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## Rape on the Washington Southern: The Tragic Case of *Hines v. Garrett*

Michael I. Krauss

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## Rape on the Washington Southern: The Tragic Case of *Hines v. Garrett*

### **Cover Page Footnote**

Professor of Law, Antonin Scalia Law School at George Mason University. Thanks are due to William H. Jones, George Mason University School of Law Class of 2011 for substantial research on an earlier draft of this paper, and to Keith Underkoffler, George Mason University School of Law Class of 2017, for work on this version. This paper has been a long time in the making, and I also thank George Mason students and faculty for their input. It is estimated that 12.4% of Virginia women will be forcibly raped during their lifetime. Only one rape in six will be reported to authorities. See D. Kilpatrick & K. Ruggiero, Rape in Virginia: A Report to the Commonwealth, National Violence Against Women Prevention Research Center, Medical University of South Carolina (2003) 6–7. This article commemorates the courage of those victims.

# RAPE ON THE WASHINGTON SOUTHERN: THE TRAGIC CASE OF *HINES V. GARRETT*

*Michael I. Krauss*<sup>+</sup>

I. JULIA MAY GARRETT’S DAILY COMMUTE .....	248
II. THE ASSAULTS .....	255
III. THE POLICE SEARCH .....	261
IV. THE LAWSUIT.....	264
V. THE TRIAL.....	271
VI. THE APPEAL.....	279
VII. THE VIRGINIA SUPREME COURT’S DECISION .....	286
VIII. AFTERMATH .....	287

It was the winter of 1919 in the Nation’s capital. The United States was emerging as an international power following its successful, if belated, participation in World War I. The Great War was technically not over, though; President Woodrow Wilson had extended his stay in Europe to negotiate the Treaty of Versailles.<sup>1</sup> Social change was the order of the day. Women’s suffrage was on the horizon<sup>2</sup> and racial tensions were building. Northern Virginia chapters of the Ku Klux Klan were established in 1915,<sup>3</sup> and the Klan attracted

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<sup>+</sup> Professor of Law, Antonin Scalia Law School at George Mason University. Thanks are due to William H. Jones, George Mason University School of Law Class of 2011 for substantial research on an earlier draft of this paper, and to Keith Underkoffler, George Mason University School of Law Class of 2017, for work on this version. This paper has been a long time in the making, and I also thank George Mason students and faculty for their input. It is estimated that 12.4% of Virginia women will be forcibly raped during their lifetime. Only one rape in six will be reported to authorities. See D. Kilpatrick & K. Ruggiero, Rape in Virginia: A Report to the Commonwealth, National Violence Against Women Prevention Research Center, Medical University of South Carolina (2003) 6–7. This article commemorates the courage of those victims.

1. *The Paris Peace Conference and the Treaty of Versailles*, U.S. DEPT. OF STATE, <https://history.state.gov/milestones/1914-1920/paris-peace> (last visited Oct. 15, 2016).

2. In 1917, suffragettes picketed in front of the White House only to be arrested and imprisoned at the Occoquan/Lorton Workhouse. See *People: Alice Paul*, PBS, [http://www.pbs.org/wgbh/amex/wilson/peopleevents/p\\_paul.html](http://www.pbs.org/wgbh/amex/wilson/peopleevents/p_paul.html) (last visited Oct. 15, 2016). Their efforts were not in vain because on August 18, 1920, the Nineteenth Amendment was ratified and granted women the right to vote. U.S. CONST. amend. XIX. Virginia, however, would not ratify the amendment until 1952. VIRGINIA DABNEY, VIRGINIA: THE NEW DOMINION 477 (1971).

3. In 1923, the *Fairfax Herald* called the Ku Klux Klan ““much beloved by the people”” of Fairfax, and by 1929 Fairfax celebrated “Herndon Day” at the county fair, featuring a Burning Cross and a fireworks finale. NAN NETHERTON ET AL., FAIRFAX COUNTY, VIRGINIA: A HISTORY 534–35 (1978).

upwards of thirty-thousand new members in neighboring Maryland.<sup>4</sup> In Washington, the federal government had been re-segregated by President Wilson.<sup>5</sup>

A few miles south of the capital city and just outside the Alexandria city limits, Fairfax County, Virginia was affected by this upheaval.<sup>6</sup> Like its neighbor Montgomery County, Maryland, Fairfax was a rural and agricultural county whose white population had generally supported the Confederacy.<sup>7</sup> But by 1919, Fairfax agriculture was declining as the county's economy was pulled into the orbit of Washington's growing federal government.<sup>8</sup> The influenza epidemic of 1918<sup>9</sup> and the military requirements of World War I constricted the area's white male labor market,<sup>10</sup> just as railroads and a network of electric trolleys made it cheaper to travel to jobs in the District of Columbia.<sup>11</sup> Deprived of adequate labor, some Fairfax County farmers' fields lay fallow.<sup>12</sup> Meanwhile for the first time, wives and daughters, such as eighteen-year-old Julia May Garrett, found it possible to supplement their families' income by commuting to clerical employment in Washington that had formerly been reserved for men.

After work one Sunday afternoon in February 1919, Ms. Garrett departed for home from her job as a "messenger girl" (also known as a telegraph operator) at

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4. Knights of the Ku Klux Klan, Klan No. 51, Mt. Rainier, Maryland, UNIV. OF MARYLAND LIBRS. DIG. COLLECTION (1924–1965).

5. See DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* 357–58 (2008). On President Wilson's racist views, in general, see William Keelor, "The long-forgotten racial attitudes and policies of Woodrow Wilson," Boston University Professors' Voices, March 4, 2013, <http://www.bu.edu/professorvoices/2013/03/04/the-long-forgotten-racial-attitudes-and-policies-of-woodrow-wilson/> (last visited Jan. 3, 2017).

6. See generally *Staff Report for 2232-P13-13 (Tinner Hill Historic Site) – Fairfax County, Va.*, FAIRFAX COUNTY PLANNING COMMISSION 1–47 (Jan. 23, 2014), [www.fairfaxcounty.gov/dpz/2232/staffreports/2232-p13-13.pdf](http://www.fairfaxcounty.gov/dpz/2232/staffreports/2232-p13-13.pdf).

7. CHARLES V. MAURO, *THE CIVIL WAR IN FAIRFAX COUNTY: CIVILIANS AND SOLDIERS* 19–21 (2006) (noting that Fairfax County citizens supported efforts to secede from the Union by adopting "twelve resolutions for the common defense of the county as well as forming a Committee of Safety and Central Home Guard"). Neither Maryland nor Virginia ever ratified the Fourteenth Amendment.

8. See KARLIANA SAKAS, *NINE DECADES OF MAKING THE BEST BETTER: A HISTORY OF 4-H IN FAIRFAX COUNTY, VIRGINIA* 3 (2002).

9. The epidemic killed 531 people in Fairfax County. NETHERTON ET AL., *supra* note 3, at 499.

10. *Id.* at 530. (noting that "[t]he war aggravated the existing labor calls for help with farm labor").

11. See *infra* notes 30, 32 and accompanying text.

12. See NETHERTON ET AL., *supra* note 3, at 530.

the Southern Railway's<sup>13</sup> head office near the White House.<sup>14</sup> As an employee she held a free pass for the Southern Railway, but she was not able to catch the local train and instead boarded Train 29 of her employer's competitor,<sup>15</sup> the Washington Southern Railway.<sup>16</sup> However, the Washington Southern Railway train failed to stop at Ms. Garrett's intended station, letting her off approximately eight-tenths of a mile further down the line instead.<sup>17</sup> While she was walking back home along the tracks, Ms. Garrett was accosted and raped twice, first by a soldier and then by a vagabond.<sup>18</sup>

Ms. Garrett's attorneys sued the U.S. Director General of Railroads ("Director"), Walker D. Hines, alleging that Washington Southern Railway had negligently caused her harm. After a contentious trial, the jury awarded her \$2,500.<sup>19</sup> On appeal, the Virginia Supreme Court confirmed that the railroad's negligence could be the proximate cause of Ms. Garrett's injuries, but remanded the case to clarify one important factual question. Before the case was decided on remand, however, Ms. Garrett settled for a mere \$1,000 minus court costs.<sup>20</sup> The settlement left her essentially without compensation, but kept intact a

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13. The Southern Railway was "the product of nearly 150 predecessor lines that had been combined, reorganized, and recombined since the 1830s[.]" formally becoming the Southern Railway in 1894. See *Southern Railway History*, SOUTHERN RAILWAY HIST. ASS'N, <http://www.srha.net/public/History/history.htm> (last visited Oct. 15, 2016). In 1982, Southern was placed under control of Norfolk Southern Corporation along with the Norfolk and Western Railway. The company was renamed Norfolk Southern Railway in 1990. See *Norfolk Southern Merger Family Tree*, TRAINS MAG. (June 2, 2006), <http://trn.trains.com/railroads/railroad-history/2006/06/norfolk-southern-merger-family-tree>.

14. Brief in Behalf of Defendant in Error at 3, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921) (Record No. 653); Petition for Writ of Error at 8, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921) (Record No. 653); see also *Two Attack a Girl*, WASH. POST, Feb. 3, 1919, at 3.

15. Brief in Behalf of Defendant in Error, *supra* note 14, at 3; Petition for Writ of Error, *supra* note 14, at 8.

16. The Alexandria and Fredericksburg Railway was chartered by Washington during the Civil War, but hostilities and damage prevented it from beginning operations until July 2, 1872, when it began running to Quantico, VA. See Al Cox, *The Alexandria Union Station*, 1 HISTORIC ALEXANDRIA Q. 1, 3 (1996). There the 1.70-mile long Potomac Railroad, which had opened two months earlier, connected the Alexandria and Fredericksburg Railway with the Richmond, Fredericksburg and Potomac Railroad. *Id.* On March 31, 1890, the Alexandria and Fredericksburg Railway and the Washington and Alexandria Railroad merged to form the Washington Southern Railway. The merged company was in turn merged into CSX Transportation [Chessie System], the great rival of Norfolk Southern, in 1991. *Id.* at 5.

17. Petition for Writ of Error, *supra* note 14, at 3.

18. See *id.* at 8; see also Brief in Behalf of Defendant in Error, *supra* note 14, at 7.

19. 10 Fairfax Circuit Court Minute Book, at 162 (1919–1922); Brief in Behalf of Defendant in Error, *supra* note 14, at 2; Petition for Writ of Error, *supra* note 14, at 1.

20. 10 Fairfax Circuit Court Minute Book (1919–1922). \$13,700 in 2015 dollars. See the *CPI Inflation Calculator*, BUREAU OF LAB. STAT., <http://data.bls.gov/cgi-bin/cpicalc.pl?cost1=1%2C000.00&year1=1919&year2=2015> (last visited Oct. 15, 2016). Court costs likely diminished this amount by about fifteen percent. Even adjusted for inflation, this was very low compensation for the pain and suffering, as well as job-related losses, caused by two violent rapes.

precedent on proximate causation that is still cited in American casebooks,<sup>21</sup> cases<sup>22</sup> and law review articles.<sup>23</sup>

Those are the headlines. This essay and its historical footnotes tell the rest of Ms. Garrett's story.

### I. JULIA MAY GARRETT'S DAILY COMMUTE

In 1917, sixteen-year old Julia May Garrett began working as a messenger girl in the Southern Railway's telegraph office near the White House, commuting to work by rail from her home in Fairfax County, Virginia.<sup>24</sup> Today, Fairfax is a prosperous suburb of Washington, D.C. and home to civil servants, politicians, and diplomats; but in 1917, the area was rural, sparsely populated, and only recently pulled into the orbit of the Nation's Capital.<sup>25</sup> Ms. Garrett lived on a two-acre farm with her sixteen year old brother J.W. Garrett,<sup>26</sup> her six-month old half-sister Ellen Frinks,<sup>27</sup> her mother Rowena Garrett Frinks, and her stepfather

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21. See RICHARD EPSTEIN, *CASES AND MATERIALS ON TORTS* 504, 510–11 (9th ed. 2008); JOHN W. WADE ET AL., *PROSSER, WADE AND SCHWARTZ'S CASES AND MATERIALS ON TORTS* 322 (9th ed. 1994); WILLIAM LLOYD PROSSER ET AL., *CASES AND MATERIALS ON TORTS* 348 (7th ed. 1982); FRANK J. VANDALL ET AL., *TORTS: CASES AND PROBLEMS* 324 (2d ed. 2003). See, e.g., JERRY J. PHILLIPS ET AL., *TORT LAW: CASES, MATERIALS, PROBLEMS* (3d ed. 2002); HARRY SHULMAN ET AL., *LAW OF TORTS: CASES AND MATERIALS* (4th ed. 2003); VINCENT R. JOHNSON & ALAN GUNN, *STUDIES IN AMERICAN TORT LAW* (4th ed. 2009); WARD FARNSWORTH & MARK F. GRADY, *TORTS: CASES AND QUESTIONS* (2004); JAMES A. HENDERSON ET AL., *THE TORTS PROCESS* (7th ed. 2007); DOMINICK VETRI ET AL., *TORT LAW AND PRACTICE* (2d ed. 2003); JOHN C.P. GOLDBERG ET AL., *TORT LAW: RESPONSIBILITIES AND REDRESS* (2004).

22. See, e.g., *Taboada v. Daly Seven, Inc.*, 641 S.E.2d 68, 73 (Va. 2007) (ruling a common carrier is liable for third party criminal harm when the carrier's agents knew or ought to have known that danger was threatened and failed to protect the passenger from impending peril).

23. See Stephen D. Sugarman, *Rethinking Tort Doctrine: Visions of a Restatement (Fourth) of Torts*, 50 *UCLA L. REV.* 585, 613 (2002) (arguing that "harm within the risk" analysis of proximate cause explains frequent defendant liability despite intervening causes); Lawrence M. Solan & John M. Darley, *Causation, Contribution, and Legal Liability: An Empirical Study*, 64 *L. & CONTEMP. PROBS.* 265, 269–70 (2001) (describing enabling torts, where the negligent defendant merely sets the stage for a subsequent wrongdoer to cause the plaintiff's harm); Robert N. Strassfeld, *Causal Comparisons*, 60 *FORDHAM L. REV.* 913, 928–29 (1992) (arguing that "greatest cause" analysis is insufficient when allocating comparative liability between two causes if one cause occasions the other cause).

24. Transcript of Record at 263, 268, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921) [hereinafter Transcript].

25. See *supra* notes 7–12 and accompanying text. Although their home was located in Fairfax County, the Frinks very likely saw themselves as Alexandria residents. The family belonged to Alexandria's Washington Street Methodist Episcopal Church South. A regional Washington, D.C., telephone book listed a Mrs. Charles Frinks in "Alexandria" on "Duke Street Extended." By contrast, the Fairfax County seat, Fairfax Courthouse (today Fairfax City) was far away, in the vicinity of the Little River Turnpike. NETHERTON ET AL., *supra* note 3, at 256.

26. See *Suspects Released*, *ALEXANDRIA GAZETTE*, Feb. 5, 1919, at 1.

27. Ellen Frinks was born in Alexandria on September 29, 1918.

Charles Frinks.<sup>28</sup>

Ms. Garrett had three transit options to get home from work. Normally she traveled on her employer's train, where she held a free pass.<sup>29</sup> However, on Sundays Southern Railway service was limited. If she missed the Southern Railway train, she could purchase a ticket either on the cheaper electric streetcar operated by the Washington-Virginia Railway<sup>30</sup> or on the more expensive Washington Southern Railway train.<sup>31</sup> Both routes proceeded southwest from Washington, crossing the Potomac River into the retroceded portion of Virginia.<sup>32</sup>

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28. Rowena Garrett and Charles Frinks were both widowed when they married in 1904. Charles was substantially older than Rowena. Born in 1847, Mr. Frinks had possibly participated in the latter stages of the Civil War: he donated \$5.00 to the Confederate Soldiers reunion fund in 1900. *Report of Treasury of Re-Union Finance Committee*, FAIRFAX HERALD, Nov. 30, 1900, at 2. See CONSTANCE K. RING & CRAIG R. SCOTT, INDEX TO THE FAIRFAX COUNTY, VIRGINIA REGISTER OF MARRIAGES, 1853–1933 50 (1997).

29. See Transcript, *supra* note 24, at 263.

30. See *id.* at 263, 269. The Washington, Alexandria, and Mount Vernon Railway streetcar was opened in 1892 between Alexandria and Mount Vernon and extended in 1896 across the Long Bridge to downtown Washington, D.C., terminating at 12th and D Streets, NW, near the present location of Federal Triangle Metro Station. See Philip V. Bagdon, *South from Alexandria to Mount Vernon: The Washington, Alexandria & Mt. Vernon R.R.*, ECHOES OF HIST., Nov. 1970, at 20, 31–32 (Nov. 1970). The streetcars ran in what is, today, Arlington, near and along the present routes of Interstate 395 (I-395) and S. Eads Street, travelling largely on the grade of a towpath on the west side of the defunct Alexandria Canal. The Washington, Alexandria, and Mount Vernon Railway and its affiliates constructed Luna Park, an amusement park, and a rail yard complete with a car barn and power plant. After crossing Four Mile Run into Alexandria, the streetcars ran along the present route of Commonwealth Avenue until reaching the city's Old Town area at King Street. See *id.* at 20. At Mount Vernon, the estate's proprietors allowed the railroad to build only a modest terminal next to the trolley turnaround. They resisted commercial development out for fear of compromising the dignity of the historical Mount Vernon site. The estate convinced financier Jay Gould to purchase and donate thirty-three acres outside the main gate for protection. By 1906, the railway had transported 1,743,734 passengers along its routes with 92 daily trains. *Id.* During World War I, the line was extended to Camp Humphreys (now Fort Belvoir). See *id.* at 32. In 1913, the Washington, Alexandria, and Mount Vernon Railway merged with the Washington, Arlington & Falls Church Railroad to form the Washington-Virginia Railway. That company went into receivership in 1920 when buses became the dominant form of local public transportation. *Id.*

31. See Transcript, *supra* note 24, at 42, 256–57, 262–64.

32. Compare *id.* at 18 (explaining that the railroad tracks, including those of the Washington Southern Railway, ran southwest towards Richmond, VA) with Scott M. Kozel, *14th Street Bridge Complex (I-395 and US-1)*, ROADS TO THE FUTURE, [http://www.roadstothefuture.com/14th\\_Street\\_Bridge.html](http://www.roadstothefuture.com/14th_Street_Bridge.html) (last updated June 20, 2004) (showing the railroad tracks run southwest over the 14th Street Bridge). An additional swing-span bridge called the Highway Bridge, 500 feet (150 m) upriver opened February 12, 1906 to serve non-railroad traffic including streetcars. See *id.* In August, 1904, a railroad-only bridge opened where today's five-span "14th Street Bridge" (I-395) is located. See *George Mason Memorial Bridge*, INFOLIST, <http://www.theinfolist.com/php/SummaryGet.php?FindGo=George%20Mason%20Memorial%20Bridge> (last visited Oct. 21, 2016). The Highway Bridge was replaced by the George Mason Memorial Bridge in 1962. See Chief Justice William H. Rehnquist, Remarks to the Arlington Historical Soc'y at the Bicentennial Banquet Army-Navy Country Club (April 27, 2001), [http://www.supremecourtus.gov/publicinfo/speeches/sp\\_04-27-01.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_04-27-01.html).

Ms. Garrett's route traversed an area imbued with a rich and disturbing history. Alexandria County was an area inextricably linked both to the District of Columbia and to the institution of slavery.<sup>33</sup> In 1791, when the U.S. Capital was moved to the South, Maryland and Virginia ceded territory to the federal government.<sup>34</sup> Virginia ceded Alexandria County and the independent city of Alexandria, while Maryland ceded parts of Prince George's and Montgomery Counties, including the Montgomery County seat, the city of Georgetown.<sup>35</sup> Almost immediately, citizens in the prosperous port cities of Alexandria and Georgetown complained that they lacked political rights and that the new national Congress poorly managed their local affairs. Retrocession of the two cities to Virginia and to Maryland, respectively, was discussed.<sup>36</sup>

The retrocession movement in Alexandria came to a head in 1840, when Congress was urged to abolish slavery in the District of Columbia.<sup>37</sup> At the time, Virginia's legislature pitted abolitionist forces in what is today West Virginia against pro-slavery voices from plantations in the eastern part of the state.<sup>38</sup> Now lacking representation in the House of Representatives and the U.S. Senate, farmers in the ceded Alexandria County had no say over abolition if the county remained part of the federal capital. By contrast, if the county were to become

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33. Transcript, *supra* note 24, at 256–67.

34. *Washington, DC- Historical Timeline of the Nation's Capital*, DC VOTE, <https://www.dcvote.org/fight-equality/washington-dc-historical-timeline-nations-capital> (last visited Oct. 21, 2016). Locating the Capital entailed a delicate compromise between Southern representatives and Alexander Hamilton, under which plan the federal government would assume the Revolutionary War debts of Northern states in return for moving the capital from Philadelphia to the slaveholding South. FORREST McDONALD, *ALEXANDER HAMILTON: A BIOGRAPHY* 199–200, 202–03 (1979).

35. Initially, the District of Columbia had five distinct legal divisions: Alexandria City, Alexandria County, Georgetown, Washington County, and Washington City (the latter is, roughly, today known as Capitol Hill). Mark David Richards, *The Debates Over the Retrocession of the District of Columbia, 1801–2004*, WASH. HIST., Spring/Summer 2004, at 9, 56, 59, 62, 78. Though today the term “Washington, D.C.” is tautologous (the District of Columbia is the city of Washington, and *vice versa*) such was not originally the case: people lived in Georgetown DC, Alexandria DC, etc.

36. *See id.* at 59–62.

37. The infamous 1836–1844 “gag rule” in the US House of Representatives was initially passed to squelch petitions to abolish slavery in the District of Columbia. *See* 2 WILHELMUS BOGART BRYAN, *A HISTORY OF THE NATIONAL CAPITAL: FROM ITS FOUNDATION THROUGH THE PERIOD OF THE ADOPTION OF THE ORGANIC ACT* 143 (1916). *See also* Jeffrey Jenkins & Charles Stewart, III, *The Gag Rule, Congressional Politics, and the Growth of Anti-Slavery Popular Politics* 11 (Draft of April 16, 2005), [http://web.mit.edu/cstewart/www/gag\\_rule\\_v12.pdf](http://web.mit.edu/cstewart/www/gag_rule_v12.pdf) (indicating that the passage of the gag rule quickly followed the debate of retrocession in Alexandria).

38. *See* Erik S. Root, *The Virginia Slavery Debate of 1831–1832*, ENCYCL. VIRGINIA, [http://www.encyclopediavirginia.org/Virginia\\_Slavery\\_Debate\\_of\\_1831-1832\\_The#start\\_entry](http://www.encyclopediavirginia.org/Virginia_Slavery_Debate_of_1831-1832_The#start_entry) (last modified Sept. 23, 2015).



part of Virginia again, Alexandria County's votes would strengthen the pro-slavery majority in the divided Virginia legislature.<sup>39</sup>

Meanwhile, in 1840 Congress refused to extend bank charters in the District of Columbia and to fund a much-demanded canal in Alexandria. These developments gave Alexandrians the final push they needed to seek to rejoin Virginia.<sup>40</sup> The Virginia legislature voted to accept the region back and both Alexandria City and Alexandria County voted to retrocede. In 1846, Congress acquiesced and retroceded the region to Virginia.<sup>41</sup> In 1847, the Virginia legislature voted to fund the canal in Alexandria, thus paying the price for Alexandria's votes.<sup>42</sup>

Passing through Alexandria County, Ms. Garrett's route afforded her a view of Arlington House, sited on a bluff overlooking Washington, D.C.<sup>43</sup> Arlington

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39. See *The Slavery Question—Resistance Contemplated by the South—Proposed Retrocession of the District of Columbia, &c.*, THE BALTIMORE SUN, Dec. 27, 1848, at 4.

40. Andrew Jackson's Democrats continued the war against banks even after Jackson left office. The subtle irony is that George Washington bargained to include Alexandria in the Capital city in return for establishing a bank, and then years later George Washington Parke Custis, Washington's step-grandson and owner of Arlington House, would lead Alexandria out of the District of Columbia because Congress refused to re-charter Alexandria's banks. Richards, *supra* note 35, at 62, 66–67.

41. The gag rule prevented Congress from discussing whether retrocession would have an impact on abolition politics, but Congress did grapple with two other foreboding questions that presaged issues of the coming Civil War. First, Congress considered whether the U.S. Constitution contained any authority for the Congress to retrocede land once the land had joined the capital city. Second, Congress considered whether it was wise for the Federal Government to give up control of Alexandria County's strategic high-ground within bombardment range of the White House. The strategic high ground included Robert E. Lee's home, the Arlington House and plantation. *Id.* at 55, 58–59, 70–71, 76–77.

42. At the same time, the Maryland retrocession movement in Georgetown faded. Maryland was already in debt from funding public works, and could not afford to offer similar infrastructure boondoggles to bribe the citizens of Georgetown into favoring retrocession. Georgetown residents, who did not want to pay taxes to Maryland without such bribes, began to look toward full amalgamation with Washington City as a different avenue to increased local funding. See BRYAN, *supra* note 37, at 261, 263.

43. See *Arlington House, The Robert E. Lee Memorial*, NAT'L PARK SERV., <http://www.nps.gov/arho/index.htm> (last visited Oct. 21, 2016) (showing by its address that the house overlooks the Potomac River and the George Washington parkway, which was the path of the Southern Railway). Arlington House, then called the Custis-Lee House, had been intended as a living memorial to George Washington when the first President's adopted Grandson, George Washington Parke Custis, constructed it upon a 1,100-acre tract he had inherited. George Washington Parke Custis and his wife, Mary Lee Fitzhugh (whom he had married in 1804), lived in Arlington House for the rest of their lives and were buried on the property following their deaths in 1857 and 1853, respectively. See *George Washington Parke Custis*, NAT'L PARK SERV., <http://www.nps.gov/arho/learn/historyculture/george-custis.htm> (last visited Oct. 21, 2016). On June 30, 1831, Custis' only child, Mary Anna, married her childhood friend and distant cousin, West Point graduate Robert E. Lee. See *Mary Anna Randolph Custis Lee*, NAT'L PARK SERV., <http://www.nps.gov/arho/learn/historyculture/mary-lee.htm> (last visited Oct. 21, 2016). Lee was the son of former three-time Virginia Governor Henry ("Light Horse Harry") Lee III. See *Light Horse Harry Lee*,

House was the well-known manor house of the Alexandria County plantation formerly inhabited by General Robert E. Lee and his family.<sup>44</sup> The plantation was used by federal troops as a cemetery, fort, and freedman's village during the Civil War. After the war it was confiscated as retribution for General Lee's disloyalty; when the seizure was declared illegal by the courts, the land was purchased and used to bury Union dead.<sup>45</sup> In 1920, Alexandria County changed its name to Arlington County, both to avoid confusion with the independent City of Alexandria and in rebellious honor of the home of the Confederate general.<sup>46</sup>

Continuing south from Arlington House, trains and streetcars passed through Potomac Yard, the busiest rail yard in the area. Potomac Yard was built in 1906<sup>47</sup> and was decommissioned following complicated legal and political

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STRATFORD HALL, <http://www.stratfordhall.org/meet-the-lee-family/henry-lee-iii/> (last visited Oct. 2, 2016).

44. The plantation was situated so strategically that heavy siege guns could absolutely command the cities of Washington and Georgetown. General Lee had already formulated plans to fortify Arlington, and Confederate engineers were selecting locations for batteries targeting Georgetown and Washington City when, in what Confederate newspapers called "one of the greatest misfortunes" nine days into the war, three columns of Federal troops advanced on Arlington House, thereby securing Washington from capture by Confederates. See Benson J. Lossing, *THE PICTORIAL FIELD BOOK OF THE CIVIL WAR IN THE UNITED STATES OF AMERICA* 480 (1874).

45. When Northern casualties overwhelmed cemeteries near Washington in 1864, Quartermaster General Montgomery C. Meigs proposed that two hundred acres of the Lee property at Arlington be used for that purpose. See *Arlington House, The Robert E. Lee Memorial*, ARLINGTON NATIONAL CEMETERY (Oct. 7, 2015), <http://www.arlingtoncemetery.mil/Explore/History/Arlington-House>. After Lee's death, Custis Lee, heir to the property, sued the federal government, claiming that its seizure of the estate was illegal. *Id.* The Supreme Court ruled in Lee's favor and Congress returned the land to Lee, who a year later sold it back to the federal government for \$150,000 (about \$4.6 million in today's dollars). *Id.*; see *Tom's Inflation Calculator*, HALFHILL.COM, [http://www.halfhill.com/inflation\\_js.html](http://www.halfhill.com/inflation_js.html) (last visited Oct. 21, 2016) (calculating dollar amount of \$150,000 in starting year of 1882 and target year of 2016); see also *United States v. Lee*, 105 U.S. 196, 250–51 (1882).

46. *Arlington County in Transition*, ARLINGTON HISTORICAL SOC'Y, <http://www.arlingtonhistoricalsociety.org/learn/history-of-arlington-county/arlington-county-in-transition/> (last visited Oct. 21, 2016). See also *IT'S ARLINGTON COUNTY NOW: Governor Davis, of Virginia, Signs Bill to End Confusion*, WASH. POST, Mar. 18, 1920, at 3. In a moment of levity during the *Garrett v. Hines* trial, the following exchange took place among Julia May Garrett's attorney, Mr. Ford, Defendant's civil engineer witness, Mr. Thomas, and Judge Brent:

*By Mr. Ford*

Q Mr. Thomas, where did you say you are living now?

A Potomac, Va.

Q What County is that in?

A Arlington County.

*The Court.* It is not. It is Alexandria County. The act takes effect on the 12<sup>th</sup> day of June.

*Mr. Ford.* Your honor will take judicial notice of that, will you?

*The Court.* Yes.

Transcript, *supra* note 24, at 442.

47. See D'Vera Cohn, *Cleanup Becomes Less Urgent*, WASH. POST, Feb. 22, 1993, at C3.

wrangling in 1989.<sup>48</sup> Today, it is a massive high-density residential development. Seventy of its four hundred acres have become Potomac Yard Center, a six hundred thousand square-foot strip mall anchored by “big box” stores that had been deemed unsightly in adjacent jurisdictions.<sup>49</sup> But this urban muddle looked quite different in Ms. Garrett’s day:<sup>50</sup>



48. The facility had been declared a toxic waste site in 1987. See *Stadium Toxic Cleanup May Cost \$13.5 million*, FREE LANCE-STAR, July 22, 1992, at D2. The Richmond, Fredericksburg and Potomac Railroad (RF&P) finally decommissioned it in 1989 and it ceased to function as a rail yard in 1994. See Virginia Churn, *RF&P to Build Transit Hub; It's In Growth Plan For Potomac Yard*, RICHMOND TIMES-DISPATCH, Nov. 16, 1995, at A-1; *History of Land Use and Planning in Potomac Yard*, CITY OF ALEXANDRIA, 1, <https://www.alexandriava.gov/uploadedFiles/planning/info/PYSPYLandUseandPlanningHistory.pdf> (last visited Oct. 21, 2016). Plans for rehabilitation and redevelopment of the land thereafter became a source of intense debate. See, e.g., Paul Bradley, *RF&P Sues Over Potomac Yard Zoning*, RICHMOND TIMES-DISPATCH, July 23, 1992, at A-1. In 1995 the Environmental Protection Agency approved RF&P's study and cleanup plans for the site and declared remediation completed by 1998. See ARLINGTON COUNTY DEP'T OF ENVTL. SERVS., CHESAPEAKE BAY RESTORATION PLAN § III.5 (Apr. 21, 2001), <http://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/31/2014/03/DES-Chesapeake-Bay-Preservation-Plan.pdf>. Various interest groups vigorously promoted incompatible uses for the land. See Kristan Metzler, *City Starts All Over With Potomac Yard*, WASH. TIMES, Oct. 15, 1992, at B1. The City of Alexandria rejected the original mixed-use plan in 1992. See D'Vera Cohn, *Cleanup Becomes Less Urgent*, WASH. POST, Feb. 22, 1993, at C3. Jack Kent Cooke, owner of the Washington Redskins, then unsuccessfully advocated placing the team's new stadium on the site. When he was snubbed, the Redskins moved to Maryland. See *id.*

49. See Ben Hammer, *Potomac Yard Sale Could Alter Mix*, WASH. BUS. J. (May 24, 2004, 12:00 AM), <http://www.bizjournals.com/253irginia253n/stories/2004/05/24/story2.html>.

50. *Picture of Keefer, Potomac Yards, Alexandria, Va.*, U.S. LIBR. OF CONGRESS, <http://hdl.loc.gov/loc.pnp/npcc.32905> (last visited Oct. 21, 2016).

After crossing Potomac Yard, Ms. Garrett's train passed through the scenic backyard of Abingdon Mansion. The mansion had been built by the Alexander family, for which Alexandria was named,<sup>51</sup> and was later owned by the Custis family.<sup>52</sup>



Abingdon Mansion burned down in 1930,<sup>53</sup> and the grounds' splendid view of the Potomac River was subsequently eliminated by the erection of National Airport's Terminal building in 1938.<sup>54</sup> However, in 1919, Ms. Garrett would surely have seen the mansion and across the Potomac into the southeast quadrant of the District of Columbia, where the U.S. Army was building its own avant-garde structure—an airfield known today as Bolling Air Force Base and Anacostia Naval Station.<sup>55</sup>

51. See *A Timeline of Alexandria History*, CITY OF ALEXANDRIA, VIRGINIA, 2 (1998), [http://www.alexandriava.gov/goto.aspx?u=http%3A//alexandriava.gov/uploadedFiles/Homepage\\_Quicklinks/info/annual\\_report\\_1998/ar98\\_timeline.pdf&i=16&s=content&h=Timeline%20of%20Alexandria%26apos%3Bs%20History](http://www.alexandriava.gov/goto.aspx?u=http%3A//alexandriava.gov/uploadedFiles/Homepage_Quicklinks/info/annual_report_1998/ar98_timeline.pdf&i=16&s=content&h=Timeline%20of%20Alexandria%26apos%3Bs%20History).

52. See *History of Reagan Washington National Airport*, METRO. WASH. AIRPORTS AUTH., <http://www.flyreagan.com/dca/history-reagan-national-airport> (last visited Oct. 21, 2016).

53. *Id.*

54. The original terminal building is, today, Terminal A. *Id.* Much of the airport was built not on the existing shoreline retroceded to Virginia in 1846, but rather on fill extending out over the Potomac River, an area that had remained part of the District of Columbia. *Id.* That is why it is not incorrect to state that National Airport was built in the District of Columbia. *Id.* In 1945, however, the Federal Government ceded its part of the airport to Virginia on the condition that the Federal Government retain concurrent jurisdiction. See Act of Oct. 31, 1945, Pub. L. 79-208, § 102, 59 Stat. 552, 553 (1945). The original grants to the United States in 1791 and the 1945 Act re-drawing Virginia's Potomac border are the source of an ongoing border dispute in Old Town Alexandria. See also *United States v. Robinson Terminal Warehouse, Inc.*, 575 F. Supp. 2d 210, 213 (D.D.C. 2008).

55. See *History*, CNIC, <http://www.cnic.navy.mil/regions/ndw/installations/jbab/about/history.html> (last visited Oct. 21, 2016).

Proceeding south, the train left Alexandria County, entered the City of Alexandria, and stopped at Alexandria's Union Station.<sup>56</sup> The Washington-Virginia Railway's electric streetcar service terminated at this station. Had Ms. Garrett taken the streetcar, she would have disembarked and walked approximately one and a half miles west on the Little River Turnpike to her home.<sup>57</sup> But the trains ran further on tracks that were roughly parallel to the Little River Turnpike, leaving Alexandria City and entering Fairfax County.<sup>58</sup>

Ms. Garrett's destination was Seminary,<sup>59</sup> a tiny stop that consisted of a three-walled shed with a gothic roof.<sup>60</sup> From Seminary she would climb a small hill north to Quaker Lane.<sup>61</sup> Then, after about one hundred yards, she would turn west on the Little River Turnpike,<sup>62</sup> and walk a few hundred more yards to her family's farm.<sup>63</sup>

## II. THE ASSAULTS

On Sunday, February 2, 1919, Ms. Garrett missed the Southern Railway's local train.<sup>64</sup> The schedule for the streetcar to Alexandria City was even more sporadic on Sundays, so she boarded the Washington Southern Railway train.<sup>65</sup>

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56. The station still bears the name Union Station but is more commonly called Alexandria Station to avoid confusion with Washington's Union Station. Cox, *supra* note 16, at 4.

57. See Transcript, *supra* note 24, at 142–43. The Little River Turnpike existed before the Revolutionary War. It was a privately owned toll road from the 1700s until 1896, running from Alexandria to Aldie in Loudoun County. See *Early Transportation in Loudoun County*, THE HIST. OF LOUDON COUNTY, VIRGINIA, <http://www.loudounhistory.org/history/255irgini-transportation.htm> (last visited Oct. 21, 2016) [hereinafter *Early Transportation in Loudoun County*]. Several sections of the road originated as Indian trails, and it mostly traversed rural areas. *Id.*

58. *Early Transportation in Loudoun County*, *supra* note 57.

59. The station was named after the Protestant Episcopal Theological Seminary in Virginia, the largest accredited Episcopal seminary in the United States. See VIRGINIA THEOLOGICAL SEMINARY, <http://www.vts.edu> (last visited Oct. 21, 2016); see also Transcript, *supra* note 24, at 14.

60. Interview with Norman Cockrell, Nephew of Walter Cockrell, Witness in Hines v. Garrett (Nov. 9, 2009) (notes on file with William Jones); see also Transcript, *supra* note 24, at 295 (testifying that Seminary is “just a little house, with no agent, you know. They call it a storm house, you know, a house to get out of the weather waiting for the train”).

61. Transcript, *supra* note 24, at 142–43. Today this hill is called South Quaker Lane. *Walking Directions from 3737 Seminary Road, Alexandria, VA to 3502 Duke Street, Alexandria, VA*, GOOGLE MAPS, <https://maps.google.com> [hereinafter *Walking Directions*] (follow “Get Directions” hyperlink; then search starting point field for “3737 Seminary Road, Alexandria, VA,” search second destination point for “3340 Duke Street, Alexandria, VA,” and search destination point for “3502 Duke Street, Alexandria, VA”).

62. Transcript, *supra* note 24, at 142–43. Today this portion of Little River Turnpike is called Duke Street. *Walking Directions*, *supra* note 61.

63. Transcript, *supra* note 24, at 142–43. Julia May Garrett's family farm was located at the modern-day intersection of Wheeler Avenue and Duke Street. Interview with Normal Cockrell, *supra* note 60. See also *Walking Directions*, *supra* note 61.

64. Brief in Behalf of Defendant in Error, *supra* note 14, at 3.

65. *Id.*; Petition for Writ of Error, *supra* note 14, at 2.

That train departed at 5:04 PM, thirty-two minutes before sunset.<sup>66</sup> It was crowded and Ms. Garrett could not find a seat, so she stood with a group of civilian and military passengers in the vestibule of the second to last coach car.<sup>67</sup>

The train, due at Seminary at 5:21 PM, was running one minute behind schedule.<sup>68</sup> However, it failed to stop at Seminary. An irate passenger, one W.L. Garnett, immediately asked a flagman why the train had not stopped.<sup>69</sup> The flagman signaled for a halt and sent a porter to tell conductor I. H. Thompson, that the train had carried someone past Seminary Station.<sup>70</sup> After the train stopped, roughly seven-tenths of a mile past the station, Mr. Garnett disembarked and walked back along the tracks to Seminary.<sup>71</sup> He would later testify that as he departed, he observed Ms. Garrett standing beside a soldier on a car platform located near the rear of the train.<sup>72</sup>

Ms. Garrett did not disembark with W.L. Garnett. Instead, she communicated to a porter named Graham her desire for the train to reverse and transport her back to Seminary.<sup>73</sup> Graham apparently told Ms. Garrett that the train would likely reverse course for her. He then jumped from the second-last car and walked along the ground until he reached the second car, where he informed the conductor of Ms. Garrett's request.<sup>74</sup>

When the train started up again seconds later, it chugged slowly *forward*.<sup>75</sup> By then Conductor Thompson had walked back to Ms. Garrett's car and saw her standing near the exit stairs.<sup>76</sup> She protested to him: "I thought you were going to go back."<sup>77</sup> The conductor responded: "We cannot go back; we are afraid of

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66. Petition for Writ of Error, *supra* note 14, at 2, 3. The Petition for Writ of Error indicates that sundown occurred 5:36 PM, but the National Weather Services indicates 5:30 PM as the time of sundown. *Alexandria, Virginia Rise and Set for the Sun for 1919*, U.S. NAVAL OBSERVATORY, [http://aa.usno.navy.mil/cgi-bin/aa\\_rstablew.pl?ID=AA&year=1919&task=0&state=VA&place=Alexandria+.htm](http://aa.usno.navy.mil/cgi-bin/aa_rstablew.pl?ID=AA&year=1919&task=0&state=VA&place=Alexandria+.htm) (last visited Oct. 21, 2016).

67. See Brief in Behalf of Defendant in Error, *supra* note 14, at 3; Petition for Writ of Error, *supra* note 14, at 2.

68. The train was scheduled to arrive at Seminary at 5:21 PM. Brief in Behalf of Defendant in Error, *supra* note 14, at 3. The train passed the station at 5:22 PM that evening, thus approximately ten minutes before sunset. Petition for Writ of Error, *supra* note 14, at 3.

69. Petition for Writ of Error, *supra* note 14, at 2; Brief in Behalf of Defendant in Error, *supra* note 14, at 4; see also *Hines v. Garrett*, 108 S.E. 690, 691 (Va. 1921).

70. Petition for Writ of Error, *supra* note 14, at 2; Brief in Behalf of Defendant in Error, *supra* note 14, at 4.

71. Brief in Behalf of Defendant in Error, *supra* note 14, at 4–5.

72. Transcript, *supra* note 24, at 181.

73. Petition for Writ of Error, *supra* note 14, at 2; Brief in Behalf of Defendant in Error, *supra* note 14, at 4; see also *Hines*, 108 S.E. at 691.

74. Petition for Writ of Error, *supra* note 14, at 2.

75. *Id.* at 2; see also *Hines*, 108 S.E. at 691; Transcript, *supra* note 24, at 5.

76. Transcript, *supra* note 24, at 301.

77. *Id.* at 47.

butting into another train.”<sup>78</sup> “You will either have to *go on through* and we will send you back on the next train, or get off here.”<sup>79</sup> At that moment, the train was moving very slowly; Julia had only seconds to make up her mind.<sup>80</sup> She asked the conductor to stop the train a second time, which it did about one full train’s length later.<sup>81</sup> At that point, the train was approximately seven hundred feet further down the line, and a bit more than four thousand feet beyond Seminary. As the sun was just about to set, in clear forty-degree weather, Ms. Garrett stepped off the train.<sup>82</sup>

A misunderstanding by Ms. Garrett may possibly have contributed to her decision to disembark. The stop after Seminary was Franconia, four miles further down the track, but Ms. Garrett testified at trial that she thought the conductor’s offer to have her “go on through” meant that she would have to take the train to Richmond, the state capital one hundred miles further south.<sup>83</sup> Today, it would seem incredible that anyone could think that the next stop on a “milk run” train was one hundred miles distant, but in an era of newfound and limited female mobility this misconception was plausible. Ms. Garrett testified that she knew nothing of the Washington Southern Railway itinerary after Seminary, had never been to Richmond, and did not know anybody there.<sup>84</sup> If the train had taken her to Richmond, as she allegedly believed it would, she would not have returned to Seminary until the next day; and she did not have the resources to secure lodging in Richmond overnight.<sup>85</sup> Perhaps this influenced her decision to disembark from the Washington Southern Railway train.<sup>86</sup>

That last forward push of the train was relevant to her fate. The place where Ms. Garrett disembarked was near an uphill grade where the Washington Southern Railway train climbed to a bridge crossing over Southern Railway tracks at Cameron Run Crossing.<sup>87</sup> The climb from Seminary to the bridge at

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78. *Id.*; see also *Hines*, 108 S.E. at 691; Petition for Writ of Error, *supra* note 14, at 2–3; Brief in Behalf of Defendant in Error, *supra* note 14, at 5. The defendant conceded at trial that there was not another train due on the tracks for ninety minutes, so the apprehension about a collision that was provided to Ms. Garrett was at a minimum inaccurate and more likely dishonest. See Brief in Behalf of Defendant in Error, *supra* note 14, at 5. Of course, reversing a train was highly irregular.

79. Transcript, *supra* note 24, at 47 (emphasis added); see also *Hines*, 108 S.E. at 691; Petition for Writ of Error, *supra* note 14, at 3; Brief in Behalf of Defendant in Error, *supra* note 14, at 5.

80. Transcript, *supra* note 24, at 51.

81. *Id.*; see also Brief in Behalf of Defendant in Error, *supra* note 14, at 6; Petition for Writ of Error, *supra* note 14, at 3.

82. J. Marshall Fitzhugh, the telegraph operator at the tower at Cameron Run, past Seminary, testified he was reading a newspaper in the tower when he saw the train stop for the second time. See Petition for Writ of Error, *supra* note 14, at 3. It was at that time still daylight—“a clear, beautiful evening”—and Fitzhugh had not yet turned on the lights. *Id.*

83. See Transcript, *supra* note 24, at 13; Brief in Behalf of Defendant in Error, *supra* note 14, at 6; see also *Hines*, 108 S.E. at 691.

84. Transcript, *supra* note 24, at 51; *Hines*, 108 S.E. at 691.

85. See Transcript, *supra* note 24, at 13.

86. *Id.* at 14.

87. Petition for Writ of Error, *supra* note 14, at 3.

Cameron Run, which was on an increased elevation of seventeen feet, slowed passenger trains; indeed, heavier freight trains typically almost stalled at this point.<sup>88</sup> Because of this topographical feature, and Cameron Run's water availability, tramps and vagabonds often congregated here to hop on and forage from passing trains.<sup>89</sup> They camped in the woods in makeshift structures at this intersection—an informal “train station” for the destitute whose population had been swollen by returning displaced war veterans.<sup>90</sup> Rail employees and local residents variously called the area “Hoboes’ Hollow,” “Tramps’ Hollow,” “Tramps’ Den,” “Tramps’ Rendezvous,” and “Hobo Junction.”<sup>91</sup>

At trial, Ms. Garrett's attorneys argued that Washington Southern Railway knew Hoboes' Hollow to be dangerous.<sup>92</sup> Nearby was a switching tower and small rail yard where cars were occasionally stored overnight to await interline transfer.<sup>93</sup> Ms. Garrett's attorneys produced evidence showing that when loaded rail cars were stored there, armed detectives remained aboard due to the frequency of burglaries.<sup>94</sup> A law enforcement officer was ready to testify that he had once arrested an escaped convict attempting to board a train there.<sup>95</sup> A local shopkeeper wanted to say that tramps would sometimes stumble into his store drunk, and that he would have to “knock them in the head and throw them out . . . .”<sup>96</sup> The U.S. Army stationed troops to guard the bridge at Cameron Run during the war.<sup>97</sup> The railroad employee who worked at the switching tower always carried a gun for self-defense.<sup>98</sup> Ms. Garrett's attorneys also produced evidence that food had been stolen from the track foreman's home nearby.<sup>99</sup> For her part, Ms. Garrett testified that she knew as little about the area immediately past Seminary as she did about the train's next stop.<sup>100</sup>

Once off the train, Ms. Garrett began walking back along the tracks toward her stop. A dark-haired man in an army uniform, between 5'2" and 5'6," jumped

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88. Brief in Behalf of Defendant in Error, *supra* note 14, at 9; Transcript, *supra* note 24, at 20.

89. Brief in Behalf of Defendant in Error, *supra* note 14, at 9.

90. *See id.* at 7, 10.

91. *See id.* at 9–11; *see also* Hines v. Garrett, 108 S.E. 690, 692 (Va. 1921).

92. Transcript, *supra* note 24, at 20–21.

93. *Id.* at 19, 389, 393.

94. *Id.* at 239–40, 390; *see also* Brief in Behalf of Defendant in Error, *supra* note 14, at 12.

95. *Id.* at 11. As is shown below, this evidence was not admitted. *See infra* note 198 and accompanying text.

96. Transcript, *supra* note 24, at 95. However, because the shopkeeper had not “knocked any of them in the head” between March 1, 1918 and February 2, 1919, the evidence was excluded. *Id.*

97. *Id.* at 133–34. Lieutenant Morgan Moltz continued to rent a room at Walter Cockrell's nearby farm after the soldiers had ceased guarding the crossing. *Id.* at 130–31.

98. *Id.* at 210; *see also* Brief in Behalf of Defendant in Error, *supra* note 14, at 11.

99. Transcript, *supra* note 24, at 471–72; *see also* Brief in Behalf of Defendant in Error, *supra* note 14, at 12.

100. Transcript, *supra* note 24, at 12, 51.



off the opposite side of the train and began to follow her.<sup>101</sup> Here is Ms. Garrett's testimony as to what transpired next:

*By Mr. Ford, . . .*

Q. Now, talk to these gentlemen and tell them just what occurred, please.

A. You mean, after I got off the train?

Q. Yes, after you got off the train.

A. Well, I got off the train and started back toward Seminary Station, and when the train started out I happened to glance over my shoulder and saw the soldier<sup>102</sup> coming, and then I walked off real fast, and then he came up and caught me by the arm and wanted to know if he could go home with me, and I told him no.

Q. Then what happened?

A. And then he grabbed me by the arm and dragged me down the bank.<sup>103</sup>

Q. How far down the bank did he drag you?

A. To the bottom.

Q. What did he do when you reached the bottom of the bank?

A. He twisted my arm.

Q. How or where?

A. He twisted it up on my back.

Q. And what else did he do?

A. And of course he threw me to the ground. He said some very insulting things that I would not like to repeat.

Q. Outside of what he said to you, what did he do to you, Ms. May?

A. He tore some of my clothes off me.

Q. What else did he do, if anything?

A. He just did as he pleased.

Q. What do you mean by saying he did as he pleased?

A. Well, he just treated me like he wanted to.

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101. *Men Not Caught*, FAIRFAX HERALD, Feb. 14, 1919, at 3.

102. According to Julia, this was not the soldier she had been seen talking to while on board the train. Brief in Behalf of Defendant in Error, *supra* note 14, at 11, 13–14.

103. The double tracks were on a steep embankment and it was thirty feet down on either side. See Petition for Writ of Error, *supra* note 14, at 6. The soldier apparently dragged Ms. Garrett down on the far side of the embankment, away from the tower and adjacent houses. See *id.* at 6–7. The spot where the soldier first touched Ms. Garrett was in plain view of the signal tower occupied by Mr. Fitzhugh and roughly one thousand feet from the house of Mr. Cockrell. *Id.* at 7. Mr. Cockrell, who was sitting on his porch, saw Ms. Garrett walking down the track. See Brief in Behalf of Defendant in Error, *supra* note 14, at 10. However, once down the far side of the embankment Ms. Garrett was apparently not visible from either location. See *id.* at 15.

Q. In what way? You will have to tell the jury. I cannot tell them.

A. Well, I do not know just exactly how to put it, because I do not want to come out in plain words and say it.

Q. Did he become intimate with you?

A. Yes, sir.<sup>104</sup>

After the assault, the soldier fled back up to the tracks, leaving Ms. Garrett lying in the dip on the far side of the railway embankment, out of view of her neighbor Walter Cockrell, who lived close by.<sup>105</sup> Looking back up at the track, Ms. Garrett observed her assailant talking with a civilian. The civilian was about the same size as the soldier, but wore a dirty, brownish-grey suit.<sup>106</sup> He had a florid complexion, light hair and eyes, and a scar across his eyebrows.<sup>107</sup> Perhaps he was a denizen of Hoboes' Hollow. He rushed down the embankment, pinned Ms. Garrett back on the ground and, in her words, "repeated the same thing."<sup>108</sup>

Ms. Garrett's rapists left her face bruised on one side and scratched on the other, her lip cut, her neck marked red, and a handprint on her side.<sup>109</sup> They broke her right corset stays, tore her skirt, and ripped buttons from her coat.<sup>110</sup> Her undergarments had been removed.<sup>111</sup>

After the second rape, Ms. Garrett eventually climbed up the embankment to the tracks where Mr. Cockrell and his tenant, Lieutenant Moltz, met her.<sup>112</sup> Mr. Cockrell had been sitting on his porch with his baby son when the train stopped, had seen a woman depart from the train, and had watched as the soldier caught up with her.<sup>113</sup> Although Mr. Cockrell knew Ms. Garrett, he did not recognize her because she was about 360 yards away.<sup>114</sup> Mr. Cockrell then took his son inside, but when he came back to his porch, the woman and soldier were out of

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104. Transcript, *supra* note 24, at 249–50; Petition for Writ of Error, *supra* note 14, at 4–5.

105. See Brief in Behalf of Defendant in Error, *supra* note 14, at 15.

106. *Men Not Caught*, *supra* note 101, at 3.

107. *Id.*; see also *Hounds in Manhunt*, WASH. POST, Feb. 4, 1919, at 2.

108. Transcript, *supra* note 24, at 251–52. Apparently fearful that this testimony was insufficient to indicate lack of consent, Mr. Ford asked the following question on re-direct, "[w]hen you answered my questions a little while ago and said that the soldier and the tramp were intimate with you at that time, did you mean that they raped you?" "Yes, sir" was the response. Petition for Writ of Error, *supra* note 14, at 6.

109. Transcript, *supra* note 24, at 483.

110. *Id.* at 483–84.

111. *Id.* at 113, 484; Brief in Behalf of Defendant in Error, *supra* note 14, at 7, 15.

112. Transcript, *supra* note 24, at 127–28, 132–33; Brief in Behalf of Defendant in Error, *supra* note 14, at 10.

113. Transcript, *supra* note 24, at 110–11; Brief in Behalf of Defendant in Error, *supra* note 14, at 10.

114. Transcript, *supra* note 24, at 110–11; Brief in Behalf of Defendant in Error, *supra* note 14, at 10; Petition for Writ of Error, *supra* note 14, at 7.

sight.<sup>115</sup> This aroused his suspicions, so he retrieved Lieutenant Moltz and the two went to search for the woman who had mysteriously disappeared.<sup>116</sup> They found Ms. Garrett and accompanied her back to her farm, after which they set out in pursuit of the assailants.<sup>117</sup> Meanwhile, Ms. Garrett's mother expunged fluids from her eighteen-year-old daughter's body with a syringe.<sup>118</sup> Ms. Garrett's mother observed no serious injury to her genital area, and the doctor who subsequently treated Ms. Garrett was not called to testify, so this claim can be presumed true.<sup>119</sup>

### III. THE POLICE SEARCH

Although the rapes took place in Fairfax County, police from the City of Alexandria were summoned and arrived at the farm that evening.<sup>120</sup> The following morning, the Fairfax County Sheriff,<sup>121</sup> along with Fairfax Commonwealth's Attorney C. Vernon Ford<sup>122</sup> and his assistant

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115. Transcript, *supra* note 24, at 111; Brief in Behalf of Defendant in Error, *supra* note 14, at 10.

116. Transcript, *supra* note 24, at 111, 132–33; Brief in Behalf of Defendant in Error, *supra* note 14, at 10.

117. Transcript, *supra* note 24, at 127–29, 132–33; Brief in Behalf of Defendant in Error, *supra* note 14, at 10.

118. Transcript, *supra* note 24, at 253, 280.

119. Petition for Writ of Error, *supra* note 14, at 6.

120. Transcript, *supra* note 24, at 234–35. It is likely that Alexandria police were notified because Fairfax had only an Office of the Sheriff, with no Police Department until 1940. *See generally* CHRIS ROBICHAUX, OFFICE OF THE SHERIFF, FAIRFAX COUNTY, VIRGINIA: 1742–2001 16 (2002).

121. In 1919, the Fairfax County Sheriff was James Roberdeau Allison, who was elected in 1904 and served until 1927. *See id.* at 34. The Deputy Sheriff was Harvey Cross. *See Announcements*, FAIRFAX HERALD, July 18, 1919, at 3.

122. C. Vernon Ford (1851–1922) was born in Fairfax City and initially practiced law with his cousin, Joseph E. Willard. Mr. Ford was appointed Commonwealth Attorney for Fairfax County in 1879 and served in this capacity until his death. Mr. Ford's aunt was noted convicted Confederate spy Antonia Ford, who married her jailor, Joseph C. Willard, the union officer who owned the Willard Hotel just two blocks from the White House. Mr. Ford's cousin and former partner Joseph E. Willard inherited the Willard Hotel, served as Lieutenant Governor of Virginia from 1902–1906, and was Ambassador to Spain from 1914–1920. *See Willard Family Papers, 1800–1968*, LIBR. OF CONGRESS, <http://hdl.loc.gov/loc/mss/eadmss.ms010061> (last visited Oct. 21, 2016); William Page Johnson, *Sesquicentennial Wedding Anniversary of the Spy and the Millionaire*, FARE FACS GAZETTE, Winter 2014, at 15. The Ford home, built by Vernon Ford's grandfather, is on the National Register of Historic Places. *National Register of Historic Place Registration Form of the Kanawha Home*, NAT'L PARK SERV., 10 (Aug. 5, 1999), [http://www.dhr.virginia.gov/registers/Cities/Alexandria/100-0022\\_Fairfax-Moore\\_House\\_1991\\_Final\\_Nomination.pdf](http://www.dhr.virginia.gov/registers/Cities/Alexandria/100-0022_Fairfax-Moore_House_1991_Final_Nomination.pdf).

Between 1908–1913, Mr. Ford attempted to acquire possession of Martha Washington's will, which had recently re-emerged in the possession of J.P. Morgan after being stolen from the Fairfax courthouse during the Civil War. However, Mr. Ford's efforts were in vain, and J.P. Morgan refused to return the will. *To Make J. Pierson Morgan Disgorge His Stolen Will*, RICHMOND-TIMES DISPATCH, Apr. 25, 1915, at 8. Mr. Ford was educated at the Virginia Military Institute and

Wilson Farr,<sup>123</sup> began their investigation. They retrieved Ms. Garrett's underwear at the crime scene.<sup>124</sup> They borrowed police dogs from the notorious Lorton Reformatory in Occoquan, approximately seven miles from the site of the attack, to track the assailants.<sup>125</sup> Not wishing to lose pay and wearing the only suit she owned, Ms. Garrett returned to work in the same outfit she wore during the assaults.<sup>126</sup> Her boss, who had read about the ordeal in the Monday morning newspaper, sensed her emotional distress and promptly sent her home

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went to law school at the University of Virginia. He died on April 24, 1922, after a year-long illness.

123. Wilson M. Farr (1884–1958), son of Richard Ratcliffe Farr who was arguably Fairfax's most prominent citizen, was elected Mayor of the Town of Fairfax in 1918 at the same time as he was serving as both a private attorney and as an assistant Commonwealth's Attorney under Mr. Ford. See Steven C. Stombres, *The Farr Family Residences: Historic Homes of Local Family Enrich Modern Fairfax City*, 1–2, <http://steveforfairfax.com/docs/farr-family-residences-stombres.pdf> (last visited Oct. 21, 2016). At Ford's death in 1922, Farr was elected Commonwealth Attorney for one term, during which time he made a name for himself as a ferocious enforcer of Prohibition laws. See DAVID S. TURK, A FAMILY'S PATH IN AMERICA: THE LEES AND THEIR CONTINUING LEGACY 123 (2007). In 1958, one year before his death, Farr and his daughter Viola Orr sold 150 acres of land just south of town along Route 123—at the very location where his grandfather Richard Ratcliffe Farr had as a teenager attempted to ambush federal troops during the Civil War—to the Town of Fairfax for \$300,000. Fairfax then offered this land to the University of Virginia as the site for its teacher's college in Northern Virginia. See Stombres, *The Farr Family Residences: Historic Homes of Local Family Enrich Modern Fairfax City*, at 1-2. Today it is the site of the main campus of George Mason University, where the author is employed. *Id.* The Farr home is listed as a Historic Structure in the National Register of Historic Places. NETHERTON ET AL., *supra* note 3, at 40 & appendix G 214.

124. Brief in Behalf of Defendant in Error, *supra* note 14, at 7, 15.

125. See Transcript, *supra* note 24, at 146; *Hounds in Manhunt*, *supra* note 107, at 2. Lorton Reformatory opened in 1916 as a maximum-security institution for offenders from the District of Columbia. The Lorton penitentiary was completed and occupied in 1916. The reformatory was something of a traditional prison, but the workhouse was intended to rehabilitate convicts with hard work rather than discipline alone. A separate, medium-security Woman's Workhouse was established in 1912. In 1917, 168 National Women's Party suffragettes convicted of disturbing the peace by picketing the White House were held at the workhouse on three occasions. Some suffragists at the facility were force-fed after they began hunger strikes. On November 14, 1917, known as the "Night of Terror," guards dragged a seventy-year old woman down the stairs, threw a second woman against a wall, and threw another woman against an iron bed knocking her unconscious. The jailors confined Alice Paul—the President of the National Woman's Party who was at the forefront of the fight for the Nineteenth Amendment—for insanity. Anna Strock, *This Abandoned Prison in Virginia has a Truly Terrifying History*, ONLY IN YOUR STATE (Nov. 27, 2015), <http://www.onlyinyourstate.com/Virginia/abandoned-lorton-reformatory-va/>. In 2001, the last prisoners departed the workhouse, and in 2002, the District of Columbia ceded the entire facility to Fairfax County. *Laurel Hill History*, FAIRFAX CNTY GOV'T, <http://www.fairfaxcounty.gov/dpz/laurelhill/history.htm#> (last visited Oct. 21, 2016). On September 19, 2008, a transformed facility was reopened as the Lorton Workhouse Arts Center. The "rehabilitated" workhouse dormitories are now house artist studios and music performance venues. Janet Rems, *The Workhouse*, FAIRFAX COUNTY TIMES, Nov. 6, 2008, at A8.

126. Transcript, *supra* note 24, at 484; Petition for Writ of Error, *supra* note 14, at 9.

to recover.<sup>127</sup> Ms. Garrett remained absent from work for two weeks.<sup>128</sup> She suffered from crying spells.<sup>129</sup> Swelling on her neck and between her legs was so painful that she could barely walk.<sup>130</sup>

Sheriff Allison searched in vain for the two rapists.<sup>131</sup> A \$100 award was offered for their capture.<sup>132</sup> Public outrage was so great that Sheriff Allison opined, “lynching is not at all unlikely if the right men are found by our citizens.”<sup>133</sup> One man was arrested eighty miles away in Orange, Virginia, but was released when neither Ms. Garrett nor the railroad tower operator could identify him.<sup>134</sup> Two others were arrested in Spotsylvania and taken to Fredericksburg, to be identified.<sup>135</sup> A small crowd gathered while Julia Garrett, brought to Fredericksburg, examined the suspects for over a minute.<sup>136</sup> She fainted due to the stress of the ordeal and had to be revived with a glass of water.<sup>137</sup> Once revived, she declared that the suspects were not the men who raped her, and they were immediately released.<sup>138</sup>

Competing daily papers, the *Washington Post* and the *Alexandria Gazette*, covered the attacks and the ensuing investigation extensively for about a week.<sup>139</sup> Both newspapers attempted to preserve Ms. Garrett’s dignity, omitting the fact that she was raped from their accounts of the attacks and reporting that Julia had heroically fought the men off after a desperate struggle.<sup>140</sup> The small-town weekly *Fairfax Herald* did not publish its first story about the attacks until February 7, 1919—thereby corroborating that these rapes were seen as a big-city matter far removed from rural Fairfax concerns.<sup>141</sup>

Coincidentally, in that same edition of the *Fairfax Herald* and on the same page where the assaults on Ms. Garrett were first reported, a picture of Walker

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127. Transcript, *supra* note 24, at 268.

128. *Id.* at 375; Brief in Behalf of Defendant in Error, *supra* note 14, at 15.

129. Transcript, *supra* note 24, at 376, 485; Brief in Behalf of Defendant in Error, *supra* note 14, at 15. This is a classic manifestation of what is now known as the “acute phase” of Rape Trauma Syndrome. See Ann W. Burgess & Lynda L. Holmstrom, *Rape Trauma Syndrome*, 131 AM. J. PSYCHIATRY 981, 982 (1974).

130. Transcript, *supra* note 24, at 484–85.

131. *Men Not Caught*, *supra* note 101, at 2.

132. *See id.* at 2; *No Clew Yet*, FAIRFAX HERALD, Feb. 21, 1919, at 3.

133. *Hounds in Manhunt*, *supra* note 107, at 2.

134. *Men Not Caught*, *supra* note 101, at 2.

135. *See Arrest Suspects in Assault Case*, WASH. POST, Feb. 5, 1919, at 2.

136. *Young Lady Assaulted*, FAIRFAX HERALD, Feb. 7, 1919, at 2.

137. *Id.*

138. *Id.*

139. *See, e.g., Arrest Suspects in Assault Case*, *supra* note 135, at 2; *Hounds in Manhunt*, *supra* note 107, at 2; *Suspects Released*, *supra* note 26, at 1; *Two Attack a Girl*, *supra* note 14, at 3.

140. *See Two Attack a Girl*, *supra* note 14, at 3; *Young Lady Assaulted*, *supra* note 136, at 2.

141. *See Young Lady Assaulted*, *supra* note 136, at 2. Compare *id.* (publishing an article about Ms. Garrett’s attack five days after the incident), with *supra* note 139 (listing papers that reported on Ms. Garrett’s attack the following morning).

D. Hines, the newly promoted Director General of Railroads and Ms. Garrett's soon-to-be legal adversary, was prominently displayed.<sup>142</sup>

#### IV. THE LAWSUIT

Vernon Ford and Wilson Farr, Fairfax County Commonwealth attorneys who had interviewed Ms. Garrett and unsuccessfully investigated her rape, evidently also had private practices and used their position with the Commonwealth to gain advance knowledge of potential clients.<sup>143</sup> Brushing aside possible conflicts of interest, they recruited Ms. Garrett as a civil client and filed suit in her name in Fairfax County Circuit Court.<sup>144</sup> They initially sued the Washington Southern Railway in trespass on the case, alleging that the railroad's negligence

142. *Walker D. Hines: New Director General of Railroads Succeeds McAdoo*, FAIRFAX HERALD, Feb. 7, 1919, at 2.

143. See Strombes, *supra* note 123, at 2; see generally Transcript, *supra* note 24.

144. The modern day city of Fairfax was built around the Courthouse. In 1790, Fairfax County's court was in the county seat, the City of Alexandria, but when Virginia ceded Alexandria to the Federal Government to form part of the District of Columbia, Fairfax County was left without a courthouse. The Justices of Fairfax, who acted as the county administrators as well as the judiciary, sought a new location somewhere in the center of the county, and eventually selected a four-acre plot owned by Justice Richard Ratcliffe situated on Little River Turnpike. The county purchased Ratcliffe's four acres for the discounted price of four dollars. Ratcliffe retained the surrounding three thousand acres, and immediately set about developing fourteen of those into the original town, Fairfax Courthouse. The town was named Town of Providence in 1805, Town of Fairfax in 1875, and the City of Fairfax in 1961. See NETHERTON ET AL., *supra* note 3, at 220-21, 645. The Fairfax Circuit Court was part of the 16<sup>th</sup> Judicial Circuit, holding session on the third Monday of the month, on months alternating with Alexandria (Arlington) county. In 1919, on the first Mondays of the month, Judge Brent alternated between Prince William county and the City of Alexandria. BI-ENNIAL REPORT OF THE SECRETARY OF THE COMMONWEALTH TO THE GOVERNOR AND GENERAL ASSEMBLY OF VIRGINIA 33 (1923).

was a proximate cause of her physical injuries, pain, and suffering.<sup>145</sup> The complaint described her damages in the then-current style, which required only one sentence for each element of the suit:

[T]he plaintiff was severely bruised and wounded, her clothes torn and soiled, her nervous system greatly shocked, impaired and permanently injured, her person violated and defiled, whereby she became sick, sore, lame and disordered and ruined in body, health, reputation and respectability, with her future forever reaked [*sic*] and ruined, all of which will continue for a long space of time, to-wit, thence, hitherto, and plaintiff suffered great physical and mental pain, anguish and horrors, was unable to sleep for a long space of time and has been prevented from transacting and attending to her necessary affairs and business as an employee in the office of the Southern Railway Company . . . and was deprived of divers [*sic*] great gains and profits which she might and otherwise would have derived and acquired by reason of her right and authority to collect her own wages and out of the desire to pay her expenses, and thereby the plaintiff was also obliged to expend, and did pay and expend, divers [*sic*] sums of money, to-wit, the sum of \$25.00, in and about endeavoring to be cured of the said bruises, wounds, hurts and injuries so received as aforesaid. To the damage of the plaintiff of \$50,000.00.<sup>146</sup>

The defense counsel<sup>147</sup> came from the Fairfax County and District of

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145. Complaint at 8–9, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921).

146. *Id.* The amount of the suit is the equivalent of \$670,308.57 in 2016 dollars. See *Tom's Inflation Calculator*, HALFHILL.COM, <http://www.halfhill.com/inflation.html> (last visited Feb. 2, 2017). Though the amount demanded was astronomical at the time, it is typical by today's standards. A 2008 study conducted by Jury Verdict Research, a Pennsylvania-based legal consulting firm, found the median recovery among successful civil rape lawsuits from 2000–2007 to be \$600,000. Tom Lininger, *Is It Wrong To Sue For Rape?*, 57 DUKE L.J. 1557, 1568 & n.54 (2008) (citing Eric Frazier, *More Women Sue After Sexual Assault*, CHARLOTTE OBSERVER, Feb. 21, 1999, at 1B).

147. The Virginia Bar Association listed eleven attorneys registered in Fairfax County, including four of the six attorneys involved in this case—plaintiff's attorneys Ford and Farr, and defendant's attorneys McCandlish and Keith. Defendant's attorneys Barbour and Garnett were active in the Virginia Bar, but listed in the District of Columbia. Garnett is in fact listed as maintaining his office in the Southern Building, the same building where Ms. Garrett was employed. REPORT OF THE THIRTIETH ANNUAL MEETING OF THE VIRGINIA STATE BAR ASSOCIATION 159, 172 (1919). These attorneys were quite familiar with each other. For example, in 1915 the defendant's firm assisted C. Vernon Ford in unsuccessfully defending Fairfax County Alexandria's annexation of four hundred acres of Fairfax County. The City of Alexandria was represented by three attorneys, including then Commonwealth's attorney Samuel G. Brent, who later presided over *Hines v. Garrett* as a circuit court judge. See *Extends City Limits: Greater Alexandria Assured by High Court Ruling*, WASH. POST, Mar. 12, 1915, at 14.

Columbia law firm of Barbour,<sup>148</sup> Keith,<sup>149</sup> McCandlish,<sup>150</sup> & Garnett.<sup>151</sup> The firm regularly represented railroads, and had close ties to the federal government.<sup>152</sup> Former partner Robert Walton Moore had served as Assistant General Counsel to the U.S. Railroad Administration from 1918 to 1919.<sup>153</sup> Moore's replacement at the firm, Christopher Brown Garnett (no known relationship to witness W.L. Garnett), was equally at home with railroad matters. Before World War I, Mr. Garnett served as a Railroad Commissioner on the

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148. John S. Barbour (1866–1952) was the son of James Barbour, a member of the Virginia Secession Convention and Major in the Confederate Army. Barbour moved from Culpepper, VA to Fairfax Courthouse in 1907 to practice law with R. Walton Moore and James Keith. See *John Strode Barbour*, FAMILYTREEGUIDE.COM, <http://beckhamfamily.familytreeguide.com/getperson.php?personID=I7051&tree=T1> (last updated Mar. 22, 2005). Barbour's home in Fairfax is listed as a Historic Structure in the National Register of Historic Places. NETHERTON ET AL., *supra* note 3, at 690. After Vernon Ford failed to secure Martha Washington's will from J.P. Morgan Barbour's wife succeeded. See *supra*, note 122. Mrs. Barbour was Regent of the Falls Church chapter of the Daughters of the American Revolution between 1912–1914, and was responsible for returning Martha Washington's will from J.P. Morgan's Estate to the Fairfax Courthouse in 1915. See MELVIN LEE STEADMAN, JR., FALLS CHURCH: BY FENCE AND FIRESIDE 159 (1964).

149. Thomas Randolph Keith (b. 1872) was the son of Isham Kieth, a member of Mosby's Confederate Black Horse Calvary. Keith was the youngest of ten children, three of whom became lawyers. He began practicing law in Fairfax Courthouse, now the modern City of Fairfax, in about 1895. PHILIP ALEXANDER BRUCE, VIRGINIA; REBIRTH OF THE OLD DOMINION 154–55 (1929).

150. Fairfax Shield McCandlish (b. 1881), son of attorney and confederate veteran Robert McCandlish, joined the law firm in 1908. *Id.* at 155–56. He married his Partner Robert Walton Moore's niece, and moved into the Moore House after his partner passed away. See *History of the Moore Family*, CHAP! THE PEOPLE'S SENATOR, <http://archive.is/O9BBc> (last updated Mar. 18, 2015). McCandlish's Great Grandson Chap Petersen has been a State Senator from Fairfax since 2007. See *id.* The Moore House is now listed in the National Register of Historic Places. *National Register of Historic Places Registration Form*, NAT'L PARK SERV., 1–15 (Nov. 29, 1990) [http://www.dhr.virginia.gov/register/Cities/Alexandria/100-0022\\_FairfaxMoore\\_House\\_1991\\_Final\\_Nomination.pdf](http://www.dhr.virginia.gov/register/Cities/Alexandria/100-0022_FairfaxMoore_House_1991_Final_Nomination.pdf).

151. Christopher Brown Garnett, no known relation to W.L. Garnett, was the most recent addition to the firm, but brought significant experience that could help fill Moore's shoes. LYON GARDINER TYLER, ENCYCLOPEDIA OF VIRGINIA BIOGRAPHY 175 (1915); 6 VIRGINIA LAW REGISTER 1053 (1921). His grandfather was a member of the Secession Convention in Virginia, and his father was a Virginia Military Institute cadet who was badly wounded at the Battle of New Market. Indeed, every attorney involved in Julia Garrett's eventual lawsuit was a first generation descendent of a Confederate soldier. See *supra* text accompanying notes 122, 123, 148–150; see also Stombres, *supra* note 123, at 1. Years later, Ms. Garrett would demonstrate her Confederate pride by naming her two sons Robert and E. Lee. *Sheet 6A—Inhabitants of Falls Church Magistrate District, Fairfax Cty., Va.*, in BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE FIFTEENTH CENSUS OF THE UNITED STATES (1930).

152. In 1918, the firm's principal clients were the National Bank of Fairfax, Southern Railway Company, Washington Southern Railway Company, and Washington Virginia Railway. See JAMES CLARK FIFIELD, THE AMERICAN BAR 679 (1918).

153. See *Moore, Robert Walton, (1859–1941)*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=M000915> (last visited Oct. 22, 2016). Moore left the firm when elected to the U.S. Congress, where he served five consecutive terms. *Id.* In 1933, President Franklin Roosevelt appointed Moore Assistant Secretary of State. *Id.*



Virginia State Commerce Commission.<sup>154</sup>

The defense attorneys exercised their familiarity with the railroads immediately by invoking U.S. Railroad Administration regulations to block the lawsuit before the plaintiffs could even get to trial, and then excluding unfavorable evidence once trial began.<sup>155</sup> Understanding the defendant's legal maneuvers requires a look at what Director Hines later called a boondoggle that cost taxpayers approximately \$1.125 billion 1917 dollars<sup>156</sup>—the U.S. Government's nationalization of the entire railroad industry.

American railroads were hurting in the early twentieth century. Federally-subsidized overbuilding of tracks, coupled with the low marginal cost of running trains on existing tracks, led to a price war that had resulted in a substantial decline in railroad freight rates from 1877 until 1900.<sup>157</sup> Meanwhile, at the state level, local shippers found railroads easy targets for populist levies, since railroads, unlike other businesses, could not move out of state. One analyst noted that, "[i]n 1913 alone, [forty-two] state legislatures passed 230 railroad laws affecting the railroads in such areas as extra crews, hours of labor, grade crossings, signal blocks, and electric headlights—and many of the laws were expensively contradictory."<sup>158</sup> Between 1900 and 1916, an era when state regulation of other industries was relatively rare and unintrusive, over seventeen hundred state regulations and laws were inflicted on railroads.<sup>159</sup>

Overbuilding and state predation may have delivered two strikes against the railroad industry, but World War I constituted the third. Federally-mandated transport of men and material led to severe rail congestion.<sup>160</sup> Federal regulations prevented railways from coordinating to alleviate this congestion. For instance, when railway executives contemplated pooling available facilities

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154. *Federal and State Commissioners in Convention: Termination of War Removes Some Restraint on Discussion of Railroad Administration Policies*, 63 RAILWAY AGE GAZETTE 851 (1918).

155. Bulletin No. 4 (Rev.), General Order 50, Proclamations by the President Relating to the United States Railroad Administration and General Orders and Circulars Issued by the Director General of Railroads, 334–35 (Dec. 31, 1918).

156. WALKER HINES, *WAR HISTORY OF AMERICAN RAILROADS* 83–84 (1928). The figure is equivalent to \$21 billion in 2016. See *Tom's Inflation Calculator*, HALFHILL.COM, <http://www.halfhill.com/inflation.html> (last visited Feb. 2, 2017). At that time, total civilian expenditures by the federal government totaled barely three times that amount. In 1917, federal civilian disbursements totaled \$243,000,000. In 1918, due to the War, federal expenditures increased to \$1,516,000,000, doubling again to \$3,242,000,000 in 1919. See M. Slade Kendrick, *Federal Nonarmament Expenditures During the Emergency Period*, 214 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 14, 15 (1941).

157. Chris Matthew Sciabarra, *Government and the Railroads During World War I: Political Capitalism and the Death of Enterprise*, LIBERTARIAN ALLIANCE (2003), <http://www.libertarian.co.uk/lapubs/histn/histn045.htm>.

158. GABRIEL KOLKO, *RAILROADS AND REGULATION, 1877-1916* 218 (1965).

159. Gerald W. Scully, *Rent-Seeking in U.S. Government Budgets, 1900–88*, 70 PUB. CHOICE 99, 104–05 (1991).

160. Sciabarra, *supra* note 157.

east of Chicago to deal with wartime capacity, the Attorney General declared that anti-pooling clauses of the Interstate Commerce Act and the Sherman Act would be enforced against them.<sup>161</sup> The *Railway Age Gazette* protested against these threats by calling for the immediate “repeal of every law which interferes with . . . efforts to operate as a single national transportation system.”<sup>162</sup>

On December 1, 1917, the young Interstate Commerce Commission, tasked with regulating railroads, offered Congress two options to resolve the problems afflicting the railroads: either legalize interline cooperation and pooling or nationalize railroads for the duration of the war.<sup>163</sup> The nationalization option was met with a rare confluence of approval from interested lobbies. Local shippers favored federal control because it would allow them to lobby Congress to reverse price increases caused by increased demand for wartime rail transport.<sup>164</sup> Railroad workers’ labor groups seeking to obtain wage increases much preferred to deal with the federal government instead of profit-seeking boards of directors.<sup>165</sup> Finally, the railroads themselves were not averse to nationalization if it would legalize their hoped-for coordination, permit them to avoid state predation, and (most importantly) secure windfall profits with generous federal purchase prices.

Congress had authorized President Wilson to nationalize the railroads in 1916.<sup>166</sup> In November, 1917, Treasury Secretary William G. McAdoo, Jr., President Wilson’s son-in-law, formulated the plans for nationalization.<sup>167</sup> On December 18, 1917, President Wilson met with railroad executives to inform

161. *Railway Problem Viewed from Washington*, 63 RAILWAY AGE GAZETTE 1031, 1031 (1917).

162. *The Railway War Problem, and its Solution*, 63 RAILWAY AGE GAZETTE 919, 920 (1917).

163. *Government Control and Operation of Railroads: Hearing on S. Res. 171 Before the S. Comm. on Interstate Commerce*, 65<sup>th</sup> Cong., 2d Sess. 2, 19–20 (1918).

164. See Sciabarra, *supra* note 157 (noting that shippers preferred having control over rates increases under government control).

165. See *id.* (writing that labor lobbied the government for wage increases and threatening strikes if the government did not comply).

166. Act of Aug. 29, 1916, ch. 418, 39 Stat. 619, 645.

“The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable.”

*Id.*

167. See HINES, *supra* note 156, at 22–23. McAdoo was a colorful Tennessean who had been a Captain in the Confederate Army and who worked on the Wilson campaign in 1912. In May 1914, he married Wilson’s daughter, Eleanor. See *Eleanor Wilson Weds W.G. McAdoo*, N.Y. TIMES, May 8, 1914, at 1, 13. President Wilson declined McAdoo’s offer to resign as Treasury Secretary after the marriage. WILLIAM L. SILBER, WHEN WASHINGTON SHUT DOWN WALL STREET: THE GREAT FINANCIAL CRISIS OF 1914 AND THE ORIGINS OF AMERICA’S MONETARY SUPREMACY 19–20 (2007). McAdoo was credited with saving the American financial system by closing all stock markets for *four months* in July 1914. *Id.* at 1–7. His nomination as first Director General of Railroads was surely a recognition of his service. HINES, *supra* note 156, at 22.

them of his decision to proceed with a takeover.<sup>168</sup> Federal pledges to the executives guaranteed that the rich profits of the 1914–1917 period, which were estimated at over \$940 million per year, would continue.<sup>169</sup>

Legislation nationalizing the railroads went into effect in March 1918. In one fell swoop, the rate caps imposed by the customer-dominated state railroad commissions were superseded by federal supremacy, the industry was legally cartelized, and the labor force was placated with wage increases.<sup>170</sup> Subsequently, Secretary McAdoo himself was named as Director General of Railroads.<sup>171</sup> However, after the surrender of Germany on November 11, 1918, McAdoo resigned as Director to prepare his run for President of the United States.<sup>172</sup> His deputy, Walker D. Hines who was a former partner of the Cravath law firm and the CEO of the Acheson Topeka & Santa Fe Railroad, succeeded him in early 1919 and remained Director until federal control of railroads ended in May 1920.<sup>173</sup>

In the statute nationalizing the railroads, Congress specifically preserved liability for causes of action against railroads arising under state or federal

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168. Sciabarra, *supra* note 157.

169. *Id.* This corresponds to over \$11 billion per year in 2016 dollars. See *Tom's Inflation Calculator*, HALFHILL.COM, <http://www.halfhill.com/inflation.html> (last visited Feb. 2, 2017).

170. Sciabarra, *supra* note 157.

171. *Id.*

172. After stepping down as Director, McAdoo ran twice for the Democratic nomination for President. He lost to James Cox at the nominating convention in 1920. See Wesley M. Bagby, *William Gibbs McAdoo and the 1920 Democratic Presidential Nomination*, 31 E. TENNESSEE HIST. SOC'Y PUBL'NS 43, 56 (1959). He lost again to John Davis in 1924. See Lee N. Allen, *The McAdoo Campaign for the Presidential Nomination in 1924*, 29 J. OF SOUTHERN HIST. 211, 227 (1963). A bon vivant, he served as Senator for California from 1933–1938. *McAdoo, William Gibbs, (1863–1941)*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=M000293> (last visited Oct. 22, 2016). He and Eleanor Wilson were divorced in 1935 when they were both senior citizens: two months later, the seventy-one-year old McAdoo married twenty-six-year-old nurse Doris Isabel Cross. See *No. 3 for McAdoo*, TIME, Sept. 23, 1935, at 16.

173. *Bailey v. Hines*, 109 S.E. 470, 471 (Va. 1921). Direct federal control of the railroads ended at 12:01 AM on March 20, 1920. See Transportation Act, ch. 91, § 200, 41 Stat. 456, 457 (192).

law.<sup>174</sup> However, General Orders 50<sup>175</sup> and 50a<sup>176</sup> of the U.S. Railroad Administration indicated that in such cases the Director, not any individual railroad, was to be named as defendant. Defense counsel invoked these orders against the non-railroad-savvy plaintiff's attorneys, and the Fairfax County Circuit Court judge nonsuited Ms. Garrett's case against Washington Southern Railway. Her attorneys promptly re-filed, preserving Washington Southern Railway as defendant and adding Walker D. Hines as co-defendant.<sup>177</sup> The court dismissed this suit as similarly barred by the statute.<sup>178</sup> The third time was the

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174. The Act generally distinguished the "President" and the "ICC" from the "carriers" and contained language suggesting that it was the railway companies, not the Government, that would be liable:

"[C]arriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this Act or any other Act applicable to such Federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government . . . But no process, mesne or final, shall be levied against any property under such Federal control."

See Federal Control Act, ch. 25, § 10, 40 Stat. 451, 456 (1918). The railroad administration disagreed and declared that the government, not the railroad owners should be liable. See General Order 50, *supra* note 155, at 334–35. The Supreme Court ultimately agreed with the U.S. Railroad Administrations' declaration, construing the word "carrier" to mean the ultimate carrier, the government, thereby avoiding deciding whether it would be constitutional to hold a corporation liable for actions when the corporation was operating completely as an agent of the federal government. See *Missouri Pac. R.R. Co. v. Ault*, 256 U.S. 554, 562 (1921).

175. General Order 50, *supra* note 155, at 334–35.

"Whereas since the Director General assumed control of said systems of transportation, suits are being brought and judgments and decrees rendered against carrier corporations on matters based on causes of action arising during Federal control for which the said carrier corporations are not responsible, and it is right and proper that the actions, suits and proceedings hereinafter referred to, based on causes of action arising during or out of Federal control should be brought directly against the said Director General of Railroads and not against said corporations . . . It is therefore ordered, that actions at law, suits in equity, and proceedings in admiralty . . . should be brought against William G. McAdoo, Director General of Railroads, and not otherwise; provided, however, that this order shall not apply to actions, suits, or proceedings for the recovery of fines, penalties, and forfeitures."

*Id.* (emphasis omitted).

176. General Order 50a, an amendment to General Order 50, was issued on the day Walker D. Hines was appointed Director General of Railroads and merely substituted Walker D. Hines name for William G. McAdoo, the departing Director Generals name. For a complete treatment of the legal issues in suing the changing director generals, see *Bailey v. Hines*, 109 S.E. 470, 471 (Va. 1921).

177. 10 Fairfax Circuit Court Minute Book, *supra* note 19, at 91. After World War I ended, Hines worked and traveled extensively in Europe. In 1925, he authored the *Report on Danube Navigation for the League of Nations*. See STEPHEN GOROVE, LAW AND POLITICS OF THE DANUBE: AN INTERDISCIPLINARY STUDY 31 (2012).

178. *Garrett v. Wash. S. Ry. Co.* (Va. Cir. Ct. 1919) (the case was dismissed on Sept. 26, 1919).

charm: on May 20, 1919, Ms. Garrett's attorneys dropped Washington Southern Railway from the suit and filed against Director Hines alone.<sup>179</sup> *Garrett v. Hines* was the first lawsuit filed against the Director in Virginia.<sup>180</sup>



Walker D. Hines in 1919.<sup>181</sup>

#### V. THE TRIAL

At trial, the two sides offered competing theories of the case. The plaintiff's claim was that Washington Southern Railway, as a common carrier, owed its passengers the utmost duty of care to transport them safely to their agreed-upon destinations and that it had breached this duty by negligently passing Ms. Garrett's station and refusing to back up to it.<sup>182</sup> The plaintiff maintained that, for all practical purposes, Ms. Garrett was forced off the train at Hoboes' Hollow in violation of the railroad's duty of care, and that this violation was a legal cause of her injuries because the railroad knew, or should have known, that Hoboes'

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179. 10 Fairfax Circuit Court Minute Book, *supra* note 19, at 162.

180. *Id.* at 90 (requiring the plaintiff to amend her complaint to sue the Director because of the recent change in General Order No. 50).

181. 1917 *Hines*, Walker D. Director General, U.S.R.R. Adm., January 10, 1919. Walk e6, AMAZON, <http://www.amazon.com/WALKER-DIRECTOR-GENERAL-U-S-R-R-JANUARY/dp/B004J7IWJQ> (last visited Oct. 22, 2016).

182. See Complaint, *supra* note 145, at 2–4; see also Defendant's Bill of Exceptions No. 4, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921).

Hollow was dangerous and that if it let Ms. Garrett off there, alone and unprotected, she was likely to be attacked.<sup>183</sup>

In response the defendant launched a multi-pronged counter-attack. He contended that: (1) the railroad did not owe Ms. Garrett any duty of care because she was not a paying passenger; (2) Ms. Garrett knew that Seminary was a flag-stop station and had not signaled the train to stop; (3) there were no tramps in the vicinity, and even if there were, the railroad did not have notice of them; (4) Ms. Garrett knew the region well and thus assumed all risks; (5) Ms. Garrett had, of her own volition, ceased being a passenger and thus no further duty was owed her after disembarking; and (6) letting Ms. Garrett off in between stations did not cause her injuries, as criminal batteries constitute a legal break in the chain of causation.<sup>184</sup>

The defendant's first two factual allegations were debated extensively at trial, though the jury was not asked to consider them.

First, the defendant alleged that Ms. Garrett, who could not produce any Washington Southern Railway ticket, was not a paying passenger on the train and so the railroad did not owe her the high duty of care owed to paying passengers, and perhaps owed her no duty at all.<sup>185</sup> A young female commuter testified that the conductor had improperly extended a professional courtesy to Ms. Garrett by accepting her Southern Railroad employee pass.<sup>186</sup> The plaintiff countered this testimony by producing both a policeman, who claimed that he had watched Ms. Garrett buy her ticket,<sup>187</sup> and another woman, who was allowed to testify that in her experience a Washington Southern Railway conductor would never accept a Southern Railroad pass.<sup>188</sup>

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183. See Complaint, *supra* note 145, at 4–7.

184. Grounds of Defense, at 1–2, *Garrett v. Wash. S. R.R.* (Va. Cir. Ct. 1919).

185. *Id.* at 1; see also Transcript, *supra* note 24, at 254. Although a common carrier's duty of utmost care to a passenger was already well established by 1921, the state of the law regarding the duty owed a guest passenger was less certain. See *Wash. A & M v. Ry. Co. v. Vaughan*, 69 S.E. 1035, 1038 (Va. 1911). In 1931, the Virginia Supreme Court announced the classic rule regarding automobiles that to establish liability the guest passenger must show that the owner or operator of the vehicle was grossly negligent. *Boggs v. Plybon*, 160 S.E. 77, 81 (Va. 1931). In 1950, the Virginia legislature modified the common law and adopted a uniform rule for motor vehicles according to which "any person transported" may establish liability against the vehicle owner or operator by showing ordinary negligence. VA. CODE ANN. § 8.01-63 (West 2009); see also *Hodge v. Sycamore Coal Co.*, 95 S.E. 808, 809 (W. Va. 1918) (holding that when the general manager knew about the custom of accepting gratuitous riders on the private carrier, a coal car, then the gratuitous rider is a passenger and not mere licensee or trespasser).

186. Transcript, *supra* note 24, at 380–81. The witness may have been her co-worker, one Mrs. Lacy, who said she was with her and used her employee pass at the same time. It's unclear from the available materials, but Lacy's evidence may have been stricken from the record as irrelevant.

187. Transcript, *supra* note 24, at 57.

188. *Id.* at 481.

Second, Hines argued that Seminary was a flag stop station, i.e., that passengers had to specifically signal if they wanted to be let off at the stop.<sup>189</sup> The defendant alleged that Ms. Garrett knew this but did not timely notify the conductor to stop the train, therefore the railroad was not negligent in carrying her past Seminary.<sup>190</sup> However, W.L. Garnett and the plaintiff's mother both testified that the train always stopped at Seminary without being specifically notified.<sup>191</sup>

These arguments were intellectually and factually interesting. Are duties owed by railroads to non-paying guests? Should a custom of stopping at a station override its legal status as a flag stop? For some unknown reason, however, these questions remained theoretical, as the defendant did not propose jury instructions on either issue. By so doing, the defendant effectively conceded that the train had negligently failed to allow Ms. Garrett to disembark at Seminary.<sup>192</sup> This concession, which is hard to explain, narrowed the jury's role to determining the causal relationship between the railroad's negligence and Ms. Garrett's injuries. The defendant's fallback argument, therefore, had to be either that the railroad was absolved of any further duty to Ms. Garrett once she had left the train or that the two assaults broke the chain of causation between its initial negligence and her injuries.

The plaintiff's strategy was to establish that the defendant, already negligent for having missed Seminary, was negligent again because it knew, or should have known, that Hoboes' Hollow was dangerous.<sup>193</sup> However, since Ms. Garrett, alone and unprotected, was evicted from the train near the alleged den of thieves that was Hoboes' Hollow, the second and separate act of negligence seemed causally linked to the second rape because the railroad may have been able to foresee Ms. Garrett's attack.<sup>194</sup> Since the second rape arguably would never have occurred but for the first assault, which was not committed by a hobo, a causal conundrum remained.

At this point, the defendant made two objections that were distinct obstacles to the plaintiff's theory. First, he objected to the admission of all the plaintiff's evidence about the general reputation of the Hoboes' Hollow area.<sup>195</sup> The trial judge sustained this objection, finding that a general reputation for danger was legally insufficient to give a railroad notice of a dangerous condition.<sup>196</sup> Instead, the court held that the plaintiff had to prove that the railroad or its employees

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189. See *Grounds of Defense*, *supra* note 184, at 1.

190. *Id.* at 1–2.

191. Transcript, *supra* note 24, at 171, 479; Brief in Behalf of Defendant in Error, *supra* note 14, at 3.

192. See generally *Hines v. Garrett*, 108 S.E. 690 (Va. 1921).

193. See *Complaint*, *supra* note 145, at 6–7.

194. *Id.* at 7–8.

195. Defendant's Bill of Exceptions No. 11, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921).

196. Defendant's Bill of Exceptions No. 13, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921).

knew, or should have known, of *actual criminal events* that had taken place in the area before the attack on Ms. Garrett.<sup>197</sup>

Ms. Garrett now faced a challenge, which was made even more daunting by the defendant's ingenious second objection.<sup>198</sup> He argued that evidence of any actual criminal events that took place in Hoboes' Hollow *before the railroads' nationalization* should be excluded from the jury's consideration because Director Hines could not possibly have had legal notice of events that transpired prior to the creation of his position.<sup>199</sup> The trial judge sustained this objection as well.<sup>200</sup> Thus, Ms. Garrett was forced to produce evidence that Hoboes' Hollow was the site of specific crimes that took place between March 1918 and February 1919.<sup>201</sup>

This ruling seems particularly dubious because Director Hines clearly assumed the assets and the liabilities of the railroads the federal government came to own. Washington Southern Railway was not liquidated when the railroads were nationalized, but continued its prior business under federal ownership.<sup>202</sup> Director Hines was clearly vicariously liable when a railroad employee negligently caused injury during his tenure.<sup>203</sup> Thus, any knowledge Washington Southern Railway employees had of crimes that had taken place at or near Cameron Crossing would suffice to give the Director constructive notice of this dangerous condition. And most of the railroad's employees had worked on the rail line near Seminary for years—one conductor had over three decades' experience.<sup>204</sup> However, under the court's ruling, these employees' memories were wiped clean as a matter of law on the day the government nationalized the railroads, as if the companies had been liquidated and their workforces reconstituted.

These two rulings were potentially devastating for Ms. Garrett's case. The theft of food from the track foreman's home and of merchandise from rail cars,

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197. *Id.*

198. Before the trial, the judge had ruled *in limine* that public knowledge of an escape from the maximum-security reformatory in Lorton was too remote to be relevant to the plaintiff's case. Brief for Defendant's Support of the Motion to Strike Out, *Garrett v. Washington S. Railway Co.* (Va. Cir. Ct. 1919).

199. Defendant's Bill of Exceptions No. 10, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921).

200. *See, e.g.*, Transcript, *supra* note 24, at 225.

201. Congress excluded "interurban" street cars from federal control, even when owned by interstate rail carriers. Had Julia been attacked after riding the street car, she would not have sued the Federal Government. Rather, her suit would have been against the street car operator. *See* Federal Control Act, ch. 25, § 1, 40 Stat. 451, 452 (1918); Transcript, *supra* note 24, at 226–27. Of course, the street car did not stop at Seminary.

202. According to the Virginia Supreme Court of Appeals "[w]here two railroad companies unite or become consolidated under the authority of law, the presumption is, until the contrary appears, that the united or consolidated company has all the powers and privileges and is subject to all the restrictions and liabilities of those out of which it is created." *Langhorne v. Richmond Ry. Co.*, 22 S.E. 159, 160–61 (Va. 1895) (holding the successor corporation liable in tort).

203. *See* General Order 50, *supra* note 155, at 334–35.

204. Transcript, *supra* note 24, at 459.



as well as the stationing of armed detectives whenever a train car with merchandise was left overnight near Cameron Crossing, all occurred prior to nationalization.<sup>205</sup>

Left without access to the most damning evidence of criminality, the plaintiff's attorneys resolved to ignore the judge's first evidentiary ruling and produced witnesses who offered observations concerning the general character of shady individuals seen in the area subsequent to nationalization.<sup>206</sup> When one plaintiff's witness asserted that criminals lived in the woods, the defendant would ask, "[h]ow do you distinguish a tramp from a criminal?"<sup>207</sup> When a plaintiff's witness said the area was known to be dangerous, the defense would challenge "[c]an you tell us . . . specifically any crime that occurred between March, 1918 and February, 1919?"<sup>208</sup> None of the plaintiff's witnesses were able to provide the level of detail necessary to answer the defense's questions.<sup>209</sup>

Unable to impute knowledge of specific post-nationalization crimes at Cameron Crossing to Director Hines, the plaintiff relied on evidence from the surrounding area. Mr. Walter Cockrell, who lived 360 yards away from where Ms. Garrett was attacked and located her after the rapes, testified that tramps would come up to his home and that he would have to give them food to make them go away.<sup>210</sup> The track foreman conceded that he too had fed tramps who approached his house at Cameron's Crossing, though he denied that his family ever felt threatened by them.<sup>211</sup> The track foreman's statement was dubious and likely dictated by his employer because the track foreman did make a crucial admission: when he was away from home his wife would either leave to stay with his extended family in Maryland or that family would temporarily move in with his wife.<sup>212</sup> Of course the defendant then objected that this was legally irrelevant "general reputation" evidence while the plaintiff maintained that this was a specific fact.<sup>213</sup> Deviating from his requirement of proof of *specific crimes*, the trial judge admitted this evidence.<sup>214</sup>

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205. *Id.*

206. *See, e.g.*, Defendant's Bill of Exceptions No. 8, Hines v. Garrett, 108 S.E. 690 (Va. 1921); Defendant's Bill of Exceptions No. 9, Hines v. Garrett, 108 S.E. 690 (Va. 1921); Defendant's Bill of Exceptions No. 10, Hines v. Garrett, 108 S.E. 690 (Va. 1921); Defendant's Bill of Exceptions No. 11, Hines v. Garrett, 108 S.E. 690 (Va. 1921); Defendant's Bill of Exceptions No. 12, Hines v. Garrett, 108 S.E. 690 (Va. 1921).

207. Transcript, *supra* note 24, at 71–72.

208. Transcript, *supra* note 24, at 82; Defendant's Bill of Exceptions No. 12, Hines v. Garrett, 108 S.E. 690 (Va. 1921).

209. *See* Petition for Writ of Error, *supra* note 14, at 12.

210. Transcript, *supra* note 24, at 468, 471; Brief in Behalf of Defendant in Error, *supra* note 14, at 10.

211. Transcript, *supra* note 24, at 468, 471.

212. *Id.* at 501; Brief in Behalf of Defendant in Error, *supra* note 14, at 12–13.

213. Transcript, *supra* note 24, at 475–76.

214. *Id.*

The plaintiff was in any case able to partially bypass the judge's chronologically restrictive evidentiary ruling. As each plaintiff's witness took the stand and was questioned about dangerous happenings at Cameron's Crossing, plaintiff's attorneys would purposely forget to limit the time period in their questions. Defense counsel would immediately object and the objection would be sustained, but not before the jury heard the witness's answer.<sup>215</sup> After several witnesses repeated the same performance, it became clear that counsel and witnesses had pre-determined to relate prior criminal acts before the defense could object. For whatever reason, perhaps out of recognition that the judge's decision to limit evidence to the period of the Director's tenure was legally dubious, the defendant did not move for a mistrial.<sup>216</sup>

In this manner, the plaintiff's witnesses testified that the area where the rapes occurred was a haven for criminals, while the defendant's witnesses, typically railroad employees, contended that it was peaceful.<sup>217</sup> Plaintiff's counsel took advantage of this discrepancy to introduce evidence otherwise barred by the judge's rulings, purportedly, to challenge the credibility of the defense witnesses. For example, when the railroad foreman testified that he did not know about any crime in the area, plaintiff's counsel questioned him about food that was stolen from the foreman's own home, even though it was stolen before Director Hines took control of the railroad.<sup>218</sup> Because they were offered on cross-examination to impeach the witness, the judge permitted these questions.<sup>219</sup>

Indeed, the plaintiff produced evidence of crimes committed *after* the attack on Ms. Garrett. For instance, a few months after the incident, the Fairfax Sheriff deputized Walter Cockrell to police that area of the track.<sup>220</sup> Of course, any subsequent crimes committed under Mr. Cockrell's watch would be irrelevant to what railroad employees knew or should have known at the time of the rapes. By a curious irony, the defendant's insistence that pre-nationalization events were *hors-combat* seemed to have confused the trial judge and he appeared unwilling to exclude post-nationalization events from the jury's purview.<sup>221</sup>

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215. See, e.g., Defendant's Bill of Exceptions No. 10, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921).

216. This is akin to efforts by plaintiff's attorneys to get the defendant in a tort suit to admit that he has liability insurance—even if there is an objection to the question the evidence will have been heard. Indeed, the objection will typically solidify knowledge of the forbidden fact in the jurors' minds. 75A AM. JUR. 2D *Trial*, §§ 618–20 (2016). A mistrial motion is typically sustained in such conditions because of this psychological effect. See, e.g., *Snowwhite v. State*, 221 A.2d 342, 347 (Md. 1963).

217. Transcript, *supra* note 24, at 503, 510; see Petition for Writ of Error, *supra* note 14, at 12.

218. Transcript, *supra* note 24, at 472.

219. *Id.* at 472, 474, 476.

220. *Id.* at 100.

221. Judge Brent pondered aloud whether he himself had deputized Mr. Cockrell before or after Garrett's assault. Mr. Cockrell's appointment on November 19, 1919, nine months after the assault, was presumably a result of the assault in the first place. See *id.* at 367–68 (quoting

Apart from the chaotic dispute over whether the railroad knew the area was dangerous, another legal disagreement involved Ms. Garrett's alleged assumption of the risk of assault. The defendant attempted to show that Ms. Garrett knew the area well,<sup>222</sup> that she in fact hoped to leave the dangerous track to take a safe shortcut trail through Mr. Cockrell's farm,<sup>223</sup> and that the return route she chose created new risks for Ms. Garrett that she alone should bear. The plaintiff countered with witnesses who testified that the trail through the Cockrell farm was marshy—Ms. Garrett would have had to cross twenty feet of swamp, wade through a five-foot-wide mill race, and scale five feet of barbed wire—making it extremely improbable that she ever intended to take such a route.<sup>224</sup> As for Ms. Garrett herself, she consistently testified to being unfamiliar with the area past Seminary Station.<sup>225</sup>

The defendant's two remaining arguments were the strongest and would form the basis of his later appeal. He maintained that Ms. Garrett voluntarily disembarked from the train and, by doing so, ceased being a passenger to whom the railroad owed any duty of care.<sup>226</sup> Ms. Garrett testified that after vigorously protesting when the train started moving forward, instead of backwards towards Seminary as she had expected, the conductor told her, “[y]ou will either have to go through and we will send you back on the next train, or get off here.”<sup>227</sup> This offer to take Ms. Garrett “through” was crucially ambiguous, the plaintiff claimed. She repeated at trial that she thought “through” signified she would have to remain on the train until Richmond,<sup>228</sup> from which city her return train would not have deposited her at Seminary until the next day. She was without resources to secure lodging in Richmond overnight.<sup>229</sup> However, defense witnesses testified that the conductor said he would take Ms. Garrett “through to Franconia [station].”<sup>230</sup> The porter testified that the conductor had explained the next train would bring her back from Franconia in two and a half hours, long

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appointment order, November 19th, 1919, “[T]he County will pay him \$75 for one month's services . . . & he to furnish his motor cycle & pay his own expenses”).

222. See, e.g., Petition for Writ of Error, *supra* note 14, at 8.

223. The Defendant's civil engineer witness testified that three hundred and fifty feet farther south on the tracks a footpath to Mr. Cockrell's barn safely traversed the stream over a railroad tie. See Transcript, *supra* note 24, at 436. The book *Love and Marriage in the Civil War* describes the Cockrell farm as: “Blooms Hill Plantation (twenty slaves), in Virginia was owned by the Cockrell's. This farm had a reputation for treating slaves well . . . Cockrell bought a sixteen year old girl from a nearby plantation and brought her to Blooms Hill to cook. The girl had four children by Cockrell.” CHARLES A. MILLS, *LOVE, SEX AND MARRIAGE IN THE CIVIL WAR* 37 (1995).

224. Transcript, *supra* note 24, at 496–97.

225. *Id.* at 51.

226. Petition for Writ of Error, *supra* note 14, at 30.

227. Transcript, *supra* note 24, at 45–48.

228. See *id.* at 13; Hines v. Garrett, 108 S.E. 690, 691 (Va. 1921); Brief in Behalf of Defendant in Error, *supra* note 14, at 6.

229. See Transcript, *supra* note 24, at 12–13.

230. *Id.* at 32.

after nightfall.<sup>231</sup> Additionally, the defendant noted that Ms. Garrett was an experienced train passenger who had been riding trains for two years and who lived in sight of sixty trains passing each day on the track below her house.<sup>232</sup> That she would believe Richmond was the next stop after Seminary strained credulity, implied the defense, but of course credibility issues are left to the jury. In any case, the fact that the train started moving forward before Julia could deliberate was undisputed because at trial Julia testified, “I just had a minute to think and I told him, ‘[I]et me off.’”<sup>233</sup>

The defendant’s second vital argument was that any negligence by Washington Southern Railway could not, as a matter of law, be the proximate cause of Ms. Garrett’s injuries.<sup>234</sup> The defendant produced evidence that Ms. Garrett was talking to a soldier on the train.<sup>235</sup> Presumably, jurists were free to insinuate that a flirtatious Ms. Garrett had somehow invited the first attack or perhaps even that the first sexual encounter was consensual. The defendant mentioned a lack of vaginal bruising in his appellate brief,<sup>236</sup> but (perhaps chivalrously) avoided doing so in his oral argument to the jury.<sup>237</sup> The plaintiff countered that although she did talk to a man in uniform on the train, he was a U.S. Marine, whereas one of the men that raped her was in U.S. Army garb.<sup>238</sup> In any case, the defendant maintained that criminal acts were legally unforeseeable and thus broke the causal chain.<sup>239</sup>

After four days of trial and intense debate about how the jury should be instructed, the judge submitted ten verbose instructions to the jurors.<sup>240</sup> It is doubtful that they studied these instructions closely. It only took them a few hours to find for Ms. Garrett, but they awarded her only \$2,500 or five percent of her at-the-time humongous demand.<sup>241</sup> After the jury announced its verdict, the defendant immediately moved for a sixty-day stay of execution so that he could appeal to the Supreme Court of Virginia.<sup>242</sup> The court granted the stay<sup>243</sup>

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231. *Id.* at 306–07.

232. *Id.* at 30–31.

233. *Id.* at 51.

234. Petition for Writ of Error, *supra* note 14, at 11–12.

235. *See id.* at 11; *see also* Transcript, *supra* note 24, at 181, 264.

236. *See* Petition for Writ of Error, *supra* note 14, at 6, 9.

237. This was presumably to avoid appearing insensitive. *See* Transcript, *supra* note 24, at 28–40.

238. *Id.* at 264, 275.

239. *See* Petition for Writ of Error, *supra* note 14, at 11.

240. *See generally* Defendant’s Bill of Exceptions, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921).

241. Petition for Writ of Error, *supra* note 14, at 1.

242. *Id.* at 43.

243. 10 Fairfax Circuit Court Minute Book, *supra* note 19, at 162.

and the defendant posted a \$3,000 supersedeas<sup>244</sup> bond while the appeal was pending.<sup>245</sup>

#### VI. THE APPEAL

On September 20, 1920, Director Hines sought a writ of error from the Virginia Supreme Court.<sup>246</sup> His petition submitted twelve assignments of error, but his appellate brief pressed for only two of them. The first was that at the time of her assaults the railroad did not owe Ms. Garrett a duty of care.<sup>247</sup> Petitioner Hines conceded on appeal that the railroad had been negligent in missing Ms. Garrett's stop, but argued that her decision to disembark from the train terminated her status as a passenger and absolved the railroad of any further duties to her.<sup>248</sup> Second, the petitioner argued that the railroad's negligence in carrying Ms. Garrett past her station was not the proximate cause of her injuries.<sup>249</sup> Ms. Garrett countered that the jury, by its verdict, had implicitly determined that her decision to leave the train was not voluntary and that finding of fact was not to reviewable on appeal.<sup>250</sup>

Unfortunately, the Virginia Supreme Court disagreed with Ms. Garrett. It held that the jury instructions did not properly submit the question of whether she had voluntarily relinquished her status as a passenger to the jury.<sup>251</sup> Since the question was not previously before a jury, it was up to a trial court to determine whether Ms. Garrett was a passenger as a matter of law or whether, to the contrary, reasonable minds could disagree on this point. In the latter case the jury should be directed to determine this issue.<sup>252</sup>

The Virginia Supreme Court ruled that “[t]he relationship and liability of a carrier to a passenger, having once commenced, will ordinarily continue until the passenger has reached his destination; but such relationship and liability may be terminated at some other point by the passenger's voluntary departure from

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244. A supersedeas bond is “[a]n appellant's bond to stay execution on a judgment during the pendency of the appeal.” BLACK'S LAW DICTIONARY 190 (8th ed. 2004).

245. Petition for Writ of Error, *supra* note 14, at 43.

246. See Petition for Writ of Error, *supra* note 14, 1–45. Although the appeal was heard in Richmond, the opinion and order was granted from the court's session in Staunton, a full 100 miles west of Richmond, on September 23, 1921. 10 Fairfax Circuit Court Minute Book, *supra* note 19, at 369.

247. This was actually the second ground for appeal, but the Virginia Supreme Court addressed it first. Compare Hines v. Garrett, 108 S.E. 690, 692 (Va. 1921) (citing Ms. Garrett's passenger status as the first issue), with Petition for Writ of Error, *supra* note 14, at 30–31 (arguing no proximate cause existed before denying Ms. Garrett was a passenger under the law).

248. Petition for Writ of Error, *supra* note 14, at 30–31.

249. *Id.* at 9.

250. Brief in Behalf of Defendant in Error, *supra* note 14, at 33–34.

251. Hines, 108 S.E. at 693.

252. *Id.* at 695.

the carrier's vehicle."<sup>253</sup> It invoked this principle in approval of the closely related case of *Stevens v. Kansas City Elevated Ry. Co.*,<sup>254</sup> where the Missouri Western District Court of Appeals had held:

While we approve the rule quite generally recognized that when the passenger, knowing that he is being carried beyond his station, voluntarily leaves the conveyance without insisting on the full performance of the carrier's contract, he thereby terminates his relation of passenger, and the carrier cannot be held liable to respond in damages for an injury he afterward sustains in traveling to his destination, we must hold *the rule does not obtain in cases where the carrier's servants either coerce or persuade the passenger into alighting in an unsafe place, of the danger of which the latter has no knowledge.*<sup>255</sup>

The issue thus became whether Ms. Garrett's departure from the train was voluntary or whether she was coerced or persuaded to disembark at Hoboes' Hollow. In *Stevens*, the court ruled that after a train missed a station, the passenger who asked the train to stop and voluntarily disembarked terminated the carrier/passenger relationship.<sup>256</sup> Director Hines argued that, like the plaintiff in *Stevens*, Ms. Garrett asked the train to stop, was not coerced or persuaded to disembark by the conductor, and therefore voluntarily released the railroad from any duty to protect her.<sup>257</sup> In response to the Virginia Supreme Court, Ms. Garrett focused on the circumstances preceding her departure from the train. First, the false information from the porter led Ms. Garrett to decline to disembark when the train had stopped the first time, in a safer location, at Mr. W.L. Garnett's request. Director Hines claimed that Ms. Garrett did not depart with Mr. W.L. Garnett because she was initially averse to walking home and wanted the train to back up to Seminary.<sup>258</sup> However, according to Ms. Garrett, she was about to depart from the train while it was stopped for Mr. Garnett, but was physically prevented from doing so by the porter, who told her to remain on board because the train would back up to the station.<sup>259</sup> Ms. Garrett argued that she would not have suffered any injuries if she had departed with Mr. Garnett.<sup>260</sup> The Virginia Supreme Court sided with Ms. Garrett's statement of the facts, finding from its reading of the trial transcript that "the plaintiff told the conductor

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253. *Id.* at 692 (citing *Commonwealth v. Boston & Maine R.R. Co.*, 129 Mass. 500 (Mass. 1880)).

254. 105 S.W. 26 (Mo. Ct. App. 1907).

255. *Id.* at 28 (emphasis added).

256. *Id.* at 29.

257. Petition for Writ of Error, *supra* note 14, at 33.

258. *Id.* at 2.

259. Brief in Behalf of Defendant in Error, *supra* note 14, at 5.

260. *Id.*; see also Complaint, *supra* note 145, at 4.

[sic] she had a ticket to Seminary, and she was about to get off, but he directed her to wait, as he intended to back the train to the station.”<sup>261</sup>

Ms. Garrett further argued that the conductor’s explanation of why the train did not back up was disingenuous. The conductor had told Ms. Garrett the train could not back to Seminary because “we are afraid of butting into another train[,]”<sup>262</sup> but the plaintiff was able to demonstrate that the track would be clear for over an hour.<sup>263</sup> In addition, the plaintiff claimed that the conductor was rude and curt with Ms. Garrett and noted that during his testimony at trial, conductor Thompson politely referred to Ms. Garrett as a “lady,” and promptly took it back and crudely called her a “woman” instead.<sup>264</sup> This fraudulent and hostile atmosphere of disrespect for Ms. Garrett’s female virtue was argued to be tantamount to coercion.<sup>265</sup>

Finally, the plaintiff reiterated that when the conductor told Ms. Garrett “you will either have to go through and we will send you back on the next train, or get off here,” the train started up again immediately after the ultimatum and before she had time to deliberate or to clarify it.<sup>266</sup> “I just had a minute to think and I told him, ‘let me off.’”<sup>267</sup>

The Virginia Supreme Court decided to remand for further consideration by a new jury, explaining that:

[T]here is a view of the evidence under which [Ms. Garrett] might be regarded as having been coerced or unduly induced to take the course which she did in leaving the car . . . . On the other hand, the testimony of the conductor and other witnesses on behalf of the defendant, if taken alone and accepted at its face value, would have warranted the jury in finding that she did voluntarily and deliberately give up her rights as a passenger, and voluntarily terminate the relationship.<sup>268</sup>

The court instructed that:

[I]f the jury should find that the plaintiff did exercise a free will and deliberate judgment, unhampered by any improper conduct on the part of the conductor, and decided to leave the train rather than incur the inconvenience of taking the other course, then she did terminate her relationship as a passenger and assumed the risk of the consequences which befell her.<sup>269</sup>

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261. Hines v. Garrett, 108 S.E. 690, 691 (Va. 1921). Clearly the court was, quite properly, treating the porter as an agent for the conductor.

262. See Petition for Writ of Error, *supra* note 14, at 2–3, 31.

263. See Brief in Behalf of Defendant in Error, *supra* note 14, at 5, 17.

264. *Id.* at 5–6.

265. See *id.* at 33–34.

266. *Id.* at 5; Petition for Writ of Error, *supra* note 14, at 31.

267. See Petition for Writ of Error, *supra* note 14, at 3.

268. Hines v. Garrett, 108 S.E. 690, 693 (Va. 1921).

269. *Id.*

The court then went on to address whether, if on the other hand a future jury did find that the railroad coerced Ms. Garrett to leave the train and therefore breached the duty the railroad owed to her, that negligence would constitute the proximate cause of her injuries.<sup>270</sup>

Director Hines's argument that felonious acts of third parties broke the chain of causation was well-supported by prevailing common law, and he offered numerous cases in support of this proposition.<sup>271</sup> The court discussed two Virginia cases on point. In *Fowlkes v. Southern Railway*,<sup>272</sup> a pregnant woman had purchased a Southern Railway ticket from Richmond to Skinquarter.<sup>273</sup> The Southern Railway agent assured her that she would be able to connect to Skinquarter at Mosely Junction, but after disembarking at Mosely she learned that there was no train to Skinquarter that day.<sup>274</sup> At trial the plaintiff sought to introduce the following evidence:

The Southern railway having made no provision for getting her to her destination, she endeavored to find the means of private conveyance. After waiting in the store for about four hours, and suffering great anxiety, she succeeded in hiring a team, and set out for her father's home. It was raining at the time, but the owner of the team would not let it wait, and, as it was getting late, she thought it best to start. The road was very rough, and she was greatly jolted. Several hard showers came up during the drive, and she was wet through, and her baggage was also damaged. She was perfectly well when she got on the train at Richmond, and when she got off at Moseley Junction. When she got to her father's house, she was suffering with abdominal pains and hemorrhage, from the womb. These pains continued until August 23, 1896, when she suffered a miscarriage. Since that time she has been in bad health, and has had another miscarriage.<sup>275</sup>

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270. *Id.*

271. *Garrett v. Louisville & N.R. Co.*, 71 So. 685, 686 (Ala. 1916); *Andrews & Co. v. Kinsel*, 40 S.E. 300, 301 (Ga. 1901); *Henderson v. Dade Coal Co.*, 28 S.E. 251, 253 (Ga. 1897); *Perry v. Cent. R.R.*, 66 Ga. 746, 751 (1881); *Bowers v. S. Ry. Co.*, 73 S.E. 677, 681 (Ga. Ct. App. 1912); *Harnett v. Boston Store of Chicago*, 106 N.E. 837, 839-40 (Ill. 1914); *Alexander v. Town of Newcastle*, 17 N.E. 200, 201 (Ind. 1888); *Missouri Pac. Ry. Co. v. Columbia*, 69 P. 338, 341 (Kan. 1902); *Watson v. Ky. & Ind. Bridge & R.R. Co.*, 126 S.W. 146, 151 (Ky. Ct. App. 1910); *Laidlaw v. Sage*, 52 N.E. 679, 688 (N.Y. 1893); *The Lusitania*, 251 F. 715, 732 (S.D.N.Y. 1918); *Nirdlinger v. Am. Dist. Tele. Co.*, 91 A. 883, 885-86 (Pa. 1914); *Winfrey v. Jones*, 51 S.E. 153, 155 (Va. 1905); *Fowlkes v. S. Ry. Co.*, 32 S.E. 464, 465-66 (Va. 1899); *Connell Ex'rs v. Chesapeake & Ohio Ry. Co.*, 24 S.E. 467, 470-71 (Va. 1896).

272. 32 S.E. 464 (Va. 1899).

273. *Id.* at 464. Skinquarter is an unincorporated part of Chesterfield County, Virginia. The hamlet was named for a nearby spring where Indians would skin and quarter deer. *See generally* HARRIETT M. HORNER, *HICKMAN'S HALF ACRE: AN ILLUSTRATED HISTORY OF SKINQUARTER BAPTIST CHURCH, 1778-1978* (1978).

274. *Id.*

275. *Id.*



The Virginia Supreme Court in *Fowlkes* had ordered that plaintiff's case be dismissed because the defendant's admitted negligence was not the proximate cause of the plaintiff's injuries.<sup>276</sup> In the words of the court:

The negligent act proved in this case was committed at the time the ticket was purchased, and it seems to us manifest that a most prudent and experienced man, acquainted with all the circumstances which existed at that moment, could never have foreseen or anticipated the consequences which supervened. It might reasonably have been anticipated that a failure to make the connection at Moseley Junction would involve delay and inconvenience, but not that the plaintiff would procure a buggy, and in the face of a storm, in her delicate condition, drive over a rough road to her father's house, and that a miscarriage would be the result.<sup>277</sup>

Director Hines similarly argued that, just as the injuries could not be foreseen at the time of the railroad's negligence in *Fowlkes*, it was unforeseeable when Washington Southern Railway carried Ms. Garrett past her station that its negligence would result in multiple rapes.<sup>278</sup> Ms. Garrett responded that *Fowlkes* was inapposite because Washington Southern Railway's negligence was not limited to carrying her past Seminary.<sup>279</sup> Instead, Ms. Garrett argued that the railroad's subsequent decision to let her off at Hoboes' Hollow provided a *second act of negligence*, apart from carrying her past Seminary and that that decision was negligent precisely because it was foreseeable she would be assaulted as she walked home, alone, near nightfall in a dangerous area.<sup>280</sup>

Next, Director Hines cited *Connell v. Chesapeake and Ohio R.R.*,<sup>281</sup> in which a railroad had negligently failed to lock the door to a sleeping car. A robber entered and accosted the sleeping passenger.<sup>282</sup> When the passenger refused to relinquish his property, the robber shot and killed him.<sup>283</sup> In the wrongful death suit against the railroad that followed, the court held that, although robbery may have been a foreseeable result of the railroad's negligent failure to secure the cabin, murder and other physical harm are too horrid to be foreseeable:

There is no causal connection between the negligence pleaded and the injury sustained. In a peaceful community, in a law-abiding and Christian land, a car of the defendant company is invaded in the nighttime by an assassin, and an innocent man falls a victim to his

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276. *Id.* at 465–66.

277. *Id.*

278. See Reply Brief in Behalf of the Plaintiff in Error, at 17–18, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921) (Record No. 653) [hereinafter Reply]; Petition for Writ of Error, *supra* note 14, at 15.

279. Brief in Behalf of Defendant in Error, *supra* note 14, at 18–19.

280. *Id.*

281. 24 S.E. 467 (Va. 1896).

282. *Id.* at 468; Petition for Writ of Error, *supra* note 14, at 17.

283. *Id.*

murderous assault. Can it be said that, in leaving a door ajar, in permitting a stranger or passenger to enter, the defendants were guilty of negligence, when to hold them negligent would be to say that they should have expected the tragedy which gave rise to this action? To do so, would be to require of them more than human foresight as to the minds and motives of men, and make them indeed insurers of the safety of passengers, while under their care, against all dangers, however remotely connected with their acts of omission or commission. This view does not seem to have prevailed in those cases in which injuries to the person and not to the property of passengers, have been the subject of investigation.<sup>284</sup>

Director Hines argued that, as in *Connell*, it might have been foreseeable that Ms. Garrett be robbed while walking back along the tracks, but the multiple rapes were too horrid to be foreseeable.<sup>285</sup> He noted that while there was evidence of robberies in the area, the plaintiff was unable to produce any evidence of *rapes* in Hoboes' Hollow.<sup>286</sup>

In a similar vein, Director Hines invoked a famous New York case, *The Lusitania*,<sup>287</sup> where the court found that a steamship line was not liable for its passengers' deaths when Germany infamously sank its cruise liner.<sup>288</sup> He argued that *The Lusitania* stood for the proposition that when injuries result from an independent illegal act, such act severs the causal chain between the defendant's initial negligence and the plaintiff's injuries.<sup>289</sup> In support of his view that the rapes were unforeseeable at the time of the railroad's negligence, he noted that: the identities of both assailants remained unknown; neither assailant was employed by the railroad;<sup>290</sup> and the assaults took place in "broad daylight"<sup>291</sup> in a frequently traversed area<sup>292</sup> in plain view of nearby homes.<sup>293</sup>

In a time of renewed racial tension, it is a remarkable fact that Director Hines, a high-ranking government official, attached blatant racist legal significance to the fact that the plaintiff had testified that both her assailants were white. Hines argued that the rapes committed by white men were legally unforeseeable.<sup>294</sup> He maintained that "[t]hanks to our civilization, crimes like these are rare and

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284. *Id.* at 469.

285. Petition for Writ of Error, *supra* note 14, at 17–19, 37.

286. *Id.* at 12–13.

287. 251 F. 715 (S.D.N.Y. 1918).

288. *Id.* at 731–32.

289. Petition for Writ of Error, *supra* note 14, at 26–27.

290. *See id.* at 12, 16–17, 19–21, 26–27.

291. *Id.* at 11, 17. However, it was, at most, minutes before sunset. *See supra* note 66 and accompanying text.

292. Petition for Writ of Error, *supra* note 14, at 7–8, 36.

293. *Id.* at 6–8, 17. The closest home was Mr. Cockrell's, approximately three hundred and sixty yards away. *Id.* at 8.

294. *Cf. id.* at 12–13.

usually confined to a race not long out of the jungles of Africa . . . .”<sup>295</sup> Thus, Director Hines implied that while a person of color may sexually assault a woman in the ordinary course of events, sexual predation by a white male was unforeseeable as a matter of law.

Ms. Garrett attempted to distinguish the *Connell* and *Lusitania* cases. She argued that the presumption in *The Lusitania* that a civilized nation would not engage in an illegal act of war<sup>296</sup> said nothing about the foreseeability of the ravishment of a young woman walking alone in Hoboes’ Hollow.<sup>297</sup> Further, she noted that in *Connell*, the railroad’s negligence was in exposing the passenger to robbery by failing to lock the door to his car.<sup>298</sup> The court in that case effectively held that the passenger’s murder was not “within the risk” of the railroad’s negligence.<sup>299</sup> By contrast, Ms. Garrett argued that letting her off near Hoboes’ Hollow was a separate act of negligence from missing the Seminary Station stop, precisely because depositing her in Hoboes’ Hollow exposed a single young woman to sexual assault.<sup>300</sup> Thus, an attack from the criminal denizens of Hoboes’ Hollow was a much more a foreseeable consequence of the railroad’s negligence than would be murder in a safe moving railway sleeping car.

In rebuttal, Director Hines claimed that the existence of possibly dangerous hoboes and tramps in the area was irrelevant because Ms. Garrett was not initially raped by a hobo, but by a soldier who jumped off the other side of the train.<sup>301</sup> Thus, the harm of the first rape was not within the risk created by allowing the plaintiff to disembark near Hoboes’ Hollow.<sup>302</sup> If the plaintiff had sought damages solely for the second rape, which *was* likely committed by a tramp, Director Hines argued that too should be disallowed because the second rape would never have occurred without the soldier’s first rape, itself an

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295. *Id.* at 12. “Hoboes Hollow” was frequented by both black and white tramps, according to the trial testimony, but the aggressors in question were white. Transcript, *supra* note 24, at 92, 107.

296. *The Lusitania*, 251 F. 715, 732 (S.D.N.Y. 1918). Whether the sinking of the *Lusitania* was illegal depended in large part on whether Germany could reasonably believe that it was carrying military material. See Thomas A. Bailey, *The Sinking of the Lusitania*, 41 AM. HIST. REV. 54, 58–59 (1935).

297. Brief in Behalf of Defendant in Error, *supra* note 14, at 23–24. It was presumably to make the *Lusitania* case more relevant that the defendant emphasized that both rapes had been committed by white men, allegedly members of a civilized race from which such behavior could not be anticipated.

298. *Id.* at 19.

299. *Connell v. Chesapeake & Ohio Ry. Co.*, 24 S.E. 467, 471 (Va. 1896); Sugarman, *supra* note 23, at 613.

300. Petition for Writ of Error, *supra* note 14, at 12–13.

301. Reply, *supra* note 278, at 35–36.

302. *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99, 99 (N.Y. 1928); see also Michael I. Krauss, *Palsgraf: The Rest of the Story*, 9 GREEN BAG 2D 309, 309–310 (2006) (discussing Helen Palsgraf’s low-profile background prior to her involvement in “the most famous torts case in American history”).

unforeseeable intervening cause between the railroad's negligence and Ms. Garrett's injuries.<sup>303</sup>

#### VII. THE VIRGINIA SUPREME COURT'S DECISION

In a striking departure from prior Virginia common law, Justice Joseph Luthar Kelly,<sup>304</sup> rather summarily dismissed Director Hines' argument that subsequent felonious acts by an unknown third party break the chain of causation created by the defendant's negligence.<sup>305</sup> To circumvent his argument that the soldier's unforeseeable actions broke the chain, the court did not base its finding of negligence exclusively on the presence of tramps, but instead focused on the railroad's elevated duty of care, the plaintiff's age and sex, the secluded and unprotected character of the place,<sup>306</sup> the time of day, and the type of people who frequented the crossing. It explained that:

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303. Reply, *supra* note 278, at 34–35.

304. Judge Kelly joined the Virginia Supreme Court of Appeals in 1915 and assumed his position as president in 1920. *Judge Kelly Quits Bench in Virginia*, WASH. POST, Jan 11, 1924, at 2. He resigned from the court due to ailing health in January 1924, and became Division Counsel for the Southern Railway. Judge Kelly was succeeded as president of the court by Judge Frederick Wilmer Sims, who committed suicide less than one year later. By then Judge Kelly was in better health and he filled the court vacancy as an associate judge in March 1925. Unfortunately, his second term on the court was cut short. On April 14, 1925, Judge Kelly accidentally fell and fatally shot himself while descending his basement stairs in a hunt for rats. *Chief Judge Kelly Killed by Accident While Seeking Rats*, WASH. POST, Apr. 15, 1925, at 3.

305. *Hines v. Garrett*, 108 S.E. 690, 693, 695 (Va. 1921). Despite the court's announcement that it was adopting Ms. Garrett's theory of the case, it actually adopted the defendant's: namely, that the negligence at issue was in disembarking Ms. Garrett from the train near Cameron Crossing. Ms. Garrett argued consistently that the negligence at issue included passing the train station and then refusing to back up. The court announced the following rule on proximate causation and damages, and the legal difference between causing an unforeseeable result and causing unforeseeable damages:

“[F]oreseeableness” [*sic*] . . . is not the measure of liability of the guilty party, though it may be determinative of the question of his negligence . . . . [Rather,] the guilty party is liable for all the consequences which naturally flow [from the negligent act], whether they were reasonably to have been anticipated or not, and in determining whether or not the consequences do naturally flow from the wrongful act or neglect, the case should be viewed retrospectively . . . looking at the consequences, were they so improbable or unlikely to occur that it would not be fair and just to charge a reasonably prudent man with them . . . . The precise injury need not have been anticipated. It is enough if the act is such that the party ought to have anticipated that it was liable to result in injury to others.

*Id.* at 693–94 (citing *Norfolk & W. Ry. Co. v. Whitehurst*, 99 S.E. 568, 569 (Va. 1919)).

306. *Id.* at 694. The court specifically found that a carrier is bound to know the character of a place where it discharges passengers as a matter of law. *Id.* This holding implicitly overturns Judge Brent's ill-considered evidentiary holding in the trial court that the plaintiff must show specific instances of criminal conduct to demonstrate the carrier's actual knowledge about the area. *Id.* at 694–95 (“[I]t was not incumbent upon the plaintiff to show such knowledge. A carrier, in the discharge of the very high duty which it owes to its passengers, is bound to know the character of the place at which it wrongfully discharges them; and if the defendant wrongfully required the plaintiff to get off at a dangerous place without knowing it, it did so at its peril.”).

[B]earing in mind the high degree of care due by a carrier to its passengers, and assuming the plaintiff did not voluntarily leave the train, but was coerced or persuaded to do so at an improper and dangerous place, the case, to say the least of it, was clearly one in which the jury might have properly found in her favor . . . . The consequences which overtook this young woman were sufficiently probable to charge any responsible party with the duty of guarding against them. No 18 year old girl should be required to set out alone, near nightfall, to walk along an unprotected route . . . infested by worthless, irresponsible and questionable characters known as tramps and hoboos; and no prudent man, charged with her care, would willingly cause her to do so.<sup>307</sup>

The court therefore recognized that criminal acts of third parties are ordinarily intervening causes.<sup>308</sup> However, in this case, it found an exception: the typical rule did not apply because the railroad's negligence consisted precisely of knowingly exposing Ms. Garrett to the type of harms that ultimately befell her.<sup>309</sup> Thus, the court agreed with Ms. Garrett that the case was unlike *Connell* and *Fowlkes* because in those cases the defendants could not reasonably anticipate that a murder or miscarriage would result from their negligence.<sup>310</sup> By contrast, the harm Ms. Garrett suffered was within the risk created by the railroad's negligence, and as a common carrier, the railroad owed her a duty to protect against that risk if she did not voluntarily disembark.<sup>311</sup>

This ruling, standing out among proximate cause rulings in Virginia, was a hard fought victory for Ms. Garrett. But her victory was pyrrhic. The court remanded the case to determine whether Ms. Garrett voluntarily left the train<sup>312</sup> and assigned the entire judicial cost of the appeal—a total of \$679.09 in addition to the cost of the transcript—to Ms. Garrett.<sup>313</sup>

#### VIII. AFTERMATH

In September 1921, Ms. Garrett's case was remanded to the Fairfax Circuit Court.<sup>314</sup> It sat untouched on the court's docket for many months,<sup>315</sup> likely because Ms. Garrett's primary attorney, C. Vernon Ford, suffered from an illness

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307. *Id.* at 694.

308. *Id.*

309. *See id.* (“The very danger to which this unfortunate girl fell a victim is the one which would at once suggest itself to the average and normal mind as a danger liable to overtake her under these circumstances.”).

310. *Id.* at 695.

311. *Id.*

312. *Id.*

313. 10 Fairfax Circuit Court Minute Book, *supra* note 19, at 369.

314. *Id.*

315. *See* Settlement Order Dec. 1, 1923, Hines v. Garrett, 108 S.E. 690 (Va. Cir. Ct. 1923).

that eventually took his life in April 1922.<sup>316</sup> His former assistant, Wilson Farr, had become Commonwealth Attorney for Fairfax County and had to work through Mr. Ford's extensive outstanding private and public legal affairs.<sup>317</sup> On December 1, 1923, perhaps after persuasion from Mr. Farr, Ms. Garrett settled for \$1,000.<sup>318</sup> Out of this sum, Ms. Garrett paid the above-mentioned court fees, attorney fees, doctor fees, and witness fees, which likely left her with nothing at all.<sup>319</sup>

After the case was resolved, Ms. Garrett's life moved forward. Undeterred by her victimization at the hands of a man in uniform, Ms. Garrett had married a soldier, Ellis Lee Eustace, in 1921.<sup>320</sup> They had their first son the following year and named him after his father.<sup>321</sup> Two year after the marriage, Ms. Garrett's stepfather, Charles Frinks, passed away while working as a janitor at the West End School in Alexandria.<sup>322</sup> Her mother, Rowena Frinks, lived until 1954.<sup>323</sup> In 1925, Julia May Eustace and her husband Ellis had their second child, Robert Powell Eustace.<sup>324</sup> [Careful readers will have noticed that the two Eustace children were named Robert and E. Lee.] In 1926, Ms. Garrett's husband, Ellis Eustace, Sr. died prematurely of a stomach ulcer.<sup>325</sup>

During World War II, Ms. Garrett's eldest son, E. Lee Eustace, Jr. enlisted in the Army as a skilled railroad brakeman.<sup>326</sup> He returned home safely, lived in Alexandria, and was employed by the Richmond, Fredericksburg and Potomac

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316. C. Vernon Ford left behind descendants Mrs. Jack Zerbee, Ms. Agnes Ford, Ms. Josephine Ford, and (adopted daughter) Ms. Gertrude Ford. Obituary, *C.V. Ford Dead: A Good Citizen, Public Officer and Man Pays Nature's Debt*, FAIRFAX HERALD, Apr. 28, 1922, at 5.

317. See *Hines v. Garrett*, 108 S.E. 690, 691 (Va. 1921) (listing Wilson Farr as one of Ms. Garrett's attorneys).

318. Settlement Order Dec. 1, 1923, *supra* note 315.

319. See Order Oct. 10, 1921, *Hines v. Garrett*, 108 S.E. 690 (Va. 1921) (requiring Ms. Garrett to pay \$679.09 in court costs and attorney's fees).

320. VA. REG. OF MARRIAGES 1853-1935 (1921), *microformed on* Film Emulsion No. 09302110, Film Unit Ser. No. MRD2 K29-1030, Roll No. 134 (Genealogical Soc'y, Salt Lake City, Utah 1996).

321. U.S. DEP'T OF COM., BUREAU OF THE CENSUS, FORM 15-6, FIFTEENTH CENSUS OF THE UNITED STATES: 1930, POPULATION SCHEDULE, FAIRFAX CTY., VA. (1930).

322. *Obituary Index to the Alexandria (VA) Gazette 1916-1946*, ALEXANDRIA LIBRARY, <https://www.alexandria.lib.va.us/custom/web/lhsc/genealogyresources/obits/f.html> (last visited Oct. 28, 2016).

323. WESLEY PIPPIER, 2 TOMBSTONE INSCRIPTIONS OF ALEXANDRIA VA 39 (1992).

324. *Robert Powell Eustace in the U.S., Social Security Applications and Claims Index, 1936-2007*.

325. ALPHABETICAL INDEX, DEATH RECORDS, ALEXANDRIA, VIRGINIA, DATES INCLUDED 1912-1939, WORKS PROJECT ADMINISTRATION, STATEWIDE PUBLIC RECORDS PROJECT, OFFICIAL PROJECT 165-1-131-85 Record Location 221.

326. *Access to Archival Databases (AAD)*, NAT'L ARCHIVES & REC. ADMIN., <https://aad.archives.gov/aad/record-detail.jsp?dt=893&mtch=1&cat=all&tf=F&q=ellis+I+Eustace&bc=&rpp=10&pg=1&rid=4104287> (last visited Oct. 28, 2016).

Railroad at Potomac Yard. Robert Powell Eustace served in the Navy<sup>327</sup> and lived until 1998.<sup>328</sup> Meanwhile, Ms. Garrett remarried in the 1950's and became Julia May Deavers.<sup>329</sup> Records indicate she may have died in 1980.<sup>330</sup>

Wilson Farr, the Commonwealth's Attorney who in his private capacity settled Ms. Garrett's case for such a paltry sum, later became Mayor of Fairfax.<sup>331</sup> Before he died, Mr. Farr sold his farm to the Commonwealth of Virginia for use as a university. This farm is now the main campus of George Mason University.<sup>332</sup> The defendant's law firm, Barbour, Keith, McCandlish & Garnett, changed partners over the years, but still operates in the City of Fairfax as Mackall, Mackall & Gibb,<sup>333</sup> billing itself as "The Oldest Continuous Law Firm in Northern Virginia."<sup>334</sup>

On January 1, 1952, Ms. Garrett's childhood home became part of the City of Alexandria when it annexed part of Fairfax County.<sup>335</sup> Her old neighborhood on the Little River Turnpike is now part of Alexandria's Duke Street, and is home to a skateboard park, an assisted-living facility, and a McDonald's restaurant.<sup>336</sup> At the base of South Quaker Lane, at the former Seminary Station, there now sits a white metal radio shack with a bright blue sign reading Seminary. Cameron Crossing remains a railroad crossing in Cameron Run Park,

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327. *Robert Powell Eustace in the U.S., Social Security Applications and Claims Index, 1936–2007.*

328. The Social Security Death Index lists a Robert P. Eustace, born in Virginia in 1925, as dying in Japan on February 1, 1998. *Person Details for Robert P Eustace, "United States Social Security Death Index,"* Social Security Death Index. Social Security no. 223-98-9647.

329. ALEXANDRIA GAZETTE, June 8, 1951.

330. The Social Security Death Index lists Julia Deavers's last zip code as 22314, Old Town Alexandria, and her last benefit as 22302, Fairlington, in Arlington County Va. Social Security Death Index. Social Security Number 577-22-6779. However, the Julia Deavers listed has a birthdate of July 1, 1900, rather than sometime in 1902. The author believes this is a typographical error.

331. Michael Farr, *Virginia Farris and Ratcliffe Families*, GENEALOGY.COM (July 1, 2013, 10:08 AM), <http://www.genealogy.com/forum/surnames/topics/ratcliffe/978/>.

332. *1954–1958, Terra Incognita, Farr Tract Revisited*, GEO. MASON UNIV., <http://ahistoryofmason.gmu.edu/exhibits/show/difficulties/contents/farr> (last visited Oct. 28, 2016).

333. William Page Johnson, *The Old National Bank of Fairfax Building*, FARE FACS GAZETTE (Historic Fairfax City, Inc.), Winter 2004, at 2 (describing how the law firm Moore & McCandlish underwent numerous partner changes until it became Mackall, Mackall & Gibb).

334. *Douglas Mackall Receives Henry C. Mackall Award for Local History in McLean*, THE CONNECTION (Oct. 28, 2015), <http://www.connectionnewspapers.com/news/2015/oct/28/doug-mackall-receives-henry-c-mackall-award-local/>.

335. *Appeals Court Authorizes Alexandria To Double in Size by Adding Fairfax Land*, WASH. POST, Dec. 4, 1951, at 1, 14.

336. *Duke Street Skatepark*, LOCO SKATE PROJECT, <http://www.theskateproject.org/skateparks/duke-street/> (last visited Oct. 28, 2016); *Duke Street (Duke 1)*, MCDONALD'S, <https://mylocalmcds.com/dukestreet-va/> (last visited Oct. 28, 2016); *Sunrise of Alexandria*, SUNRISE SENIOR LIVING, <http://www.sunriseseniorliving.com/communities/sunrise-of-alexandria/overview.aspx> (last visited Oct. 28, 2016).

which is the home of a mini-golf course and a water park.<sup>337</sup> On October 15, 2009, construction began to replace the fateful single-track Cameron Run Bridge that was originally built in 1904 with a new two-track bridge designed to facilitate more reliable Virginia Rail Express and Amtrak commuter trains.<sup>338</sup> The new bridge was completed on Memorial Day Weekend in June 2010.<sup>339</sup>

After *Hines v. Garrett*, the Virginia Supreme Court continued to analyze the implications of a subsequent criminal act on proximate causation by looking at the relationship between the parties and the duty owed.<sup>340</sup> Application of *Hines* is difficult, however, because of the broad multi-factor ruling the court issued, and because the court assumed that Ms. Garrett was a passenger throughout its proximate cause analysis without explaining the significance it attached to that fact.<sup>341</sup>

In Virginia, *Hines* has primarily been interpreted as an instance of a “special relationship” giving rise to a heightened duty of care: the common carrier has a duty to protect passengers from reasonably foreseeable third-party criminal acts.<sup>342</sup> Since *Hines*, a similar special relationship has been found in an innkeeper/guest context<sup>343</sup> and employer/employee context,<sup>344</sup> but not for

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337. *Cameron Run Regional Park, Waterpark, Mini Golf, Batting Cages and More in Alexandria*, NOVA PARKS, <https://www.novaparks.com/parks/cameron-run-regional-park> (last visited Oct. 28, 2016).

338. See *Alexandria Railroad Bridge Replacement*, CSX TRANSP., 9 (Nov. 5, 2009, 7:30 PM), <https://www.alexandriava.gov/uploadedFiles/News/AlexBridgeReplacementPresentation05Nov09.pdf>; Michael Lee Pope, *Whistle Stop*, ALEXANDRIA GAZETTE PACKET, 34 (Apr. 29, 2010), <http://connectionarchives.com/PDF/2010/042810/Alexandria.pdf>.

339. John Fuller, *Grand Finale: Installation of the New CSX RF&P Bridge at Cameron Run (May 28-June 1, 2010)*, FULLERTOGRAPHY (June 3, 2010), <http://fullertography.blogspot.com/2010/06/grand-finale-installation-of-new-csx-rf.html>.

340. See *infra* notes 342–47.

341. Compare Robert L. Rabin, *Enabling Torts*, 49 DEPAUL L. REV. 435, 439–40 (1999) (arguing that *Hines v. Garrett* held is an example of negligent enabling) with John C.P. Goldberg & Benjamin C. Zipursky, *Intervening Wrongdoing in Tort: The Restatement (Third)’s Unfortunate Embrace of Negligent Enabling*, 44 WAKE FOREST L. REV. 1211, 1238–40 (2009) (arguing that *Hines v. Garrett* is grounded in an affirmative duty created by the special relationship between passenger and railroad).

342. *Hines v. Garrett*, 108 S.E. 690, 694 (Va. 1921).

343. See *Taboada v. Daly Seven, Inc.*, 626 S.E.2d 428, 434–35 (Va. 2006) (holding that a hotel guest could sue a hotel for negligence stemming from a criminal shooting him on hotel property because the hotel, due to the guest’s reliance on its superior knowledge of the surroundings, had a special relationship with its guests and could be sued for the reasonably foreseeable actions of third parties).

344. See *A.H. v. Rockingham Publ’g Co.*, 495 S.E.2d 482, 485–87 (Va. 1998) (stating that employers have a special relationship with employees that makes employers liable for negligence stemming from reasonably foreseeable third-party actions, but holding a newspaper was not negligent for failing to inform a newspaper delivery boy of a local child molester’s previous attacks because their infrequency and distance from where the delivery boy was molested made his molestation not reasonably foreseeable).



landlords/tenants,<sup>345</sup> business owners/business invitees,<sup>346</sup> or parole officers/parolees.<sup>347</sup> Virginia courts have followed *Hines* by holding that when a special relationship exists, the responsible party has a duty to protect the individual from reasonably foreseeable third-party criminal acts and that a breach of this duty is the proximate cause of plaintiff's injuries, even when there is an intervening criminal act.

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345. See *Gulf Reston, Inc. v. Rogers*, 207 S.E.2d 841, 844–45 (Va. 1974) (holding a landlord was not liable for a person throwing a can of paint from the roof of one of its properties and killing a tenant because a landlord-tenant relationship was not a special relationship that created a duty).

346. *Wright v. Webb*, 362 S.E.2d 919, 920–22 (Va. 1987) (holding the owners of a motel were not liable for negligence when a business invitee (who was not a guest) was assaulted in their parking lot because business owners have no duty to protect business invitees from third-party actors unless the owners know the third-party action is occurring or is about to occur).

347. See *Fox v. Custis*, 372 S.E.2d 373, 374–77 (Va. 1988) (holding that a parole officer did not commit negligence when he failed to act on news that a parolee was violating the terms of his parole and consequently did nothing as the parolee went on a spree of arson, rape and murder because the parole officer did not control the parolee and therefore had no special relationship with the parolee giving rise to a duty to control the parolee's conduct).

