

VIRGINIA:

IN THE CIRCUIT COURT OF ORANGE COUNTY

Friends of Wilderness Battlefield, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	No. CL09000240-00
Board of Supervisors of Orange County,)	
Virginia, <i>et al.</i> ,)	
)	
Defendants.)	

SUMMARY OF THE EXPERT TESTIMONY OF JAMES M. McPHERSON

“Soon after midnight, May 3d-4th [1864], the Army of the Potomac moved out from its position north of the Rapidan, to start upon that memorable campaign, destined to result in the capture of the Confederate capital and the army defending it.” So wrote Lieut. Gen. Ulysses S. Grant twenty years later, describing the beginning of what came to be called the Overland Campaign that began with the Battle of the Wilderness on May 5-6, 1864, and ended eleven months later at Appomattox. This campaign, Grant continued, “was not to be accomplished, however, without as desperate fighting as the world has ever witnessed; not to be consummated in a day, a week, a month, or a single season. ...The campaign now begun was destined to result in heavier losses, to both armies, in a given time, than any previously suffered.”¹ The most intense concentration of those casualties, nearly 30,000, were suffered in two days at the Battle of the Wilderness.

The Board of Supervisors of Orange County, Virginia has approved the development of a Walmart Supercenter and substantial other retail establishments at the intersection of what are now Route 3 and Route 20. A legal action has been brought to challenge that approval. This is a summary of the testimony I will give at the trial in support of that legal challenge. As summarized below, the Battle of the Wilderness took place mostly within a half-moon radius of less than three miles from the site of the proposed Walmart Supercenter. Some of the fiercest fighting occurred along what is now Route 20, in the area where it passes through the portion of the battlefield now managed by the National Park Service. Moreover, that fighting included areas very close to the Walmart site. And the historical record makes clear that the land on or adjacent to that site was the immediate rear of the fighting, where significant events occurred that were an integral part of the battle. Among other things, thousands of wounded and dying soldiers occupied the then open fields that included the Walmart Site, which is where many of the Union Army hospital tents were located during that battle. One year earlier, the Confederate

Army hospital tents were located in this area during the Battle of Chancellorsville. Lieut. Gen. “Stonewall” Jackson, wounded during that battle, was treated in the nearby Wilderness Tavern, and his amputated arm remains buried on the nearby grounds of what is now “Ellwood.” In 1993, the Congressionally-established Civil War Sites Advisory Commission, on which I served, determined after careful examination of official records and other sources that what is now the Walmart Site lies within the “study area,” and is therefore part of, both of those battlefields.

The Battle of the Wilderness Was Critical to the Outcome of the Civil War

By the spring of 1864, the Civil War had gone on for three bloody and inconclusive years, with no end in sight. Union victories in the Western theater (defined as the region between the Appalachian Mountains and the Mississippi River) had been offset by defeats or at best stalemate in the Eastern theater. Gen. Grant had been the architect of the most important of those Western victories, while Gen. Robert E. Lee had commanded the Confederacy's most successful Army (the Army of Northern Virginia) in the East. In March 1864, President Abraham Lincoln promoted Grant to general in chief of all United States armies. Grant decided to make his headquarters with the Army of the Potomac in the forthcoming campaign. Gen. Meade would remain the titular commander of the Army of the Potomac, but it would be Grant who made the vital strategic and operational decisions in this clash of titans between the two largest armies under the two best commanders of the Civil War.

Grant believed that in the past three years, Union armies in the various theaters had “acted independently and without concert, like a balky team, no two ever pulling together.”² This lack of coordination had allowed Confederate commanders to shift troops from one theater to another to meet the most pressing danger. For two years, Lincoln had been trying to get his armies to advance simultaneously on several fronts to prevent the enemy from using their interior lines to reinforce the most threatened points. Grant worked out such an overall plan. He issued orders to five Union armies stretched over a thousand miles of fronts from Virginia to Louisiana to begin coordinated campaigns as early in the spring as possible.

With about 115,000 men, the Army of the Potomac would attack the 64,000-strong Army of Northern Virginia. This would be the most important theater. “Lee's Army will be your objective point,” Grant told Meade. “Wherever Lee goes, there you will go also.”³ Two small Union armies in Virginia would operate on the perimeters of the main action. Grant ordered Maj. Gen. Benjamin Butler to bring his Army of the James up its namesake river to threaten Richmond from the south and prevent reinforcements being sent to Lee. At the same time, Maj. Gen. Franz Sigel was to pin down Confederates in the Shenandoah Valley.

Next to Virginia, the most important theater would be Georgia, where Maj. Gen. William T. Sherman's 100,000-man army faced Confederate Gen. Joseph E. Johnston's 50,000 (soon reinforced to 65,000) in a campaign to capture Atlanta and damage Confederate resources in that region. Finally, Maj. Gen. Nathaniel P. Banks' Union Army of the Gulf was to move from New Orleans (held by Union forces since April 1862) against Mobile. After capturing that key port, Banks was to strike northeast through Alabama to cooperate with Sherman in a pincers movement to crush all Confederate resistance in that area.

Like most military plans, however, parts of this one soon went awry because, as the saying goes, the enemy had a vote. Banks' campaign against Mobile never got started, because his earlier thrust up the Red River to northern Louisiana was turned back and his Army of the Gulf demoralized. Sherman's campaign eventually succeeded, but it would take four months. Both Butler and Sigel were defeated at Drewry's Bluff south of Richmond and New Market in the Shenandoah Valley, respectively, in mid-May, freeing thousands of Confederate soldiers to reinforce Lee. Although these Confederate successes in Virginia occurred after the Battle of the Wilderness, enough signs of trouble had reached Grant by the first week of May to convince him that the Army of the Potomac would have to do most of the job in Virginia by itself. The result of its confrontation with the Army of Northern Virginia might well determine the outcome of the war and the fate of the nation. This would be the first time Grant and Lee would meet on the field of battle.

Most of the Army of the Potomac crossed the Rapidan River on May 4 at Germanna Ford and moved south along the Germanna Plank Road (roughly the same as today's Route 3) past the site of the proposed Walmart Supercenter to the intersection with the Orange Turnpike (now Route 20). Maj. Gen. Gouverneur K. Warren's 5th Corps camped overnight on and near this site before continuing south on the morning of May 5. Grant's objective was the more open terrain south of the so-called "Wilderness of Spotsylvania," a large and dense second-growth forest of pine and oak a dozen miles west of Fredericksburg with only a few small farm clearings. Grant hoped to move around the right flank of Lee's army, which was camped and entrenched near Orange Court House, to force the Army of Northern Virginia out of its trenches into open battle. Lee accepted the challenge, but planned to hit Grant's divisions in the flank before they emerged from the Wilderness, where Federal superiority in numbers and artillery would count for little in the thick woods. Lee had brought Union General Joseph Hooker to grief in the Wilderness exactly one year earlier in the Battle of Chancellorsville. He hoped to repeat the performance with Grant.

The advance units of Warren's 5th Corps and of Lieut. Gen. Richard Ewell's Confederate 2nd Corps came into contact on the Orange Turnpike (now Route 20) a mile or so west of the intersection with the Germanna Road. Grant told Meade to order Warren to "pitch in," so the 5th Corps attacked across Saunders Field, which lay on both sides of the Turnpike. They met a bloody repulse and brought on two days of carnage in small clearings and woods along the Turnpike so dense that soldiers seldom saw their enemies but fired at the spots where the sound and gun smoke indicated they were. Whole brigades got lost in the forest; officers had little control over the confused movements of their men; exploding shells and muzzle flashes from rifles set the deadfall and underbrush on fire; scores of wounded men burned to death.

On the afternoon of May 5th, the heaviest fighting shifted south to the Orange Plank Road, where portions of the Union 2nd and 6th Corps attacked Lieut. Gen. A. P. Hill's Confederate 3rd Corps. Next morning, the Federals renewed the attack in this sector and almost captured Gen. Lee himself before Lieut. Gen. James Longstreet's 1st Corps arrived and counterattacked to stop the Federals cold. Later in the morning, a Confederate flank attack on the Union position covering the vital intersection of the Orange Plank Road and Brock Road achieved initial success, but Union resistance stiffened after Longstreet was seriously wounded by friendly fire.

Meanwhile Confederate Col. John B. Gordon, who commanded a brigade on the far left of Ewell's corps, discovered that his brigade extended beyond the Union right flank of Maj. Gen. John Sedgwick's 6th Corps, just above Route 20, in a good position to launch an enfilade attack on Sedgwick's flank. After several frustrating hours seeking permission to launch such an attack, Gordon finally got the go-ahead from Lee personally. The evening assault by three Confederate brigades achieved a spectacular initial success, driving back the Union right almost two miles and capturing two Union generals and hundreds of men. "Soldiers poured back from the shattered front into the fields around Wilderness Tavern. 'Everything was panic stricken, and a general stampede ensued,' observed an Alabama soldier being held in a prison compound near Grant's command center. 'Ambulances, head quarters, commissary and quarter master's wagons, in the confusion and hurry to get to the rear, made numerous collisions and were upset and broken down.'"⁴ As discussed below, Gen. Grant's command center was close to the Walmart Site, so much of this confusion and hurry took place on or through that site.

A reorganized Union defense and darkness brought Gordon's attack to a halt. One of the Union brigades that moved up to help stop the Confederate attack, Col. Joseph W. Fisher's Pennsylvania Reserves, marched across part of the Walmart site and established a new trench line across the Germanna Plank Road (now Route 3) to the northwest of that site in anticipation of a renewal of the Confederate attack the next morning from that direction. Col. Charles H. Tompkins' Union artillery brigade (22 guns) was stationed in reserve on or near the Walmart site, and Col. Tompkins moved one of his artillery batteries from their reserve position (Battery E, 1st Rhode Island) to support Fisher. That night and next morning Tompkins established six batteries to command the Germanna Plank Road from the anticipated renewal of the attack, but no attack came.⁵

During Gordon's successful assault on the evening of May 6, panicked Union officers galloped across the Walmart site to Grant's headquarters carrying exaggerated tales of disaster. One distraught brigadier rode up on a lathered horse and babbled excitedly: "General Grant, this is a crisis. ...I know Lee's methods well by past experience; he will throw his whole army between us and the Rapidan, and cut us off completely from our communications." Grant stood up, took his cigar from his mouth, fixed the officer with a steely stare, and responded: "I am heartily tired of hearing about what Lee is going to do. Some of you always seem to think he is suddenly going to turn a double somersault, and land in our rear and on both of our flanks at the same time. Go back to your command, and try to think what we are going to do ourselves, instead of what Lee is going to do."⁶

Grant suited action to words. Next day — May 7 — as both armies lay exhausted behind their breastworks or tried to rescue wounded comrades from the brushfires, many soldiers on both sides concluded that Lee had won another victory over superior numbers. As it had done in the battle of Chancellorsville a year earlier and just a few miles to the east, the Army of Northern Virginia had driven back both enemy flanks. After Chancellorsville, the Army of the Potomac had retreated across the Rappahannock River. Weary Union veterans expected the same thing to happen again. "Most of us," wrote one soldier, "thought it was another Chancellorsville, and that next day we should recross the river." During May 7, the movement of artillery and supply wagons to the rear seemed to confirm this expectation. After dark, the blueclad infantry divisions also began to pull out. But when the men in the 5th and 6th Corps reached the intersection of the Orange Turnpike and Germanna Road and turned south instead of north,

realization dawned that it was not “another Chancellorsville ... another skedaddle” after all. “Our spirits rose,” recalled one veteran who remembered this moment as a turning point in the war. Despite the terrors of the past three days and those to come, “we marched free. The men began to sing.” Grant had promised Lincoln that “whatever happens, there will be no turning back.” Now he was proving it. The Wilderness set a pattern for the next eleven months. Whether a battle was a Union victory, defeat, or draw, Grant would keep moving forward until he achieved final victory at Appomattox.⁷

During those crucial days in May 1864, civilians in both North and South crowded around newspaper and telegraph offices eager for news from the front. These were “fearfully critical, anxious days,” wrote a New Yorker, in which “the destinies of the continent for centuries” would be decided.⁸ In Washington, the artist Francis Carpenter was staying at the White House while working on his famous painting of Lincoln reading the Emancipation Proclamation to his Cabinet. Carpenter reported that during the first week of Grant's campaign in Virginia, Lincoln “scarcely slept at all” because of his anxiety.⁹ Word finally reached Washington that Grant had moved south from the Wilderness toward Spotsylvania Court House. Grant telegraphed the War Department that “I propose to fight it out on this line if it takes all summer.¹⁰ The President could finally sleep at night. He praised Grant to Carpenter and to his private secretary John Hay. “How near we have been to this thing before and failed,” Lincoln said. “I believe if any other General had been at the head of that army, it would now have been on this side of the Rapidan. ...The great thing about Grant ... is his perfect coolness and persistency of purpose. ...It is the dogged pertinacity of Grant that wins.”¹¹

Grant's dogged pertinacity — and Lincoln's — did win in the end. Those three days of trauma in the Wilderness were the beginning of that end, even if the end was still eleven months in the future. The hinge of fate in the Wilderness did indeed decide the destiny of the continent for centuries. If Grant had turned north instead of southeast when he came to that intersection near the proposed Walmart site, the destiny of the United States might have been much different.

The Walmart Site: Part of the Union Army’s Nerve Center and the Scene of Thousands of Wounded and Dying Soldiers

The nerve center of the Union Army during the Battle of the Wilderness was the whole area from the Union right flank across the Germanna Plank Road past the Walmart Site and across the Wilderness Run to the Wilderness Tavern to the Union left and extending down Route 20 to what was then the Lacy house. Today, that house, now called “Ellwood,” is only about one-quarter mile from the Walmart Site.

General Grant made his headquarters a quarter mile from the Walmart site along Route 20, on the knoll behind the present Sheetz station at the intersection of Routes 3 and 20 (the Germanna Plank Road and Orange Turnpike in 1864). Grant there made a crucial decision that would profoundly affect the course of the war and, indeed, the future of the United States, as discussed above. The headquarters of Maj. Gen. George G. Meade were about 200 yards away. General Warren’s 5th Corps headquarters were in the Lacy house.¹²

As discussed above, Col. Charles H. Tompkin’s Union artillery brigade (22 guns) was stationed in reserve just above the Germanna Plank Road until a portion was sent to guard the

approach to the Union position from the northwest. The bivouac area of the 5th Corps on May 4-5, and the area of deployment for the First Division of the 9th Corps on May 6 were also in this area.¹³

In 1864, there were few open fields in this area, and the Walmart Site is where some of those few open spaces were located at that earlier time. The battle resulted in almost 30,000 casualties, as discussed above, and Army doctors and surgeons operated in this close rear area behind the lines. On the afternoon of May 5, the Orange Turnpike behind the Union lines was clogged with ambulances and wounded men walking to the hospital area. Gordon Rhea writes, “[r]ough tables had been erected under trees where surgeons were hacking off arms and legs in an effort to save lives.”¹⁴ The hospitals for the Union Army 5th and 6th Corps were located on or near the Walmart site. There were in total about 8300 wounded Union soldiers treated there and at the 2d Corps hospitals about one mile away. A number of Confederate wounded were also brought back by the ambulances.¹⁵

The medical units of each division of each of those Corps had between 20 and 25 hospital tents. The tents must therefore have extended over a considerable area. The hospital tents for part of the 6th Corps was at the Germanna Plank Road on or very close to the Walmart site.¹⁶ Wounded soldiers waiting for treatment sprawled over an even larger area. As one report states, “thousands of men ‘stretched upon every available spot of ground for many rods around.’” As that account continued, the soldiers “seemed to have been wounded ‘in every conceivable way, men with mutilated bodies, with shattered limbs and broken heads, men enduring their injuries with heroic patience, and men giving way to violent grief, men stoically indifferent and men bravely rejoicing that it is only a leg.’”¹⁷

The Role Played by the Walmart Site Area During the Battle of Chancellorsville

One year earlier, during the Battle of Chancellorsville, this area had also witnessed significant events. This site was an important rear area for Confederate communications and medical personnel. Confederate Army hospital tents were pitched in this area, and hospitals were established at a nearby barn, at the Wilderness Tavern and at the Lacy house (now Ellwood). Lieut. Gen. “Stonewall” Jackson was wounded during that battle, and he was brought to the hospitals in this area, where his arm was amputated on May 3, 1863.¹⁸ His arm was buried on the grounds of the Lacy house, where the arm remains buried to this day.

The Civil War Sites Advisory Commission Recognized the Importance of This Site

Nearly two decades ago, from 1991 to 1993, I served as a member of the Civil War Sites Advisory Commission (“CWSAC”) established by Congress to study Civil War battlefields and recommend how to preserve these hallowed grounds for posterity. Congress was concerned “by growing instances of Civil War sites being damaged or destroyed by urban and suburban development.”¹⁹ The mission of the CWSAC was to identify the nation’s historically important significant Civil War sites, determine their relative importance, determine their condition, assess threats to their integrity and recommend alternatives to preserve and interpret them.²⁰ The CWSAC was required to have 13 members, two of whom were to be “nationally recognized experts on the history of the Civil War.”²¹ I was chosen as one of those individuals. All the

members of the Commission were experts in their fields, however, and constituted a widely respected group. The CWSAC was directed to submit to Congress and publish its findings in the form of a study and report. In 1993, we did so.

In our final report, the CWSAC designated both the Wilderness and Chancellorsville Battlefields as “Class A” battlefields. We defined “Class A” battlefields as those “having a decisive influence on a campaign and a direct impact on the course of the war.”²² We also classified both as “Priority I” battlefields, which meant that the site was in good or fair condition at the time but that parts of the core and study areas faced threats to their integrity as historical sites.²³

We defined “core” areas as “areas of decisive maneuver, most intensive fighting and heavy casualties” that “encompasses all of the tactical objectives of the battlefield.”²⁴ We defined the “study” area as that which “encompasses all of the features associated with the command, deployment, and movement of troops” that “provides the strategic setting for the battle.”²⁵ I understand some people have argued in this dispute that the “study” area consists of any area which was recommended for further study to determine whether it is part of the battlefield. This is a misunderstanding of the concept of “study area” as that term was used in the CWSAC report. Over an extended period of time, the members and staff of the CWSAC, with extensive input from numerous others, conducted that very type of study and concluded that areas within the “study area” were indeed part of the battlefield.

The proposed Walmart site lies within the study area for both the Wilderness and Chancellorsville Battlefields, as defined by the Commission. I continue to agree vigorously with that designation. This site is important for understanding the Battle of the Wilderness because of its centrality during the entire battle for Union troop movements on the roads through that intersection, artillery emplacements, infantry deployments, communications and care of the wounded. During the Battle of Chancellorsville, this site became an important rear area for Confederate communications and medical personnel, including its proximity to Wilderness Tavern where Lieut. Gen. “Stonewall” Jackson’s arm was amputated as discussed above. Truly this area is hallowed ground for the memory of sacrifice by both Union and Confederate soldiers.

NOTES

¹ Personal Memoirs of U.S. Grant, 2 vols. (New York: Charles L. Webster & Co., 1885-1886), II, 177-78.

² The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies, 69 vols. (hereinafter cited as O.R.), Series I, Vol. 46, part. i, p. 11 (GPO, 1890-1901).

³ *Ibid.*, Vol. 33, pp. 827-28.

⁴ Stamp, “Ten Months,” in Stamp Papers, AU, as quoted in Gordon C. Rhea, The Battle of the Wilderness, May 5-6, 1864 (Louisiana State Univ. Press., 2004), at p. 421.

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- ⁵ For the location of the artillery, *see* Frank A. O'Reilly, Maps, "The Battle of the Wilderness"; Col. Tompkins' Report in O.R., Series I, Vol. 36, part I, p. 753-54.
- ⁶ Horace Porter, Campaigning with Grant (New York: Century Co., 1897), pp. 69-70
- ⁷ Quotations from Bruce Catton, A Stillness at Appomattox (Garden City; Doubleday & Co., 1957), pp. 91-92, and Shelby Foote, The Civil War: A Narrative. From Red River to Appomattox (New York: Random House, 1974), pp. 186, 189-91.
- ⁸ Allan Nevins and Milton Halsey Thomas, eds., The Diary of George Templeton Strong, 1860-1865 (New York: Macmillan, 1952), p. 449, diary entry of May 20, 1864.
- ⁹ Francis B. Carpenter, Six Months at the White House with Abraham Lincoln (New York: Hurd and Houghton, 1866), p. 30.
- ¹⁰ O.R., Series I, Vol. 36, part ii, p. 627.
- ¹¹ Carpenter, Six Months at the White House, p. 283; Michael Burlingame and John R. Turner Ettliger, eds., Inside Lincoln's White House: The Complete Civil War Diary of John Hay (Carbondale, Ill.:Southern Illinois University Press, 1997), p. 195, diary entry of May 9, 1864.
- ¹² *See* Personal Memoirs of Grant, II, 193 and the McParlin and Wilkinson maps cited herein.
- ¹³ For the deployment of the First Division of the 9th Corps, *see* Warren Wilkinson, Mother May You Never See the Sights I Have Seen, The Fifty-seventh Massachusetts Veteran Volunteers in the Army of the Potomac, 1864-1865 (New York: Harper & Row, 1990), pp. 66-68 and map on p. 71.
- ¹⁴ Rhea, *supra*, at p. 156.
- ¹⁵ Report by Thomas E. McParlin, Medical Director of the U.S. Army, in O.R., Series I, Vol. 36, part i, p. 218, and the map drawn by McParlin in Atlas to Accompany the Official Records of the Union and Confederate Armies, Compiled by Capt. Calvin D. Cowles, 23rd U.S. Infantry (GPO, 1891-1895), Plate 94, map 6.
- ¹⁶ McParlin Report, *supra*.
- ¹⁷ George T. Stevens, Three Years in the Sixth Corps, 314-19; Randall, "Reminiscences," in Randall Papers, BL, as quoted in Rhea, *supra*, at 451.
- ¹⁸ As to the location of the Confederate Army hospitals and hospital tents, *see* John S. Apperson, Repairing the March of Mars (Fredericksburg and Spotsylvania National Military Park Collection).
- ¹⁹ Civil War Sites Advisory Commission Report on the Nation's Civil War Battlefields (Washington, Dept. of the Interior, 1993) (hereinafter cited as Final Report), p. 12.

²⁰ *Ibid.*

²¹ *Ibid.*; Technical Volume I: Appendices, p. 32.

²² Final Report, pp. 16-17.

²³ *Ibid.*, p. 41. The Final Report observed as follows concerning the threats to many battlefields:

Battlefield site impacts from residential or commercial construction are well-known and generally obvious. Less obvious to the public, perhaps because they are usually at or near ground level, are impacts from roads. Although the significance of a roadway as a visual detriment depends on topographic factors, high volume roadways through battlefields create a surprisingly intrusive noise disturbance as well as hazards and inconvenience for visitors. They also can constitute major distractions from the historic setting, and they divide historic sites into artificial segments.

Continuing moderate use of historic roads on battlefields can be appropriate to an authentic setting. However, allowing or expanding such roads to carry high volumes of traffic (as at Manassas and Kennesaw), or constructing interstate highways through historic battlefields (as in the Shenandoah Valley) causes major degradation of integrity, and often desecration as well.

Final Report, at p. 24.

²⁴ *Ibid.*, p. 22.

²⁵ *Ibid.*; see more complete definition at *ibid.*, Technical Volume I at p. 30.