poignant examples of the power of the courts to maintain a civil and just society inspired me. I decided to attend law school, in part, because of the injustices I saw in my youth and how the legal process had operated to right those wrongs and bring about some measure of justice.

My colleague, Jim Crockett, assisted me with this case and was a key part of our team. He grew up in McDowell County, West Virginia, in a town that was largely integrated even in the 60's and 70's while he attended school there. The southern coal fields of West Virginia offered hard work for those willing, and many immigrants and minorities came to West Virginia to fill the need. Jim originally practiced in Richmond, Virginia for over 20 years before joining my firm in 2002. Jim brought his knowledge and legal skills to the matter, but he also brought with him a deep knowledge of the history of the South. He was keenly aware of lessons learned from the burden of social segregation, even if public spaces were integrated. Jim speaks powerfully about a realization he had in college regarding the racially diverse friends he had in McDowell County. For Jim, the unspoken cost of racism and bigotry was the lost opportunity for human interaction and fully bloomed friendships, as he never visited a Black friend's house, nor they his. In addition to his extraordinary skill as a trial lawyer, Jim brought this heartfelt recognition of the dangers and harm of race discrimination to our team.

Over the years Jim and I have tried many cases together. We both typically worked on very complex high-profile cases with much at stake. Yet, we agree we will never forget the "Flag Case". It was a profound life lesson about the power of the rule of law and the noble nature of our profession.

Next, we must consider our client and why the employer chose to clarify in the Summer of 2000 that its harassment and respectful workplace policies included a ban on disruptive symbols in the workplace. Banned symbols

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skating-rink-splits-fauquier-county/17a058c2-ae4e-44c8-a457-835a78f40aac/ (last accessed June 18, 2025).

included, but were not limited to, the following:

- Swastika
- Pornographic Materials
- Violence
- Discriminatory Content
- The "Confederate Battle Flag"

(It is interesting to note that pictures of Robert E. Lee or of Jefferson Davis were not banned, while the Battle Flag was.) It is easy to see why an employer would be concerned about such symbols being disruptive in a Richmond, Virginia workplace. In particular, the flag was (and is) a flashpoint symbol that had no role in a fully integrated workplace where all should feel welcome and where the law forbids harassment or intimidation.[9]

This particular employer was not just standing on formality – it had issued a call to action in 1992 encouraging corporate America to take more concrete and constructive steps to assure a safe and welcoming workplace with equal opportunities for all based on merit and free from discrimination based on race, sex, religion, or national origin. As part of that ongoing initiative, DuPont adopted this workplace policy prohibiting all disruptive symbols from the workplace. This policy was communicated to all employees.

In September 2000, one employee decided to challenge the policy, followed quickly by six others, and these plaintiffs have a role to play in this story. They dubbed themselves the DuPont Seven. They sought support from various groups who showed up on a picket line displaying Confederate uniforms, Confederate flags, and other similar banners, including flags supporting the "Southern Party." The Southern Party was an offshoot of the violently racist and segregationist "League of the South." Allies even established a website to support the employees.

That website published constant attacks on DuPont and its policies, including attacking DuPont's support for its LGBTQ+ employees. The webpage released confidential company training material discussing the disruptive nature of the flag in the workplace. The DuPont Seven website identified and attacked me and my colleagues for representing DuPont to the point of referencing our families on their website. The website sought to garner both emotional and financial support. DuPont asked these employees to cover or remove the Battle Flag on

[9] Joshua D. Wright and Victoria M. Esses, *Support for the Confederate Battle Flag in the Southern United States: Racism or Southern Pride?*, 5 J. SOC. & POLIT. PSYCH., 224 (2017).

lunch pails, t-shirts, and car bumpers. DuPont asked employees to cover the image, remove it, or if on an employee's car and they did not want to remove it, then simply park off-site.

The employees filed grievances, and in 2003, they filed a lawsuit against their employer. This case was what we would call "The Flag Case."[10] The matter worked its way through the court system quickly, including finally making its way to the United States Supreme Court. On its face, the case was simple enough. There were three counts: Count One – discrimination based on National Origin; Count Two – discrimination based on religion; and Count Three – discrimination based on race. Their national origin count claimed discrimination based on their unique nation of origin—The Confederate States of America. Their religious discrimination count alleged discrimination based on their religion—Confederate Southern-American Christians. The last count was race discrimination and alleged discrimination based on race—white Confederate Americans.

In the early days of third-party litigation funding, The DuPont Seven's cause was taken up by – yet another character in the story—the Southern Legal Resource Center, a law firm which morphed out of prior alt-right legal defense funds from various groups. The Southern Legal Resource Center boasts that its mission is the preservation of the freedom of Southern Americans—a group the SLRC claims is the most "persecuted or marginalized group" not just in the United States but the world.[11] The focus of the organization in 2003 appeared to be the Battle Flag and fighting for the right to display it anywhere, at any time, and for any purpose.

The Southern Poverty Law Center has called the SLRC's fundraising efforts "deceitful" and found their main legal counsel had a history of defending violent and controversial "right-wing" figures, including members of the Aryan Nation and Ku Klux Klan. According to the Southern Poverty Law Center, the SLRC "replaced an earlier organization known as CAUSE, short for Canada, Australia, The United States, South Africa and Europe – the parts of the world where [they] judge white majorities rights under threat."[12]

When the lead trial counsel for SLRC was in his thirties, he was

[10] Kevin L. Chaplin et al. v. E. I. du Pont de Nemours and Company, 303 F.Supp.2d 766 (E.D. Va. 2004).

[11] https://slrc-csa.org/.

[12] Southern Poverty Law Center, "Kirk Lyons," (June 10, 2025, 10:58 am), available at https://www.splcenter.

married on the compound of the Neo-Nazi Aryan Nations in Idaho. The "pastor" presiding over the wedding was the proud Aryan leader Richard Butler. His bride was Butler's eighteen-year-old daughter. Louis Beam, a Klan leader, was the best man at the wedding.

The lead lawyer for the DuPont Seven had a long history of representing and assisting various leaders of the white separatist movement. He prefers white separatist to white supremist. In fact, he appeared on the Sally Jessy Raphael television talk show in 1993 proudly stating "Supremacy is the old word, the segregation days when whites owned the black. We're not talking about supremacy. We're talking about separatism."[13] He went on to clarify, "I am not convinced we [sic] that we can send them back. I don't think it's a possibility. It may be. It's – that may be pie in the sky. Let's sit down and divvy up this Country."[14]

Our opposing counsel's prior affiliations and prior "clients" paint a picture:

- Friends with, and represented, KKK leader Louis Beam who led violent protests against immigrant shrimpers. Beam was charged with sedition;
- Friends with, and represented, Richard Butler, Aryan Nations leader—with whom he founded Patriots Defense Fund;
- Friends with, and represented, James Wickstrom—Director of Counter Insurgency for anti-semitic Posse-Comitatus;
- Collaborated with Pete Peters of the Christian Identity Movement;
- Helped Stephen Nelson, a member of the Aryan Nations Church, with criminal charges—found guilty of plotting to

org/resources/extremist-files/kirk-lyons (last accessed June 18, 2025).

[13] Kirk D. Lyons, *White-Collar Racists*, *Sally Jessy Raphael Show*, at 4 (Mar. 18, 1993), available at https://www.main.nc.us/wncceib/lySALLY93.htm (last accessed June 18, 2025).

[14] *Id.* at 2.

bomb a gay bar in Seattle;[15]

- Helped Tom Metzger of White Aryan Resistance—connected to the murder of an Ethiopian refugee and other high-profile incidents;[16]
- Conducted legal research for "The Order" whose members were found guilty of bank robbery and the murder of a Jewish radio talk show host;
- Member of National Alliance—Neo-Nazi group headed by G. William Pierce who wrote the racist terror book The Turner Diaries.[17]

Lyons told the world he thought the right approach for the cause and their organizations to take: "[i]t would be good if the Klan followed the advice of former Klansman Robert Miles: 'Become invisible, hang the robes and hoods in the cupboard and become an underground organization. This would make the Klan stronger than ever before.'"[18]

Our opposing counsel echoed this sentiment, commenting: "the Civil Rights movement I am trying to form seeks a revolution . . . we seek nothing more than a return to a godly, stable, tradition-based society with no 'Northernisms' attached, or a hierarchical society, a majority European-derived country."[19] Perhaps not coincidently, in 2002, he and a slate of other affiliated candidates ran for office in the Sons of Confederate Veterans—an organization which was previously committed to maintaining Confederate ceme-

[15] Southern Poverty Law Center, "In the Lyons Den" (June 10, 2025 14:18), available at https://web.archive.org/web/20070807074726/http://www.splcenter.org/intel/intelreport/article.jsp?aid=251 (last accessed June 18, 2025).

[16] "*Kirk Lyons*", *supra* note 12.

[17] Tracy Rose, "The War Between the Sons" (Feb. 5, 2003), available at https://mountainx.com/news/community-news/0205sons-php/ (last accessed June 18, 2025).

[18] *"In the Lyons Den*", *supra* note 15, at p. 2.

[19] *"Kirk Lyons"*, *supra* note 12.

teries and headstones. He and his slate of candidates ran on the commitment to radicalize SCV and combat the "ethnic cleansing" of Southern white Confederates. While he narrowly lost his race, others on his ticket prevailed and caused a divisive split in the group largely along the line of racial animus. He campaigned to get rid of the "grannies" and "bed wetters" in the SCV.

H.K. Edgerton, an African American and former NAACP Chapter President who was removed from office, had a role to play. He turned in his NAACP membership in exchange for advocating that Southern slavery was a positive tool for Christendom. He formed an active alliance with SLRC and SCV. In fact, Edgerton is said to have marched in Confederate uniform from North Carolina all the way to the protests at the front gate of the DuPont plant on Jefferson Davis Highway. He also gave interviews and appeared in the court room in full support of the DuPont Seven and The Southern Legal Resource Center.

Kevin L. Chaplin et al. v. E. I. du Pont de Nemours and Company was assigned to nationally-known and well-respected conservative federal jurist Henry Hudson. Before taking the bench, Judge Hudson had served as Chairman of Ronald Reagan's Pornography Commission (The Meese Commission). He was later named United States Attorney for the Eastern District of Virginia, and under the first President Bush, he became the Director of the United States Marshals Service in 1992-1993. In fact, it was during this time that Judge Hudson and DuPont Seven's SLRC's lawyer might have first crossed paths. The infamous Ruby Ridge incident occurred while Judge Hudson was in charge of the Marshals, when the Marshals Service attempted to arrest Randall Weaver at Ruby Ridge. Violence followed with loss of life on "both sides." The chief trial counsel for SLRC was, at that time, an attorney for Randall Weaver and assisted in his representation. There is no formal indication Judge Hudson, in his role with U.S. Marshals, ever came into contact with counsel, but history brought them together at least twice. Judge Hudson was elevated to the federal bench on August 2, 2002, and one of his earliest cases was "the Flag Case."

There are two more people to know in order to appreciate the full poetic arc of this story. Dr. Benjamin L. Hooks and his wife Frances Hooks had a tremendous history of working hard throughout their lives for civil rights and the betterment of their communities. Both risked their health and welfare, even their lives, for the sake of civil rights and their communities. Dr. Hooks was a civil

rights icon who worked with Dr. Martin Luther King and the Southern Christian Leadership Conference. He was a practicing lawyer; an ordained minister; a public defender; the first Black judge appointed to criminal court in Shelby County, Tennessee; the first Black commissioner of the Federal Communications Commission; the Executive Director of the National Association for the Advancement of Colored People and the co-founder of the Children's Health Forum.

After reflecting on the palpable local history of both civil rights and the Confederate Battle Flag, this case is easy to frame as a classic struggle between good and evil; of segregation versus integration; an employer's diversity and anti-discrimination initiative versus workplace harassment, hostile work environments, and distraction; or even the rule of law versus the sad history of *Dred Scott* and *Plessy v. Ferguson*. However, in our society, sometimes, good and evil are a matter of perception, and winning a case on that basis is risky at best. In the end, this case became about reality versus fantasy, and truth versus lies. In essence, we were advocating for universal truths and defending more than an employer's policy. Twenty years later and this battle for truth still resonates, perhaps even more today.

Our goal in the case was to achieve a definitive victory for the rule of law and defend the important and legally sound concepts of diversity and inclusion, using all lawful tools at our disposal. We planned to use the rules to seek justice and do so by constantly confronting plaintiffs' legal arguments with the powerful historical and legal truth!

We immediately dove into action, researching not only the law but opposing counsel and any organization supporting the plaintiffs' litigation. We soon learned that the plaintiffs' local counsel withdrew from the case, leaving no local sponsoring attorney for their lead trial counsel, whose office was in North Carolina. On October 11, 2003, we sent the SLRC a "Rule 11 Letter." Rule 11 of the Rules of Civil Procedure states that by signing a pleading the attorney certifies that the pleading is "not being presented for an improper purpose" and that the "claims are warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law." Our letter challenged the proper purpose of the lawsuit, as well as the frivolous nature of the claims.

As required by Rule 11, we enclosed a motion for sanctions and a memorandum in support, and we provided the mandated 21-day safe harbor for them to

withdraw the Complaint before we filed our motion. In our letter, we made it clear we knew with whom we were dealing. "We have studied your internet sites, and therefore *we are aware of who you are and what you do*. We also note from those same sources that you fully appreciate the folly of this suit."[20] The letter was sincere and targeted to give the plaintiffs and the SLRC a chance to avoid sanctions, fees, and costs. The letter also was designed to let them know they were in for a fight. An unintended and indirect benefit of the letter was that potential new local counsel would likely be concerned about joining a suit with a Rule 11 motion forthcoming or pending. We filed an immediate motion to dismiss, then followed with our motion for sanctions after the expiration of the safe harbor period.

In response, plaintiffs' counsel filed a motion to proceed without local counsel. But, before that motion was ruled upon and in violation of the rules, he filed a response to our motion to dismiss. In addition, counsel orchestrated several filings by each plaintiff asking the court to 1) allow counsel to proceed without local counsel; and 2) accept SLRC's response to our motion to dismiss. This tactic by SLRC played right into our hands. While we played by the rules, neither the DuPont Seven nor their counsel would.

The Fourth Circuit Court of Appeals (the circuit court covering Richmond, Virginia) had a strict prohibition against ghost writing by attorneys for pro se plaintiffs—an effort it deemed as an affront to the rules applicable to counsel. While each of the DuPont Seven filed pleadings "Pro Se," they were obviously written by SLRC. We were "gifted" an overt violation of the court's rules. (In the meantime, Judge Hudson, himself, was trying to assist the rule of law by soliciting local attorneys unsuccessfully to serve as local counsel for SLRC).

We next sought to leverage case law, particularly, an on-point, but unpublished, opinion from the Fourth Circuit that rejected the SLRC's unique argument regarding national origin discrimination. Our Motion to Dismiss focused on the simple elements of each distinct employment discrimination count. Overall, we focused on "no adverse employment action" ever being taken against any of the plaintiffs. We informed the court that the policy banning disruptive symbols applied to all employees regardless of race, religion, or national origin.

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[20] Letter from Niall A. Paul, Attorney, Spilman, Thomas, & Battle, PLLC., to Kirk Lyons, Chief Trial Counsel, Southern Legal Resource Center (Oct. 13, 2003) (On file with Spilman, Thomas, & Battle, PLLC).

With regard to their race claim, we used the SLRC claims that Confederate Americans were not just white Americans. In their quest to seem eminently reasonable and not "racist," the SLRC argued that Southern Confederate Americans included Black Confederates who they said fought with fervor for the Confederate States of America after it seceded from the Union to preserve slavery. SLRC further argued that Indigenous Americans also counted as Southern Confederate Americans. As a result, our argument that these plaintiffs were not treated differently because they were white was supported by their own self-serving rhetoric. The policy would apply to Black Confederate Americans, Cherokee Confederate Americans, and White Confederate Americans equally.

Plaintiffs' religious discrimination claim was based on an alleged reverence of the Confederate Battle Flag as a religious symbol (the X of the flag being compared to the cross of St. Andrews). The SLRC's plan was disrupted by the fact that not a single employee ever claimed or informed DuPont of a religious connection or affinity to the Battle Flag. Not a single employee ever pointed to any kind of religious edict that they must display the flag or jeopardize their soul if they do not. They also never requested a religious accommodation that would allow them to wear the flag or display the flag on any particular day or on any particular schedule (for example, due to a religious requirement or celebration).

Further undermining their credibility, five of the seven plaintiffs filed very general affidavits claiming a religious connection to the flag. The form affidavit (found on the SLRC website) states, in part, "I consider myself to be a Confederate Southern American. The Confederate Battle Flag, emblazoned with the cross of the Martyr St. Andrew is a venerate symbol of my ancestry. *I am a Bible believing Christian of the Protestant faith…who sees Christian symbolism in the St. Andrews cross as it appears on the Confederate Battle Flag*."[21] Completely lacking from the form affidavit is any alleged religious demand to display the Battle Flag or a prior request for an

[21] The S. Legal Res. Ctr, *Confederate Southern American National Origin Affidavit* (2005), available at https://web.archive.org/web/20050409222043/http://www.slrc-csa.org/site/misc/csa-affadavit.php (last accessed June 21, 2025).

accommodation of some religious dictate relating the flag while at work. Plaintiffs' counsel showed an utter ignorance of the basic elements of their own claim.

With regard to their claim of national origin discrimination, we relied most heavily on the concept of no adverse employment action. We also relied on a prior SLRC case, *Terrill v. Chao*.[22] In *Terrill*, the Fourth Circuit rejected the SLRC argument for the recognition of the national origin of the Confederate States of America. Unfortunately, *Terrill* was an unpublished decision and not controlling authority. We, however, pursued the argument that this was a case calling for an exception of that rule. *Terrill* literally involved the same lawyers pursuing the same theory in the same judicial circuit, and it had been specifically rejected just a few years before.[23]

Plaintiffs' counsel could not dispute this fundamental truth of our position. In an apparent moment of fear, counsel used an argument regarding *Terrill* which denied all common sense. Counsel actually told the court that the *Terill* opinion should not be held against him or the DuPont Seven because he had not argued these issues in *Terrill*. He insisted that the issue of national origin discrimination based on the Confederate State of American was not argued to the Fourth Circuit Court of Appeals. This tactic was too cute for his own good, as the judge identified the twist on the truth. The issue and the case were indeed fully briefed at the Fourth Circuit and, therefore, indisputably "argued." Counsel tried to draw a distinction between oral argument—which did not take place—and written submissions—which did occur. Judge Hudson had no patience for such hair splitting and chastised counsel in his written opinion.

While we were entrenched in this case, the DuPont Seven website continued attacking both DuPont and the court, but also me, my colleague, and our families. Additionally, during this matter we were told to be aware that certain hate group websites contained discussions about Jim Crockett and me, including where we lived. We were advised to take simple precautions like parking inside at night. It was even more frightening was when some local family members of mine came to the courthouse to observe the hearing and were later singled out on the

[22] 31 Fed. Appx. 99, 100 (4th Cir. 2021), cert. denied 537 U. S. 823, (2002) (unpublished).

[23] We also questioned the very basic concept of the employee's national origin being tied to the approximate four-year existence of the Confederate States of America.

website. A different type of tension accompanied this case. On the first day in courtroom Judge Hudson may have sensed it as well; he increased the presence of federal marshals for proceedings.

The DuPont Seven's website also publicly released DuPont's confidential training materials, which revealed questions that had been asked of the management at the plant. These questions revealed the plaintiffs' mindset and suggested responses by management.

> Q: Why are African Americans getting everything they ask for and when will it stop?
> A: This is not an African American request. It is Management's responsibility to determine how to achieve a workplace free of distractions and disrespectful behavior. Leadership must set the standard and hold employees accountable to the standard.[24]

The jaded misunderstanding revealed by the question told us we had a responsibility to use our skills to quash this ill-conceived attack on the workplace. We felt an obligation to push back on a willful ignorance of the harm caused by the intimidation of historically excluded groups.

As we laid out the truth behind the policy and its implementation to the court, we also laid bare the lack of foundation, both legal and historic, for any of the plaintiffs' claims. Plaintiffs were not the subject of discrimination or oppression. We pushed our motion to dismiss and our motion for sanctions. We sought an order from the court awarding our attorney fees and costs incurred defending this dangerous attack on a peaceful and integrated workplace.

In the end, the judge did not dismiss the case or sanction SLRC counsel for ignoring the Fourth Circuit's opinion in *Terrill* or for alleging that the *Terrill* case had not been argued. Judge Hudson did not dismiss the case or sanction counsel for plaintiffs for "ghost writing" and misleading the court regarding supposed pro se filings. He did acknowledge these failings and reprimanded counsel,

[24] As shocking and disappointing as the question sounded at the time, twenty years later it seems that the perspective revealed in the question may have traction in some powerful circles today. Certainly, those with political power are emboldened to make similar claims about anyone or anything who advocates for the basic value of access, diversity and non-discrimination in the workplace and in our society or "DEI" – (diversity, equity and inclusion).

but he did not find that these issues compelled dismissal.

Judge Hudson did, however, dismiss the case with prejudice and awarded sanctions for other reasons. The court looked to the language of Title VII of the Civil Rights Act of 1964 and Rule 11 of the Federal Rules of Civil Procedure. He applied the law to the facts of the case and determined the claims not only had no merit but that pursuing certain claims called for further action by the court.

The court dismissed all three counts. The court recognized the cynical intent of SLRC, but did not sanction plaintiffs or SLRC for pursuing the national origin claim. The court ruled that a "[c]ourt should not sanction counsel for an intention that the Court does not approve, so long as the added purpose is not undertaken in bad faith and is not so excessive as to eliminate a proper purpose."[25] The judge dismissed the count but gave plaintiffs the benefit of every doubt and allowed access to court for a "good faith" attempt to "expand the law." He chose not to sanction them for this count, while dismissing their attempts to expand the law.

With regard to the other two counts, the SLRC's crusade to change the nature of civil rights and rewrite history to imagine a new symbolism surrounding the Battle Flag went too far. The court sanctioned counsel and awarded attorney's fees against the DuPont Seven for their pursuit of the race and religious discrimination counts. With regard to their religious discrimination claim, the court expressly rejected the plaintiffs' sham affidavits as an attempt to construct an issue where none was pled. Judge Hudson wrote that SLRC "had absolutely no factual foundation upon which to base a claim for religious accommodation" (or discrimination).[26] In his decision to award sanctions and attorney fees and costs, the court found that plaintiffs' religious discrimination count was "not only incredible but factually disingenuous…also frivolous, unreasonable and wholly without foundation."[27]

Finding the race-based claim to be "neither factually supported or supportable."[28] Judge Hudson identified further reason to award attorney's fees. In light of the facts and propaganda-based arguments, Judge Hudson found this claim to be "particularly frivolous and worthy of reimbursement."[29]

As a result of the court's finding, Judge Hudson awarded

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[25] *Chaplin*, 303 F Supp.2d at 770, citing *In re* Kunstler, 914 F.2d 505, 518 (4th Cir. 1990) (emphasis added).

[26] *Id.* at 771.
[27] *Id.* at 774.
[28] *Id.*
[29] *Id.* at 774.

$27,550.00 in attorney fees and costs in addition to a sanction in the amount of $10,000.00 against SLRC and its lead counsel. The system worked. Justice was served. The rule of law was defended. "Good" prevailed.

But, neither the case nor the story ends there. The plaintiffs appealed to the Fourth Circuit Court of Appeals, which soundly rejected their arguments and affirmed Judge Hudson's opinion. Next, the SLRC appealed the sanctions award to the United States Supreme Court, which denied certiorari.

We were faced with what to do with the awarded fees and fines. We agreed we did not want what we viewed at this point as tainted money. We did not believe that the employees, themselves, were affiliated with hate organizations or even knew of the SLRC's connection to them. We did not pursue the fees or costs levied against the employees, who we viewed as being caught up in the SLCR's crusade.

We did, however, devise a poetic and inspired use of the sanction money. We collected the sanction from the SLRC and donated the money to a worthy cause. We could not think of a better cause than the Children's Health Forum. This is where Dr. Hooks and his lovely wife Francis come into the picture.

In addition to being an inspirational figure in the face of violent extremism and racism, Dr. Hooks had recently started the Children's Health Forum to address the health needs of inner-city youth. We arranged for Stacy J. Mobley, DuPont's General Counsel, to present the money in the form of a ceremonial check to Dr. Hooks at a Forum fundraising event. Mobley began his career at DuPont in 1972 as the corporation's first ever minority in-house attorney. He rose to be the Senior Vice President, Chief Administrative Officer, and General Counsel of the $27 billion-dollar global science company. The image of one great man handing the ceremonial check to another great man will forever be etched in my mind. Dr. Hooks was going to put this "tainted" money to very good use, and the check was perhaps the least likely use of the funds of the SLRC and its donors.

Even more powerful for me was getting to talk with Frances and Dr. Hooks. Seeing the tears in Frances' eyes as she described the importance of the moment was life affirming for me. She informed us that it was not that long ago that she and Dr. Hooks were the target of death threats and bombings. She eloquently described what they faced as they marched in the 50's; struggled in the 60's; established hard won firsts in the

70's, 80's and 90's; and the violent push back of some. Her eyes filled with tears as the check was exchanged. To see this modest sum of money mean so much to two kind souls that had done so much for all of us was overwhelming. Her tears became my tears as I contemplated that, perhaps, in that moment good did, in fact, conquer evil.

When I reflect on the arc of this case, I am drawn to a simple phrase of another childhood hero. "Look for the helpers. You will always find people who are helping." I cannot help but think of this beautiful and simple message often repeated by Fred Rogers of "Mr. Roger's Neighborhood." Mr. Rogers said he learned this phrase from his mother whenever he saw a "scary" news story about a disaster or other incident. He often repeated it and always told his viewers that in times of tragedy, such as mass shootings or natural disasters, look for the helpers.

I think of this phrase nearly every day as I see "scary" news stories relaying the latest threats to the rule of law. As I digest the latest news and learn of the latest assault on the foundations of our government, I wonder what Mr. Rogers would say. I see the fear and often panicked faces of those facing the curtailment of their life and liberty as new challenges arise even to their personhood. I feel the fear as our own government encourages the wholesale dismantling of any effort to encourage and achieve diversity, equity and inclusion for those most disenfranchised or marginalized by our own history. I see the helplessness of those denied due process and those subject to unfair judgment or assumptions about their "qualifications." When government takeover threatens private universities; when government coerces law firms not to represent clients that may oppose the executive branch; or when government threatens judges with impeachment or arrest for ruling against those in power, the need for "helpers" is abundantly clear.

I ask myself: Where are the helpers? Who are the helpers? Who will stand for the rule of law and for the safety of all of our neighbors? Who will protect those who cannot protect themselves?

"Helpers" are not always first responders or law enforcement. Each "scary" moment requires a different set of helpers. There is no doubt that in a scary time when there are calls from the highest level of government to eliminate courts or impeach judges who dare to rule against the executive branch, we are truly in need of helpers. Even the judiciary is in need of helpers in light of such challenges to its independence. When one branch of government

chooses to ignore, or threaten, the other branches of government, the helpers can only be attorneys at law. We must find the courage and look for opportunities to help. Sometimes, that help might be as simple as providing accurate analysis for those seeking advice. That help also may be using our unique skills, education, and experience to educate others and advocate for the rule of law. There are no other "helpers" coming who can stand up for the rule of law. In our noble profession, we do not wear capes, though judges do wear robes. Nonetheless, we must be ready to be super heroes not only for the individuals and businesses in need, but to protect the very nature of our government and our society.

Not every case will turn out like our "Flag Case," but we must be ready for the fight. We must answer the call to protect our client's interest and, more broadly, to protect the country; to protect our laws; and to protect our neighbors. If we do not rise to the challenge and insist on a respect for the checks and balances provided in our constitution and our laws, then Mr. Rogers's advice will be in vain. There will be no helper coming.

I am reminded of another leader from our Country's executive branch who called us to action by asking:

> If not us, who?
> If not now, when?[30]

People like Dr. and Francis Hooks spent their entire lives as helpers. We must find the courage to recognize the opportunities and rise to the occasion – each occasion – to be a helper for good, for the rule of the law, for due process, for the freedom and the justice guaranteed to all in the founding documents and the laws of our country. We must make the seconds of our lives count.

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[30] President John F. Kennedy, *Draft Inaugural Address*, Papers of John F. Kennedy 01/70/1961 – 11/22/1963 (Jan. 17, 1961) (on file with John F. Kennedy Library, National Archives and Records Administration); *see also* Hillel the Elder, PIRKEI AVOT 1:14.