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

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

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Synopsis

It is February 1919. The United States is emerging as an international power following its belated participation in WWI. The Great War was technically not over, and President Woodrow Wilson was extending his stay in Europe while negotiating the treaty of Versailles. Women’s suffrage was on the horizon, and racial tension was building. Washington, D.C. had just re-segregated its federal government six years earlier under the orders of its unreconstructed racist president.

Just two miles south of the capital city, Julia May Garrett’s home in the outskirts of Alexandria, Virginia was not immune to the area’s social and economic transition. Fairfax’s agricultural past was quickly making way for the expansion of the federal government and the development of railroads. Like neighboring Montgomery County, Maryland, Fairfax had been a rural and largely agricultural (first tobacco, then corn)

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2 In 1917 suffragettes had picketed in front of the White House, only to be arrested and imprisoned at the Occoquan/Lorton Workhouse. But their efforts were not in vain. On August 26th, the 19th amendment was ratified, granting women the right to vote. Virginia, however, would not ratify the amendment until 1952.

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county whose white population had generally supported the Confederacy during the Civil War. But by 1919 Fairfax agriculture was declining, and the county’s economy was pulled into the orbit of Washington’s growing federal government. The influenza epidemic of 1918 and the military requirements of World War I had helped drain the local white male labor market just as railroads and a network of electric trolleys made it cheaper for remaining workers (including many women) to travel to higher paying jobs in the District of Columbia. Without adequate labor, some Fairfax farmers’ fields lay fallow. Wives and daughters such as Julia May Garrett, meanwhile, found it relatively easy to commute by rail to clerical employment in the District of Columbia.

After work one Sunday afternoon on February 2, 1919, 18-year-old Julia May Garrett left her job as “messenger girl” at the Southern Railway’s head office near the White House. She had just missed Southern’s local train, for which she held a free pass, so she purchased a ticket and boarded Train 29 of her employer’s competitor, the Washington Southern Railway (“WSR”). After departing from Alexandria station, the

county.shtm (describing Montgomery County as “a slave holding border county with many southern sympathizers”).


8 The epidemic had killed 531 people in Fairfax county. NETHERTON, supra note 3, at 499.

9 See NETHERTON, supra note 3, at 515.

10 See id.

11 The *Southern Railway* was the product of nearly 150 predecessor lines that were combined, reorganized and recombined beginning in the 1830s, formally becoming the Southern Railway in 1894. See Southern Railway Historical Association, http://www.srha.net/public/History/history.htm (last visited Dec. 20, 2009). In 1982 Southern was placed under control of Norfolk Southern Corporation, along with the *Norfolk and Western Railway* (N&W); it was renamed Norfolk Southern Railway in 1990. See *Norfolk Southern merger family tree*, TRAINS MAGAZINE, http://www.trains.com/trn/default.aspx?c=a&id=321 (last visited Dec. 20, 2009).

12 The *Alexandria and Fredericksburg Railway* [A&F] was chartered during the Civil War, but for reasons both financial and logistical (Alexandria was occupied by Union troops throughout the war, while Fredericksburg changed hands several times) could not open until July 2, 1872, when it extended as far as Quantico. See Al Cox, *The Alexandria Union Station*, 1 HISTORIC ALEXANDRIA Q. 1, 3 (Winter 1996), available at http://oha.alexandriava.gov/oha-main/haq/pdfs/haqwn962.pdf. There the 1.70-mile long Potomac Railroad, which had opened two months earlier, connected the A&F with the Richmond,
WSR train missed Garrett's intended station, letting her off approximately one-half mile further down the line. While walking home on the tracks, Garrett was accosted and raped twice, first by a soldier and then by a vagabond. Garrett’s attorneys intended to sue WSR for negligence, but instead found themselves in court suing the United States Director General of Railroads, Walker D. Hines. After a contentious trial in which Hines petitioned in vain for the case to be dismissed, the jury awarded Ms. Garrett $2,500 – even adjusted for inflation this was not much compensation for the pain and suffering, as well as job-related losses, caused by the violent rapes. The Director General’s appeal to the Virginia Supreme Court resulted in a remand to the trial court to clarify one factual question. But before the case was decided on remand, Ms. Garrett settled for a mere $1000 less court costs, leaving intact a major precedent on proximate causation and assumption of risk cited in several American casebooks and law review articles. In this essay we tell Julia Garrett’s story.

Fredericksburg and Potomac Railroad [RF&P]. Id. On March 31, 1890, the A&F and the Washington and Alexandria Railroad merged to form the Washington Southern Railway [WSR]. The merged company was in turn merged into CSX Transportation [Chessie System], the great rival of Norfolk Southern, in 1991. E-mail from William E. Griffith Jr., Author of One Hundred and Fifty Years of History Along the Richmond, Fredericksburg and Potomac Railroad, (1984) (November 4, 2009, 23:15 EST) (on file with co-author Jones).


I. The Plaintiff

Eighteen-year-old Julia May Garrett worked as a messenger girl in the telegraph office of the Southern Railway at 1300 Pennsylvania Avenue, N.W., a few blocks from the White House. Those who believe that female labor force participation is a World War II phenomenon may be surprised to know that Julia had commuted to work in the District of Columbia since the age of sixteen. Normally she traveled home on her own employer’s train, though occasionally if she missed that free train she would purchase a ticket on an electric streetcar operated by the Washington-Virginia Railway. But on Sundays the streetcar schedule was less convenient, so on February 2, 1919, when she missed her...
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*Southern* train Garrett boarded the competing WSR line.\(^{18}\) Her train departed at 5:00 pm, 30 minutes before sunset.\(^{19}\) Julia could not find a seat on the crowded train, and so stood with a group of civilian and military passengers in the vestibule of the next to last coach.\(^{20}\) The electric streetcar, the *Southern* and the WSR routes all proceeded southwest, crossing two different bridges spanning the Potomac River\(^{21}\) into Northern Virginia’s Alexandria County, now known as Arlington County.

The region’s history was inextricably linked to the District of Columbia and to the institution of slavery. In 1790, Virginians and Marylanders favored establishing the federal capital on the Potomac on a plot personally selected by President George Washington, but Congressional approval hinged on a precarious compromise with defiant supporters of Alexander Hamilton’s plan to establish a National Bank. Hamilton’s supporters had previously defeated the Potomac Plan, and refused to pass it unless the Bank Plan was approved.\(^{22}\) However, because Abolitionists were gaining momentum in

\(^{18}\) 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 against the Washington and Southern Railway would have been maintained. See An Act: To Provide for the Operation of Transportation Systems While Under Federal Control, for the Just Compensation of their Owners, and for Other Purposes, Pub. L. No. 65-107, Chapter 25, §1, 40 Stat. 451, 452 (1917-1919).


\(^{21}\) A railroad-only bridge had opened August 25, 1904, about 150 feet upriver from an older bridge, providing two tracks across the river where today’s five-span “14th Street Bridge” complex is located. See 14th Street Bridge Complex (1-395 and US-1), [http://www.roadstothefuture.com/14th_Street_Bridge.html](http://www.roadstothefuture.com/14th_Street_Bridge.html) (last consulted Dec. 20, 2009). An additional swing-span bridge called the Highway Bridge, 500 feet (150 m) upriver from the RF&P bridge, opened February 12, 1906 to serve non-railroad traffic including streetcars. *See id.* The Highway Bridge was replaced by the George Mason Memorial Bridge (one of the spans of the 14th Street Bridge) in 1962. See Chief Justice William H. Rehnquist, Remarks to the Arlington Historical Soc’y at the Bicentennial Banquet (April 27, 2001), *available at* [http://www.supremecourts.gov/publicinfo/speeches/sp_04-27-01.html](http://www.supremecourts.gov/publicinfo/speeches/sp_04-27-01.html).

\(^{22}\) FORREST MCDONALD, ALEXANDER HAMILTON, A BIOGRAPHY 189-210 (1979).
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the North, some Southerners hoped that by capturing the location of the Capital, they
could influence the Government to preserve their “peculiar institution.”

The U.S. Capital was thus formed out of pieces of Maryland and Virginia. Fairfax
County Virginia ceded Alexandria County and the independent city of Alexandria to the
federal government, while Montgomery and Prince George’s Counties in Maryland ceded
what became known as Washington City, Washington County and the City of
Georgetown. Almost immediately, the citizens of Alexandria and Georgetown began
discussing retrocession, complaining that they lacked political rights and that the national
Congress poorly managed local affairs.

The retrocession movement in Alexandria came to a head in 1840. Since the
1830s abolitionists had pressured Congress to abolish slavery in the District of
Columbia. Simultaneously, Virginia’s state legislature was divided between abolitionist
voices from what is, today, West Virginia, and pro-slavery voices from plantations in the
east. Lacking federal representation, farmers in Alexandria County would have no say in
abolition, but if the county were to become part of Virginia again, they could capture two
pro-slavery seats in the divided Virginia legislature. Congress’s refusal to extend bank

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23 In the early New York Capital, abolitionists had harassed Southern politicians, and when the Capital
moved to Philadelphia, the situation was even more onerous for slave owners. In Philadelphia, local laws
freed slaves who resided there for over six months. George Washington, unsure if his position as President
afforded him immunity from this local law, rotated his slaves between Mount Vernon and Philadelphia, to

24 Initially, the District of Columbia had five regions, Alexandria City, Alexandria County, Georgetown,
Washington County, and Washington City. Mark David Richards, *The Debates over the Retrocession of the

25 The infamous 1836-1844 “gag rule” in the US House of Representatives was initially passed to squelch
charters in the District of Columbia and fund a much-needed canal produced the final impetus for Alexandria citizens.\footnote{Andrew Jackson’s Democrats continued the war against banks even after Jackson left office. The subtle irony is that George Washington bargained with Alexander Hamilton 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.} Following a vote in the Virginia Legislature to accept the region, Alexandria City and Alexandria County voted to retrocede. The National Congress acquiesced and retroceded the region to Virginia in 1846.\footnote{The gag rule prevented Congress from discussing whether retrocession would have 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 United States 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. Mark David Richards, \textit{The Debates over the Retrocession of the District of Columbia, 1801-2004}, \textit{WASH. HISTORY}, at 54 (Spring/Summer 2004), available at http://www.dcvote.org/pdfs/mdrretro062004.pdf.} One year later, the Virginia Legislature voted to fund the canal in Alexandria.\footnote{Maryland was already in debt from funding public works, and could not afford similar infrastructure projects in Georgetown. Thus Maryland never voted to accept Georgetown, and Georgetown residents, who did not want to pay taxes to Maryland without reciprocal support, began to look toward amalgamation with Washington City as a different avenue to increased funding. \textit{See Wilhelmus Bogart Bryan, Vol. II, A History of the National Capital From Its Foundation Through the Period Of the ADOPTION of THE Organic Act} 260-67 (1916). Several months after Ms. Garrett’s trial, Alexandria County was renamed Arlington County in honor of Arlington Cemetery.}

As Julia Garrett crossed the Potomac into Virginia she could almost certainly see \textit{Arlington House},\footnote{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 that he had inherited. \textit{See Nat’l Park Serv., U.S. Dep’t of the Interior, Arlington House, The Robert E. Lee Memorial, http://www.nps.gov/arho/index.htm} (last visited Dec. 20, 2009). 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. \textit{See Nat’l Park Serv. U.S. Dep’t of the Interior, History & Restoration, George Washington Parke Custis, http://www.nps.gov/archive/arho/tour/history/bios/gwpcustis.html} (last visited Dec. 20, 2009). On June 30, 1831, Custis’ only child, Mary Anna, married her childhood friend and distant cousin, West Point graduate Robert E. Lee. Id. Lee was the son of former three-time Virginia Governor Henry (“Light Horse Harry”) Lee III. \textit{See Stratford Hall, Henry Lee III, http://www.stratfordhall.org/learn/lees/lighthorse.php} (last visited Dec. 20, 2009).} the manor home of an Alexandria County plantation formerly belonging to Robert E. Lee and overlooking the Potomac. Arlington was situated so strategically that “heavy siege guns could absolutely command the Cities of Washington
and Georgetown.\textsuperscript{30} Arlington was seized by Federal forces during the first days of the Civil War, and used as a cemetery, fort, and freedman’s village during the Civil War. After the war Arlington was (unconstitutionally) seized for disloyalty, then “purchased”\textsuperscript{31} and used to bury Union dead.\textsuperscript{32} Julia May Garrett’s stepfather had survived the Civil War, and had made a donation for a Confederate reunion in Fairfax.\textsuperscript{33} Indeed, every attorney involved in Julia Garrett’s eventual lawsuit was a first generation descendant of Confederate soldiers.\textsuperscript{34} In 1920 Alexandria County changed its name to Arlington County, partly to avoid confusion with the independent City of Alexandria and party to honor the Custis-Lee property.\textsuperscript{35}

\textsuperscript{30} Robert E. Lee had already formulated plans to fortify Arlington, and confederate engineers were selecting locations for batteries targeting Georgetown and Washington City. In what Confederate newspapers called “one of the greatest misfortunes,” only nine days into the war, three columns of union troops advanced on Arlington, securing Washington from capture by the confederates. See Benson John Lossing, \textit{3 The Pictorial Field Book of the Civil War in the United States of America} 480 (1874).

\textsuperscript{31} When federal Civil War casualties overflowed hospitals and burial grounds near Washington, D.C., Quartermaster General Montgomery C. Meigs proposed in 1864 that 200 acres of the Lee family property at Arlington be taken for a cemetery. See Arlington National Cemetery, Historical Information, http://www.arlingtoncemetery.org/historical_information/arlington_house.html (last visited Dec. 20, 2009). After Lee’s death Custis Lee, heir to the property, sued the government claiming ownership of the land. \textit{Id.} The Supreme Court ruled in Lee’s favor and Congress returned the land to Lee, who a year later he sold it back to the federal government for $150,000 (over $3 million in today’s dollars). \textit{Id.; see} Tom’s Inflation Calculator, http://www.halfhill.com/inflation.html; \textit{see also} United States v. Lee, 105 U.S. 196 (1882).

\textsuperscript{32} In the area now known as Arlington National Cemetery.

\textsuperscript{33} \textit{Confederate Reunion Donation}, FAIRFAX HERALD, Nov. 30, 1900, at 2.


\textsuperscript{35} \textit{IT’S ARLINGTON COUNTY NOW: Governor Davis, of Virginia, Signs Bill to End Confusion}, THE WASH. POST, Mar. 18, 1920, at 3.; In a moment of levity at Garrett’s trial the following exchange took place between Garrett’s attorney, Mr. Ford, and Defendants civil engineer witness, Mr. Thomas, and Judge Brent:

\begin{quote}
By. Mr. Ford
Q Mr. Thomas, where did you say you are living now?
A Potomac, Va.
Q What County is that in?
\end{quote}
Continuing south from the Custis-Lee farm, the trains and electric cars would have passed through Potomac Yard, then the busiest rail yard in the Washington area. Built in 1906, Potomac Yard was decommissioned following complicated legal and political wrangling in 1989, and is now the site of Potomac Yard Shopping center. But it looked quite different back then:

Potomac Yard in 1919

Arlington County.
The Court. It is not. It is Alexandria County. The act takes effect on the 12th day of June.
Mr. Ford. Your honor will take judicial notice of that, will you?
The Court. Yes.

38 Potomac Yards, 1916-17, Available from the Library of Congress at:
http://www.loc.gov/pictures/item/npc2008013406/?sid=6b0e45a7d8eb3c890b5b168f9bb09fff.
After crossing Potomac Yard, Ms. Garrett would have passed through the scenic backyard of Abingdon Mansion, built by the Alexander family (for which Alexandria was named) and later owned by the Custis family.

The mansion burned down in 1930, and the grounds’ splendid view of the Potomac River was thereafter eliminated by the erection of the phenomenal new National Airport’s Terminal building in 1938. In 1919, however, Julia Garrett could surely have seen past the mansion and across the Potomac River into the southeast quadrant of Washington,

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41 See id.

42 The original terminal building is, today, Terminal A. See id. Much of the airport was not built on existing shoreline retroceded to Virginia in 1846, but rather, the runway was built on fill extending out over the Potomac River, an area that the District of Columbia had always retained. In 1945 the Federal Government ceded the rest of the Airport to Virginia, on the condition that the Federal Government retain Concurrent Jurisdiction. See An Act: To Establish a Boundary Line Between the District of Columbia and the Commonwealth of Virginia, and for Other Purposes. Pub. L. No. 79-208, ch. 443 59 Stat 552-53 (1945). The original grants to the Unites States in 1791 and the 1945 Act re-drawing Virginia’s Potomac border are the source of a border dispute in Old Town Alexandria. See United States v. Robinson Terminal Warehouse Inc., 575 F. Supp. 210 (D.D.C. 2008).
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where the United States Army was building another revolutionary structure, an airfield, today comprising Bolling Air Force Base\[^{43}\] and Anacostia Naval Station.\[^{44}\]

Proceeding south, Julia’s train would have entered the City of Alexandria. Before turning further west into Fairfax County, trains and trolleys stopped at Alexandria’s Union Station.\[^{45}\] The electric street car service in fact terminated at this station; had Julia Garrett taken the street car as she often did, she would have had to walk approximately 1.5 miles west on The Little River Turnpike\[^{46}\] to her home. But Ms. Garrett decided to stay onboard a few minutes longer; entering the Falls Church Magisterial District of Fairfax County, both the *Washington Southern* and the *Southern* tracks turned west and ran roughly parallel to Little River Turnpike toward her house.

West of Alexandria, at 5:26 PM, Julia Garrett passed a switching tower and small rail yard near Telegraph Road.\[^{47}\] Rail cars containing valuable merchandise were occasionally stored here overnight, if necessary, to await interline transfer.\[^{48}\] Sometimes during car switching, the stored cars were pushed a bit farther down the line, past Ms. Garrett’s stop at Seminary Station and closer to Cameron Run Crossing.\[^{49}\] The area between Seminary Station and Cameron Run was unsettled and wooded, with an uphill grade that slowed southbound trains down so considerably that they were easily boarded.

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\[^{44}\] One Author is a member of the United States Air Force Band, located in Historic Hangar 2, Bolling Air Force Base.
\[^{45}\] The station still bears the name Union Station but is more commonly called Alexandria Station to avoid confusion with Washington’s Union station.
\[^{46}\] The Little River Turnpike existed before the Revolutionary War. It was a privately owned toll road during the 1700s and until 1896, running from Alexandria to Aldie in Loudoun County. See Early Transportation in Loudon County, http://www.loudounhistory.org/history/loudoun-transportation.htm (last visited Dec. 23, 2009). Several sections of the road originated as Indian trails, and a majority of the road traversed rural areas. See id.
\[^{47}\] See Trial Transcript at 464.
\[^{48}\] See id. at 384.
\[^{49}\] See id. at 393.
by hoboes and other free-riders. Indeed, the rail employee at the switching tower always carried a gun for self-defense,\textsuperscript{50} and when cars were pushed from Seminary Station toward Cameron Run Crossing a detective would stay overnight to protect any valuable cargo.\textsuperscript{51}

Julia May Garrett had intended to disembark at Seminary,\textsuperscript{52} a tiny station which consisted of a three-walled shed with a gothic roof\textsuperscript{53} located about 500 yards from her home.\textsuperscript{54} From Seminary she would ordinarily climb a short hill\textsuperscript{55} north to Quaker Lane, turn west on The Little River Turnpike,\textsuperscript{56} and walk a few hundred yards to her home.\textsuperscript{57} Here she lived on a two-acre farm with her sixteen year old brother J.W. Garrett,\textsuperscript{58} her six-month old half-sister Ellen Frinks,\textsuperscript{59} her mother Rowena Garrett Frinks and her stepfather Charles Frinks.\textsuperscript{60} The farmhouse looked back down over the railroad tracks.

\textsuperscript{50} Brief in Behalf of Defendant in Error, supra note 16, at 11.
\textsuperscript{51} Id. at 12.
\textsuperscript{52} The station was named after the Protestant Episcopal Theological Seminary in Virginia. See Virginia Theological Seminary, ttp://www.vts.edu (last visited Dec. 23, 2009), largest accredited Episcopal seminary in the United States, see id.
\textsuperscript{53} Norman Cockrell Interview, 9 Nov, 2009. Born 1920, nephew of witness Walter Cockrell. Notes on file with co-author Jones; see also Trial Transcript at 295 (Conductor’s testimony 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.”).
\textsuperscript{54} Indeed, the relative proximity of this station to her home, as compared with Alexandria Station, arguably explains Julia’s choice of train over streetcar.
\textsuperscript{55} Today this hill is called South Quaker Lane.
\textsuperscript{56} Today this portion of Little River Turnpike is called Duke Street.
\textsuperscript{57} Julia May Garrett’s family farm was located at the modern day intersection of Wheeler Avenue and Duke Street. Norman Cockrell Interview, 9 Nov, 2009. Born 1920, nephew of witness Walter Cockrell. Notes on file with co-author Jones.
\textsuperscript{58} See Suspects Released, ALEXANDRIA GAZETTE, Feb. 5, 1919.
\textsuperscript{59} Ellen Frinks was born in Alexandria on September 29, 1918. See Alexandria VA Birth Records 1912-1939, WPA statewide Public Records Project, Official Project 165-31-85 WP 5822.
\textsuperscript{60} Charles was substantially older than his wife Rowena, Julia’s mother. Born in 1847, Mr. Frinks had quite possibly participated in the Civil War. Rowena Garrett and Charles Frinks had survived previous spouses when they married in 1904. See Index to the Fairfax County, Virginia, Register of Marriages, 1853-1933; Constance K. Ring & Craig R. Scott, Index to the Fairfax County Virginia Register of Marriages, 1853-1933, (1997). Frinks donated $5.00 to the Confederate Soldiers reunion fund in 1900. FAIRFAX HERALD, November 30, 1900, at 2.
Though 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, and a regional Washington DC telephone book listed a “Mrs. Charles Frinks” in Alexandria on “Duke Street Extended.” In contrast, the Fairfax County seat, Fairfax Courthouse (today downtown Fairfax City), was about twelve miles away due west along the Little River Turnpike.

Approaching Seminary Station in 1921.  

Unfortunately for Julia, the WSR failed to make its scheduled stop at Seminary. It continued into the countryside for roughly one-half mile until another passenger, W.L. Garnett, asked a porter, one Pat Graham, why the train had not stopped. The porter rushed through the cars to consult with the engineer, who then stopped the train as

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62 NETHERTON, supra note 3, at 65.
63 The photograph was taken from about the same location as the current telegraph road overpass. Photo courtesy of the Railway Mail Service Library, available at http://www.railwaymailservicelibrary.org/aftower/aftower.htm.
64 Petition for Writ of Error, supra note 20, at 2.
quickly as he could. At this time Mr. Garnett descended from the train and walked back along the tracks to Seminary. He would testify at trial that he observed Julia standing beside a soldier on the platform of a car located near the rear of the train as he descended from it.

Julia Garrett, unlike W.L. Garnett, had a great aversion to walking home through this unsettled area. She communicated her desire for the train to back up to Seminary station to the porter, Mr. Graham. Graham apparently satisfied Julia 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 conductor I. H. Thompson of Julia’s request. The train shuddered, then moved slowly forward, not backward.

Meanwhile, Conductor Thompson walked to Julia’s car and saw her still standing near the exit stairs. “I thought you were going to go back”, Julia informed Thompson. “We cannot go back; we are afraid of butting into another train,” replied Thompson. “You will either have to go through and we will send you back on the next train, or get off here.” The train was moving and Julia had but seconds to make up her mind. She then asked the conductor to stop the train a second time, which it did about one full train’s length later. At that point the train was about seven hundred feet past the first stop and

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65 Id.
66 See id.
67 Id.
68 Id.
69 Id.
70 Petition for Writ of Error, supra note 20, at 2.
71 Id. at 2-3. It was conceded at trial that no train was due on these tracks for another 90 minutes, so the explanation provided to Julia was arguably disingenuous.
72 Id. at 3.
perhaps four thousand feet beyond Seminary Station. As the sun set, Julia Garrett stepped off the train.\textsuperscript{73}

Where Julia disembarked the tracks slowly climbed to Cameron Run Crossing, where the \textit{Washington Southern} would climb a grade to a bridge crossing south over the \textit{Southern Railway} tracks and over Cameron Run.\textsuperscript{74} The gentle climb from Seminary to the bridge at Cameron Run Crossing (an increased elevation of seventeen feet) slowed passenger trains; much heavier freight trains typically almost stalled at this point. Because of this topographical feature, as well as the availability of water, transients hopped trains and occasionally stole merchandise from businesses near Cameron Crossing. Tramps and vagabonds camped in makeshift structures at this intersection in the woods, a virtual “train station” for the destitute. Rail employees and local residents alike variously called this area Hoboes’ Hollow, Tramps’ Hollow, or Tramps’ Den.\textsuperscript{75} The existence of this hollow explained why armed detectives remained aboard loaded cars stored at the switching yard. During the early years of World War I the United States Army stationed troops to guard the bridge there.\textsuperscript{76} One of the soldiers, a Marylander

\textsuperscript{73} According to one J. Marshall Fitzhugh, the telegraph operator at Cameron Run, who was reading a newspaper in the tower when the train stopped the second time, it was at that time still daylight, “a clear, beautiful evening.” Fitzhugh had not yet turned on the lights.

\textsuperscript{74} \textit{Id.}

\textsuperscript{75} \textit{See} Hines v. Garrett, 108 S.E. 690, 692 (Va. 1921).

\textsuperscript{76} From 1896 to 1995 the Army maintained a supply depot in the general locality and during the Second World War the Army established Cameron Station on a 164 acre plot just beyond the crossing, wedged south of Little River Turnpike along the westbound Southern Railway. At its busiest, the facility employed 4,000 civilians and 330 military personnel. Cameron Station was wound down according to Congress’s 1988 Base Realignment and Closure Plan and replaced by a residential neighborhood with the same name. \textit{See} JOHN ACCORDINON, \textsc{Captives of the Cold War Economy: The Struggle for Defense Conversion in American Communities} 89 (2000).
named Lieutenant Morgan Moltz, continued to rent a room nearby at Walter Cockrell’s farm even after soldiers had ceased guarding the crossing.

Once off the train, Ms. Garrett began walking back along the tracks toward Seminary station. A dark-haired man in an army uniform, apparently between 5’2’’ and 5’6,’’ descended from the opposite side of the train and began to follow her. Here is Julia Garrett’s description of events as they then transpired:

By Mr. Ford, . . . “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 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.”
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 throwed 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.”

77 Lt. Moltz ultimately married Walter Cockrell’s sister. See Trial Transcript at 133.
78 See Trial Transcript at 131, 133.
79 This soldier was, according to Julia, not the soldier to whom she had been seen talking while on board the train. Id. at 11.
80 The railroad’s double tracks were placed on a steep embankment, and it was fully thirty feet down on either side. See id. at 6. The soldier apparently dragged Julia Garrett down on the side of the embankment away from the tower and the several houses. Petition for Writ of Error, supra note 20, at 6-7. The spot where the soldier first touched Julia was in plain view of the signal tower occupied by Mr. Fitzhugh, and roughly 1000 feet from the house of Mr. Cockrell and from other residences. Id. at 7. Lt. Moltz, sitting on his porch, saw Ms. Garrett walking down the track. Id. However, once down the far side of the embankment Ms. Garrett was apparently not visible from either location. See id.
Q. "What do you mean by saying he did as he pleased?"
A. "Well, he just treated me like he wanted to."
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."\textsuperscript{84}

After the rape the soldier fled back up to the tracks, leaving Julia still lying at the base of the far side of railway embankment, out of the view of any Alexandria homes. Up on the track Julia observed the soldier talking with a civilian, who then rushed down the embankment. The civilian was about the same size as the soldier but wore a dirty,\textsuperscript{82} brownish-grey suit.\textsuperscript{83} He had a florid complexion, light hair and eyes, and a scar across his eyebrows.\textsuperscript{84} Alas, the civilian was not a Samaritan, but likely a denizen of Hoboes’ Hollow. He pinned Julia back on the ground and, in her words, “repeated the same thing.”\textsuperscript{85}

This terrible series of events left Julia May Garrett’s face bruised on one side and scratched on the other, her lip cut, her neck marked red, and a handprint on her side. The rapes also wreaked havoc on her clothes by breaking her right corset stays, tearing her skirt, and ripping buttons from her coat. In addition, Ms. Garrett’s undergarments were missing.\textsuperscript{86}

\textsuperscript{81} \textit{Id.} at 4-5.
\textsuperscript{82} Young Lady Assaulted, \textit{FAIRFAX HERALD}, Feb. 7, 1919 at 2.
\textsuperscript{83} Men Not Caught. \textit{FAIRFAX HERALD}, Feb. 21, 1919, at 3.
\textsuperscript{84} \textit{Id.}
\textsuperscript{85} \textit{Id.} at 5. Apparently fearful that this testimony was insufficient to indicate lack of consent, Mr. Ford asked the following question on re-direct, “When 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, \textit{supra} note 20, at 6.
\textsuperscript{86} See Trial Transcript at 483-84.
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After the second sexual assault, Julia Garrett climbed back up the embankment to the tracks, where she was met by her neighbor Walter Cockrell and his tenant Lt. Moltz.\(^87\) Although Cockrell had witnessed Julia disembark from the train and the soldier appear behind her, he did not recognize her at that distance. After Cockrell saw the girl disappear, he and Moltz had gone to search for her. The two men accompanied Julia back to her family farm, where her mother expunged “fluids” from her 18-year-old daughter’s body with a syringe. A doctor was sought; he found no injury to Julia’s “private parts.”\(^88\)

Though the crimes had taken place in Fairfax County well outside Alexandria city limits, police from the City of Alexandria were summoned\(^89\) and arrived at the Frinks’ home that evening. The following morning, Monday, the Fairfax County Sheriff\(^90\) along with Fairfax Commonwealth attorney C. Vernon Ford\(^91\) and his assistant Wilson Farr,\(^92\)

\(^87\) *See Trial Transcript* at 113, 127.

\(^88\) *Id.*

\(^89\) It is likely that Alexandria police were notified because Fairfax had only an Office of the Sheriff, and no Police Department until 1940. *See generally OFFICE OF THE SHERIFF, FAIRFAX COUNTY, VIRGINIA* (2002).

\(^90\) In 1919 the Fairfax County Sheriff was James Roberdeau Allison who was elected first in 1904 and served until 1927. *See id* at 34. In 1919 Harvey Cross was Fairfax County’s Deputy Sheriff. *See FAIRFAX HERALD*, July 18, 1919, at 3.

\(^91\) C. Vernon Ford, (1851–1922), was born in Fairfax City, and initially practiced law with his cousin, Joseph E. Willard. Ford was appointed Commonwealth Attorney for Fairfax County in 1879 and, later elected, served in this capacity until his death. Ford’s aunt was noted confederate spy Antonia Ford, who married her jailor, Joseph C. Willard, the union officer who owned the Willard Hotel just two blocks from the Whitehouse, Ford’s cousin and former partner Joseph C. Willard inherited the Willard Hotel, served as Lieutenant Governor of Virginia from 1902-1906, and as Ambassador to Spain from 1914-1920. *See Administrative information, The Willard Family: A Register its Papers In the Library of Congress, (1977) (on file at the Manuscript Division, Library of Congress), available at http://www.loc.gov/rr/mss/text/willardf.html. The Ford home, built by Vernon Ford’s grandfather, is on the National Register of Historic Places. NETHERTON ET AL., *supra* note 3, at 244. Between 1908-1913 Ford attempted to reacquire Martha Washington’s Will that had been stolen from the courthouse during the Civil War, and had recently re-emerged in the possession of J.P. Morgan. However, Ford’s efforts were in vain, and J.P. Morgan refused to return the will. *Id.* at 57. Ford was educated at VMI, and went to law school at UVA, Ford died 24 April, 1922, after a year-long illness leaving descendants Mrs. Jack Zerbee, Ms. Agnes Ford, Ms. Josephine Ford, and adopted daughter, Ms. Gertrude Ford. *See FAIRFAX HERALD*, April 28, 1922, at 5.

\(^92\) Wilson M. Farr, (1884-1945), son of Richard Ratcliffe Farr, 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 Ford. *See Steven C. Stombres, The Farr Family Residences*, http://steveforfairfax.com/docs/farr-family-residences-stombres.pdf (last visited Dec.
began their investigation of the rapes. At the scene of the assault they found Julia’s underwear. They attempted to use police dogs transported from the brand-new Lorton Reformatory in Occoquan\(^{93}\) to track the assailants. While authorities searched for the criminals, Julia May Garrett returned to work, not wishing to miss a day and wearing the only suit she owned, the same outfit she was wearing when assaulted. Julia’s boss, who had read about the ordeal in Monday morning’s newspaper, remarked on her emotional distress and promptly sent her home to recover.\(^{94}\) She remained absent from work for two weeks.

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\(^{93}\) Lorton Reformatory opened in 1916 as a maximum-security institution for offenders from the District of Columbia. 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 Woman’s Workhouse was established in 1912, and in 1917 suffragettes convicted of disturbing the peace when picketing the White House were held at the workhouse on three occasions. Their treatment became increasingly brutal during each successive group. The Occaquan Workhouse and adjoined Lorton Reformatory were experimental facilities and eschewed walls, instead relying on wilderness isolation together with a team of guards and bloodhounds to prevent escape. In 1928 the team consisted of 45 guards and 6 bloodhounds. MARY HOSTETLER OAKEY, JOURNEY FROM THE GALLOWS, HISTORICAL EVOLUTION OF THE PEAL PHILOSOPHIES AND PRACTICES IN THE NATION’S CAPITOL, 137 (1988). During the last group’s stay at the prison, the women experienced what the suffragettes called “the night of terror” when the guards dragged a 70-year old woman down the stairs, threw a second against a wall, and threw another woman against an iron bed knocking her unconscious. The Jailors confined for insanity Alice Paul, the President of the National Woman’s Party who was at the forefront of the fight for the 19th amendment. Id. at 107-22. In 1999, the last prisoners departed the workhouse, and the District of Columbia granted the entire facility to Fairfax County. On September 19, 2008 a transformed facility was reopened: 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; available at http://www.fairfaxtimes.com/news/2008/nov/05/workhouse/.

\(^{94}\) HOUNDS IN MAN HUNT: Alexandria County People Talk of Lynching Girl’s Assailants. FROST SPOILS THEIR TRAIL. Sheriff Allison and Posse, With Bloodhounds, Have to Drop Search in Woods -- Miss Garrett Improved, THE WASH. POST, Feb. 4,1918 at 2.
Over the next months the Fairfax Sheriff searched in vain for the two rapists: without access to forensic tools, no serious suspects ever emerged. The competing dailies, the *Washington Post* and the *Alexandria Gazette*, covered the attacks and the investigation for a full week. Both newspapers attempted to preserve Ms. Garrett’s dignity, describing her injuries by reporting that Julia’s attackers had “tried to hug and kiss” her, and that she had fought them off with “plucky resolve.” For its part, it was not until Friday, February 7th that the weekly *Fairfax Herald* published its first story about the attacks--perhaps corroborating that these rapes were seen as a big-city (i.e., Alexandria) matter, given the distance to Fairfax city. Coincidentally, in that same February 7 issue of the *Herald*, indeed on the same page where the assaults on Julia were described, figured prominently a picture of one Walker D. Hines, the newly promoted Director General of Railroads and Julia’s soon-to-be adversary.

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95 *See* Trial Transcript at 484.
The Fairfax Herald, established in 1882 and in operation until 1966, was published in this building in Fairfax City from 1904 on.\textsuperscript{96}

Meanwhile, Julia Garrett suffered from crying spells.\textsuperscript{97} She claimed that swelling on her neck and between her legs was so painful that she could barely walk. Attorneys C. Vernon Ford and Wilson Farr, the (part-time) Fairfax County Commonwealth attorneys who had interviewed Julia and un成功fully investigated her rape, evidently used their position to gain advance knowledge of potential clients. They recruited Ms. Garrett as their civil client and in her name filed suit in Fairfax County Circuit Court.\textsuperscript{98} Nearly half of the lawyers were eventually involved in the case.\textsuperscript{99}


\textsuperscript{97} Brief in Behalf of Defendant in Error, \textit{supra} note 16, at 15. This is a classic manifestation of what is now known as the “acute phase” of Rape Trauma Syndrome. \textit{See} Ann Wolbert Burgess & Lynda Lytle Holmstrom, \textit{Rape Trauma Syndrome}, 131 A.M.A. PSYCHIATRY 981, 998 (1974).

\textsuperscript{98} In 1800, Fairfax County Courthouse was not built in the City of Fairfax. Rather, 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 located centrally in the county, and eventually selected a four-acre plot owned by Justice Richard Ratcliffe and situated on Little River Turnpike. The county purchased Ratcliffe’s four acres for the discounted price of four dollars. Ratcliffe retained the surrounding 3000 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 1874, and the City of Fairfax in 1961. \textit{See} NETHERTON, ROSE, MEYER, & DIVINCENZO, FAIRFAX, VIRGINIA, \textit{A CITY TRAVELING THROUGH TIME 5-8}, (History of the City of Fairfax Round Table, 1997). The Fairfax Circuit Court was part of the 16th Circuit, holding session on the third Monday of the month, on months alternating with Alexandria (Arlington) county. On the first Mondays of the month, Judge Brent alternated between Prince William county and the City of Alexandria. Annual Report of the Secretary of the Commonwealth to the Governor and the General Assembly of Virginia, 33 (Richmond, 1922).

\textsuperscript{99} The Virginia Bar Association had 11 attorneys registered in Fairfax County. And of the six attorneys involved in the case, plaintiff’s attorneys Ford, and Farr, were registered in Fairfax, along with Defendant’s attorneys McCandlish and Keith. Defendant’s attorney’s Barbour and Garnett were active in the Virginia Bar, but listed in the District of Columbia. Garnett is listed in the Southern Building, the same building where Julia May Garrett was employed. \textit{REPORT OF THE THIRTIETH ANNUAL MEETING OF THE VIRGINIA STATE BAR ASSOCIATION} 159, 172 (John B. Minor ed. 1919). Indeed, the attorneys in this case were quite familiar with each other. For example, the Defendant’s firm assisted C. Vernon Ford, Garrett’s attorney, in 1915 in unsuccessfully defending Fairfax County Alexandria’s annexation of 400 acres of Fairfax County. The City of Alexandria was represented by three attorneys, including then Commonwealth’s attorney Samuel G. Brent, the Judge in the instant case. \textit{Extends City Limits}, \textit{THE WASH. POST}, March 12, 1915, at 14.
Ford and Farr initially sued the *Washington Southern Railway*. However, in 1917, the federal government had nationalized the railroads,\(^{100}\) and in 1918 Congress specifically preserved liability for causes of action against the railroad arising under state law or federal law.\(^{101}\) The defendant invoked General Orders 50\(^{102}\) and 50a\(^{103}\) of the

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\(^{100}\) Congress first authorized the President to take control of the railroads in 1916, “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 purposes connected with the emergency as may be needful or desirable. An Act: Making Appropriations for the Support of the Army for the Fiscal Year Ending June Thirtieth, Nineteen Hundred and Seventeen, and for Other Purposes, Pub. L. No. 64-242, Ch. 418, 39 Stat. 645 (1915-1917). The President exercised that authority in 1917 via official proclamation: “[I] Woodrow Wilson, President of the United States . . . take possession and assume control at 12 o’clock noon on the twenty eighth day of December, 1917, of each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States and consisting of railroads, and owned or controlled systems of coastwise and inland transportation . . . .” The President affirmatively stated that the “interurban” electric street cars were not being nationalized. Proclamation, 40 Stat. 1733, 1734 (1917-1919). The Transportation Act of 1920 released control of the railroads back to the owners, but under severe oversight of the Interstate Commerce Commission (ICC), “Federal Control shall terminate at 12:01 a.m., March 1, 1920; and the President shall then relinquish possession and control of all railroads and systems of transportation then under Federal control and cease the use and operation thereof.” Transportation Act, 1920 Pub. L. No. 66-152, Ch. 91, 41 Stat. 456, 457 (1919-1921).

\(^{101}\) Throughout the act, Congress generally referred to the “President “and the “ICC” directing or compensating the “carriers,” so if the word “carrier” was construed to always mean the same thing when used in the same law, the language suggested 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 de 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 An Act: To Provide for the Operation of Transportation Systems While Under Federal Control, for the Just Compensation of Their Owners, and for Other Purposes. Pub. L. No. 65-107, ch. 25, §10, 40 Stat. 451, 456 (1917-1919). The Railroad administration disagreed and declared that the government, not the railroad owners should be liable. General Order 50a, note x (infra). And even though state courts were divided on the issue, the federal courts and the Supreme Court agreed with the Railroad Administrations declaration. The Supreme Court construed the word “carrier” to mean the ultimate carrier, the Government, so that the Court could avoid 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 P. R. Co. v. Ault, 256 U.S. 554, 562 (1921).

\(^{102}\) “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
United States Railroad Administration, indicating that the Director General of Railroads (DGR) was liable when otherwise a railroad would have been liable. The Fairfax Circuit court judge nonsuited Julia for this reason, and her attorneys re-filed, preserving Washington Southern as a defendant while adding Walker D. Hines as co-defendant. The court dismissed this second suit as similarly barred by the statute. The third time, May 20, 1919, was the charm: the plaintiff dropped Washington and Southern and filed against Hines alone, in the first lawsuit filed against the DGR in Virginia.

The plaintiff’s legal position alleged trespass on the case, on the theory that the railroad’s negligence was a legal cause of her physical injuries, pain and suffering. Her

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.” General Order 50, Public Acts, Proclamations by the president relating to the United States Railroad Administration and General Orders and Circulars Issued by the Director General of Railroads to Dec. 31, 1918, 334,35 (Washington Government Printing Office, 1919).

Fairfax Circuit Court Minute Book 10, at 91 (1919). Following the end of World War I, Hines worked and traveled extensively in Europe. A Southerner and an acquaintance of Woodrow Wilson as was his more illustrious predecessor, Hines travelled extensively in Europe after his tenure as Director General of Railroads ended. In 1925 he authored the Report on Danube Navigation for the League of Nations.

Fairfax Circuit Court Minute Book 10, at 158 (1919).

Plaintiff’s confusion was doubtless caused by the relatively recent advent of the United States Railroad Administration (USRA), whose organization was announced February 9, 1918. On the other hand, the defendant’s familiarity with the legislation and General Order likely stems from a personal connection. The defense firm’s former partner, Robert Walton Moore, was the USRA’s assistant general counsel in 1918 and 1919. Moore was subsequently elected five times to the U.S. House of Representatives and in 1933 was appointed Assistant Secretary of State by Franklin Roosevelt. See http://bioguide.congress.gov/scripts/biodisplay.pl?index=M000915.
complaint described her damages in the contemporary style, which required one and 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 severely 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 recked [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 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 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”109

II. The Defendant

Defendant Walter D. Hines was represented by represented by the Fairfax County and District of Columbia law firm Barbour, Keith, McCandlish & Garnett.110 The

109 Complaint at 8-9, Hines v. Garrett, 108 S.E. 690 (Va. 1921). The amount of the suit is the equivalent of $538,066.62 in 2009 dollars. A recent study conducted by Jury Verdict Research, a Pennsylvania-based legal consulting firm, reviewed civil rape lawsuits over a seven-year period and found the median recovery among successful suits to be $600,000. Tom Liningner, 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).

firm regularly represented railroads, and had close ties to federal government. Former partner Robert Walton Moore had served as Assistant General Counsel to the United States Railroad Administration in 1918-1919. Moore’s replacement, Garnett, was equally at home with railroad matters. Before World War I, Garnett served as a Railroad Commissioner on the Virginia State Commerce Commission. After the war began he was nominated to the Special War Committee, which functioned as an intermediary between the federal government and state commerce commissions. Garnett then became an Army colonel, and chaired the War Department’s Contract Adjustments Board.

Defendant’s attorneys exercised their familiarity with the railroads immediately, implementing arcane United States Railroad Administration regulations to block the lawsuit before the plaintiffs could get even get to trial, then excluding unfavorable evidence once trial began. Understanding the defendant’s maneuvers requires a look at

111 Thomas Randolph Keith (1872-?) was the son of Isham Kieth, a member of Mosby’s (Confederate) Black Horse Calvary. Keith was the youngest of 10 children, 3 of whom became lawyers. He began practicing law in Fairfax Courthouse (modern City of Fairfax) in about 1895. PHILIP ALEXANDER BRUCE, IV VIRGINIA; REBIRTH OF THE OLD DOMINION 154-55 (1929).
113 Christopher Brown Garnett’s 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 Civil War Battle of Newmarket. 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).
117 Id.
what Walker D. Hines later called “a boondoggle that cost taxpayers approximately $1.125 billion 1917 dollars,” 118 the United States Government’s wholesale nationalization of the entire railroad industry.

By the early twentieth century the nation’s railroads were victims of government regulation. Federally-subsidized overbuilding of tracks, coupled with the low marginal cost of running trains on existing tracks, led to a price war, with an ensuing substantial decline in railroad freight rates from 1877 until 1900. 119 At the same time, at the state level, local shippers found railroads easy targets for populist levies, as railroads, unlike other businesses, cannot easily move out of state. One analyst noted that, “[i]n 1913 alone, 42 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.” 120 Between 1900 and 1916, an era when state regulation of other industries was relatively rare and modest, 121 over 1700 new state regulations and laws increased taxes on railroads.

If overbuilding and state predation provided two strikes against railroads, World War I constituted the third. Federally-mandated transport of men and matériel led to severe rail congestion. Moreover, low geographical mobility and military conscription

118 WALTER HINES, WAR HISTORY OF AMERICAN RAILROADS 83-84 (1928). The figure is equivalent to $22.2 billion in 2009. See Tom’s Inflation Calculator, http://www.halfhill.com/inflation.html. 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 AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 14, 15 (1941).
combined to produce a sever manpower shortage.\textsuperscript{122} Federal regulation prevented coordination among railways to alleviate these. For instance, when railway executives contemplated pooling of available facilities east of Chicago to deal with wartime capacity, the Attorney General declared that the anti-pooling clauses of the \textit{Interstate Commerce Act} and the \textit{Sherman Act} would be enforced against them.\textsuperscript{123} The \textit{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.”\textsuperscript{124}

On December 1, 1917 the young Interstate Commerce Commission, tasked with regulating railroads, offered Congress two solutions to the problems afflicting the nation’s railroads: either legalize interline cooperation and pooling, or temporarily nationalize the nation’s railroads during wartime.\textsuperscript{125} The nationalization proposal was met with a rare confluence of approval among the interested lobbies. Local shippers favored federal control, which would allow them to lobby Congress to reverse the price increases caused by increased wartime demand for rail transport. Railroad workers’ brotherhoods seeking to obtain wage increases also preferred to deal with a federal owner rather than with aggressively competing private entities. Finally, the railroads themselves were not averse to nationalization if they could legalize their hoped-for coordination, avoid state predation, and lock in profits with generous federal purchase prices.

\textsuperscript{123} 63 \textit{Railway Age Gazette} 1031 (December 7, 1917).
\textsuperscript{124} \textit{Id.} at 920 (Nov. 23, 1917).
\textsuperscript{125} \textit{Government Control and Operation of Railroads: Hearing Before the S. Comm. On Interstate Commerce,} 65th Cong., 2d Sess., at 1 (1918).
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Congress first authorized the President to nationalize the railroads in 1916.\(^{126}\) Plans for nationalization were formulated in mid-November 1917 under Treasury Secretary William G. McAdoo’s direction.\(^{127}\) On December 18, 1917 President Wilson met with railroad executives to inform them of his decision to proceed with a takeover. Federal pledges to the railroads guaranteed that fat profits (estimated at over $940 million per year\(^{128}\)) from the 1914-17 period would continue. In one fell swoop the rate caps imposed by customer-dominated state railroad commissions were superseded, the industry cartelized, and labor placated with wage increases.\(^{129}\) Secretary McAdoo was himself named the first Director General of Railroads. After armistice with Germany (at 11 a.m. on 11 November 1918—the eleventh hour of the eleventh day of the eleventh month), McAdoo resigned as DGR to prepare his run for the Presidency of the United States.\(^{130}\) He was succeeded as DGR in early 1919 by his then-deputy, former Cravath

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\(^{126}\) “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 purposes connected with the emergency as may be needful or desirable.” An Act: Making Appropriations for the Support of the Army for the Fiscal Year Ending June Thirtieth, Nineteen Hundred and Seventeen, and for Other Purposes, Pub L. No. 64-242, Ch. 418, 39 Stat. 645 (1915-1917).

\(^{127}\) McAdoo was a former New York railroad executive. A colorful Tennessean with an illustrious Civil War pedigree, McAdoo had worked on the Wilson campaign in 1912. In May 1914 he married Wilson’s daughter, Eleanor. His offer to resign as Treasury Secretary after his marriage was declined by Wilson, and McAdoo was credited for saving the American financial system from by closing all stock markets for four months in July 1914. His nomination as first Director General of Railroads (DGR) was surely a recognition of his service. *Cf.* WILLIAM L. SILBER, *WHEN WASHINGTON SHUT DOWN WALL STREET: THE GREAT FINANCIAL CRISIS OF 1914 AND THE ORIGINS OF AMERICA’S MONETARY SUPREMACY*, (2007).

\(^{128}\) This corresponds to $18 billion per year in 2009 dollars. http://www.halfhill.com/inflation.html


\(^{130}\) After stepping down as DGR, McAdoo ran twice for the Democratic nomination for President, losing to James Cox at the nominating convention in 1920 and again to John Davis in 1924, though on each occasions McAdoo led after the first ballot. A bon vivant, he served as Senator for California from 1933–1938. He and Eleanor Wilson were divorced in 1935: two months later, the 71-year old McAdoo married 26-year-old nurse Doris Isabel Cross.
partner and Acheson Topeka & Santa Fe CEO, Walker D. Hines. Hines remained in his position until federal control ended in May 1920.\textsuperscript{131}

\begin{figure}
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\includegraphics[width=0.5\textwidth]{walker_hines_chicago_1919.png}
\caption{Walker Hines, Chicago 1919\textsuperscript{132}}
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\section*{III. The Trial}

In Julia’s day, the Fairfax Circuit Court was part of Virginia’s 16\textsuperscript{th} Circuit, which also included Alexandria County, the City of Alexandria, and Prince William County. Judge Samuel G. Brent of the City of Alexandria presided over the 16\textsuperscript{th} Circuit and held

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court in Fairfax on the third Monday of the month, alternating months with Alexandria County.\(^{133}\)

At trial, the two sides offered competing theories of the case. The plaintiff’s negligence theory was that the railroad, as a common carrier, owed its passenger,\(^{134}\) Julia May Garrett, the utmost duty of care\(^{135}\); the railroad had breached this duty by passing the station and refusing to back up to it;\(^{136}\) Julia Garrett had no choice but to get off the train;\(^{137}\) and the railroad legally caused the assault because it knew or should have known that the surrounding area was dangerous.\(^{138}\)

In response, the defense contended that: (1) the railroad did not owe Julia Garrett a duty of care because she was not a paying passenger;\(^{139}\) (2) Julia knew Seminary Station was a flag-stop and failed to signal the train to stop;\(^{140}\) (3) there were no tramps in the vicinity, and even if there were, the railroad did not have notice of them;\(^{141}\) (4) Julia Garrett knew the region well and thus assumed all risks;\(^{142}\) (5) Julia ceased being a passenger\(^{143}\) to whom any duty was owed when she voluntarily disembarked from the train; and (6) letting Julia off in the woods did not cause her injuries, because the criminal assailants broke the legal chain of causation.\(^{144}\)

\(^{133}\) Annual Report of the Secretary of the Commonwealth to the Governor and the General Assembly of Virginia, 33 (Richmond, 1922).
\(^{134}\) See Complaint at 2.
\(^{135}\) See id. at 3; See also Defendant’s Bill of Exceptions #4 (Quoting Plaintiff’s Instructions #1)
\(^{136}\) See id. at 4
\(^{137}\) See id. at 4, 5
\(^{138}\) See id. at 5, 6
\(^{139}\) Grounds of Defense
\(^{140}\) See Demurrer at 1.
\(^{141}\) Id.
\(^{142}\) Id.
\(^{143}\) See Demurrer at 1.
\(^{144}\) Id.
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The plaintiff’s case began with an attempt to prove that the defendant knew or should have known that the area where Julia disembarked was dangerous.\(^{145}\) Defendant objected to the admission of evidence about the general reputation of the area. This objection was sustained: a general reputation for danger was, it was dubiously held by the trial judge, legally insufficient to give the railroad notice of dangerous conditions.\(^{146}\) Rather, the court held, plaintiff had to prove that the defendant or his agents (the railroad employees) knew or should have known of *actual criminal events* that had taken place before the attack on Julia.\(^{147}\) The plaintiff faced an uphill battle in showing that railroad employees knew of actual criminal events of circumstances.\(^{148}\) In addition, and incredibly, the court extended its ruling to exclude even evidence of knowledge of particular crimes in Hoboes Hollow, if those crimes had occurred before the railroads’ rationalization.\(^{149}\) The defense’s argument, accepted by Judge Brent, was that the Director General could not have legal notice of any events that had transpired prior to the creation of his position.

The court’s logic was deeply flawed, since the Director General clearly assumed both the assets and the liabilities of the railroads he came to own. The court reasoned as if Hines himself was the allegedly negligent party, and of course Walker D. Hines certainly

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\(^{145}\) The Railroad’s knowledge was relevant to the question of causation. Of course, letting Julia Garrett off in the woods was a cause-in-fact of the assault in the sense that Julia Garrett would not have been assaulted if she had not been let off in the train. However, the question of proximate causation, legal causation, would only be established if the assault was a reasonably foreseeable result of the negligence.

\(^{146}\) See Defendant’s Bill of Exceptions at 29-30.

\(^{147}\) See *id*.

\(^{148}\) Before the trial, the judge had ruled *in limine* that public knowledge of an escape from the maximum-security reformatory in Lorton, approximately seven miles from the site of the attack on Julia Garrett, was too remote to be relevant to the plaintiff’s case. Defendant’s Brief in Support of The Motion to Strike Out, Garrett v. Hines (Va. Cir. Ct. 1919).

\(^{149}\) Defendant’s Bill of Exceptions at 22.
did not know much about criminal activity near Cameron Crossing. However the Director General was vicariously liable in cases where an employee had negligently caused injury. Knowledge of criminality at or near Cameron Crossing by WSR employees was therefore relevant—and except for one porter, the railroad’s employees had all worked on the rail line for several years, the conductor for several decades. Under the court’s dubious ruling, the conductor’s state of mind was wiped clean as a matter of law on the day the government nationalized the railroads, as if the corporation had been liquidated and reconstituted. Instead, of course, the prior business had been continued.

Judge Brent’s ruling was potentially devastating for the plaintiff’s case. Evidence of crime reports and police calls at Hoboes’ Hollow, including reports that food had been stolen from the track foreman’s home, that merchandise had been stolen from rail cars, and that the railroad had employed armed detectives whenever it left merchandise in a car overnight near Cameron Crossing, all pre-dated railroad nationalization. Left without access to the most damning evidence of criminality, plaintiff’s witnesses offered observations concerning the general character of people seen after the nationalization alongside the tracks and living in the nearby woods. This produced circus-like objections and rulings. For instance, 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

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150 See id at 22-23.
152 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 (Va. 1895) (holding the successor corporation liable in tort).
154 Defendant’s Bill of Exceptions at 27.
criminal?”

When the plaintiff’s witness said the area was dangerous, the defense would challenge “[c]an you tell us . . . specifically any crimes that occurred between March, 1918 and February, 1919?” Since the judge had limited the relevant time period to the period of DGR Hines’s appointment, no witness could answer this question in the affirmative.

As a result of Judge Brent’s decision, plaintiff had no facts to impute knowledge of criminal conditions at Cameron Crossing to Hines. However, some post-nationalization evidence pointed to dangerous conditions further from Hoboes’ Hollow and closer to Garrett’s home. At trial one Mr. Staunton, a shop owner, testified that tramps would come to his store and that Staunton would feed them to make them go away. The track foreman admitted that he too had fed tramps who approached his house at Cameron’s Crossing, though he (dubiously) denied that his family ever felt threatened by them. However, the track foreman made one crucial admission: when he was away from his house, both before and after the nationalization, the shop owner’s wife would leave to stay with the foreman’s extended family, or the foreman’s family would move in with the wife temporarily. Proof that the track foreman’s wife would not stay home alone undercut the claim that the vagrants were not perceived as dangerous. Defendant claimed this was irrelevant proof of “general reputation,” while plaintiff maintained that this was a “specific fact.” The trial judge, perhaps cognizant of the unintelligible distinction he had created, admitted the evidence.

155 Id. at 18.
156 Id. at 27.
157 See Petition for Writ of Error, supra note 20, at 12.
159 Id. at 12-13.
Indeed, plaintiff’s counsel was able to get evidence, including barred evidence, of negligence to the jury. As each plaintiff’s witness took the stand and was questioned about dangerous happenings at Cameron’s Crossing, counsel would “forget” to limit the time period to that following the nomination of the Director General. Defense counsel would immediately object, but not before the jury had heard the witness’s answer.\textsuperscript{160} At first, plaintiff’s counsel possibly appeared forgetful, but after several witnesses repeated the same performance it became clear that counsel wanted the witnesses to relate prior criminal acts before the defense could object. For whatever reason (perhaps both parties recognized that the judge’s decision to limit evidence to the period of the DGR’s tenure was legally defective), defense counsel did not move for a mistrial.\textsuperscript{161}

Unlike plaintiff’s witnesses, who testified that the area where the rapes occurred was a den of thieves, defendant’s witnesses, railroad employees, virtually all contended that the region was peaceful. Plaintiff’s counsel took advantage of this discrepancy by challenging the defense witnesses’ credibility and exposing the jury to evidence barred by the judge’s erroneous ruling. For example, when the railroad foreman testified to never knowing about any crime in the area at any time, plaintiff questioned the foreman about food had been stolen from the foreman’s own house, even though it had been stolen before the Director General took control of the Railroad. Because it was offered on cross-examination to impeach the witness, the question was allowed.\textsuperscript{162}

\textsuperscript{160} See, e.g., Defendant’s Bill of Exceptions at 23.
\textsuperscript{161} 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, §§ 618-620. A Mistrial motion is typically sustained in such conditions because of this psychological effect. See, e.g., Snowhite v. State, 243 Md. 291 (1963).
\textsuperscript{162} See Trial Transcript at 472, 476.
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Plaintiff’s counsel also produced evidence of crimes occurring *after* the attack on the plaintiff.\(^{163}\) For instance, during the Autumn that followed the rapes, and well before trial, Fairfax’s Sheriff had deputized Walter Cockrell to police that area of the track. Cockrell testified about numerous crimes, and on each occasion the defense objected. Of course subsequent crimes are irrelevant to what railroad employees knew or did not know at the time of the rapes. By a curious irony, the defendant’s insistence that pre-nationalization events were *hors-combat* seems to have so confused\(^{164}\) Judge Brent that he appeared unwilling to exclude post-nationalization crimes that occurred after the rapes.

Following the chaotic dispute over whether the railroad knew the area was dangerous, the next legal contention was whether Julia “voluntarily” disembarked the train. Julia Garrett testified that the conductor declared he would “carry her on through,” for the next train back if she did not disembark immediately. Julia testified that the conductor had disingenuously explained to Julia Garrett that reversing the train back to Seminary Station was too dangerous because of the risk of hitting an oncoming train, when he knew or should have known that there was no such risk.\(^{165}\) In addition, there was conflict in the evidence as to whether Julia was physically prevented (as she claimed) from leaving the train when it stopped for Mr. W.L. Garnett,\(^{166}\) or whether she declined

\(^{163}\) See Trial Transcript at 505.

\(^{164}\) Judge Brent pondered aloud whether he himself had deputized Cockrell before or after Garrett’s assault. Although Cockrell’s appointment on November 19th, 9 months after the assault, was presumably a result of the assault in the first place. See Trial Transcript at 368 (quoting appointment order, November 19th, 1919) (“The county will pay him $75 for one months services . . . & he to furnish his own motor cycle and pay his own expenses”).


to do so because of the porter’s representation that the conductor would surely reverse the
train to accommodate an unaccompanied female.\footnote{See Brief in Behalf of Defendant in Error, supra note 16, at 27.}

In any event, Julia testified that after protesting vigorously when the train
proceeded forward instead of backwards as she had expected, the conductor told her,
“you will either have to go through and we will send you back on the next train, or get off
here.”\footnote{Petition for Writ of Error, supra note 20, at 2.} This offer to take Garrett “through” was crucially ambiguous. Julia testified at
trial that she knew nothing of the line’s itinerary after Seminary Station, and that she
thought “through” signified she would have to remain on the train until Richmond, the
line’s terminus, 100 miles further south. From Richmond Julia’s return train would not
have deposited her at Seminary until the next day, and she was without resources to
secure lodging in that city overnight.\footnote{See Petition For Writ of Error, supra at 3.}

However, defense witnesses testified that the conductor said he would take Julia
“through to Franconia station.”\footnote{See, Reply Brief in Behalf of the Plaintiff in Error at 15, Hines v. Garrett, 108 S.E. 690 (Va. 1921) (Record 653). This station at the crest of Franconia Hill (near present-day Franconia Road, and the Franconia Springfield Metro station) was four miles from Seminary Station. It was torn down in 1952. The Franconia station boasted the highest elevation above sea-level on the RF&P.} The porter testified that the conductor had explained
when the next train would bring her back from Franconia (in two and one-half hours).
Additionally, the defense observed that Ms. Garrett was an experienced train passenger
who had been riding trains for two years and who lived in sight of 60 trains passing each
day on the track below her house.\footnote{See Defendant’s Bill of Exceptions at 15.} That she would believe Richmond was the next stop
after Seminary strained credulity, perhaps, but this was arguably for the jury. Undisputed,
however, was the fact that the train had started up again immediately after the
conductor’s ultimatum and before Julia could deliberate; at trial Julia testified, “I just had a minute to think and I told him, ‘let me off.’”\footnote{Petition for Writ of Error, supra note 20, at 2.}

Another legal issue concerned the very existence of any legal duty owed to Julia Garrett by the railroad. If Ms. Garrett (who could not produce her ticket) was not a paying passenger on the train, the railroad owed her less of a duty, and perhaps no duty at all.\footnote{Although a common carrier’s duty of utmost care to a passenger was already well established by 1921, see Washington A. & M. V. R. Co. v. Vaughan, 111 Va. 785, (1911), the state of the law regarding the duty owed a guest passenger was less certain. Regarding automobiles, the court announced the rule in 1930, rejecting the ordinary negligence standard and holding that to establish liability the guest passenger must show that the owner or operator of the vehicle was grossly negligent. Boggs v. Plybon, 157 Va. 30, 160 S.E. 77 (1931). In 1950 the Virginia legislature settled on a uniform rule for motor vehicles, that “any person transported” may establish liability against the vehicle owner or operator by showing ordinary negligence. Va. Code. Ann § 8.01-63 (2009); see also Hodge v. Sycamore Coal Co., 82 W.Va. 106 (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).}

The defense, therefore, presented evidence that plaintiff was not a paying passenger.\footnote{See Grounds of Defense at 1, Garrett v. Wash. S. Ry. (Va. Cir. Ct. 1919).} For the defense, a young woman commuter testified that the WSR conductor had improperly extended a professional courtesy by accepting Ms. Garrett’s \textit{Southern Railroad} employee pass. Plaintiff countered by producing both a policeman who claimed he had watched Ms. Garrett buy her ticket\footnote{The defense objected that this witness had confused the date of the rape with another date. This of course was for the jury.} and the \textit{plaintiff’s sister}, who somehow was allowed by Judge Brent to testify that WSR conductors would never accept a \textit{Southern Railroad} pass.\footnote{At the conclusion of the case, the defense apparently conceded that Ms. Garrett was a paying passenger, offering no jury instructions on the question.}

The defense attempted to show that Ms. Garrett knew the area well,\footnote{See, \textit{e.g.}, Petition for Writ of Error, supra note 20, at 7.} so that the jury might conclude that Ms. Garrett intended to leave the track to take a safe shortcut.
trail through Mr. Cockrell’s farm.\textsuperscript{178} This might establish that Julia’s choice of return route created new risks for her, risks that she alone should bear. But the plaintiff showed that the trail through the Cockrell farm was too marshy and that 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\textsuperscript{179} – making it extremely improbable that she had ever intended to take this route. Additionally, Ms. Garrett testified to being unfamiliar with any land past the Seminary station.

The defense also produced evidence that Ms. Garrett was talking to a soldier on the train.\textsuperscript{180} Presumably, jurists were meant to insinuate that Ms. Garrett had somehow invited the first attack, or in fact that the first sexual relations were consensual (the lack of vaginal bruising was mentioned in the defense appellate brief,\textsuperscript{181} though not in oral arguments to the jury\textsuperscript{182}). The plaintiff, however, countered that although she did talk to a man in uniform on the train, he a Marine, whereas she was raped by someone in Army garb.\textsuperscript{183}

After four days of trial, the jury received ten rather verbose instructions after intense debate between the parties about what those instructions should be.\textsuperscript{184} By failing

\textsuperscript{178} The Defendant’s civil engineer witness testified that 350 feet farther south on the tracks a footpath to Cockrell’s barn safely traversed the stream over a railroad tie. See Trial Transcript at 436. Charles A. Mills’ \textit{Love and Marriage in the Civil War} has this to say about the Cockrell farm: “Bloom’s 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 Bloom’s Hill to cook. The girl had four children by Cockrell . . . .” \textsc{Charles A. Mills, Love and Marriage In The Civil War} 37 (1994).

\textsuperscript{179} See Trial Transcript at 496.

\textsuperscript{180} See Complaint at 13.

\textsuperscript{181} See Petition for Writ of Error, \textit{supra} note 20, at 6, 9.

\textsuperscript{182} This was presumably to avoid appearing insensitive.

\textsuperscript{183} \textit{Id.} One co-author, whose son is a Lieutenant in the United States Marine Corps, notes this testimony with particular satisfaction.

\textsuperscript{184} See generally Defendant’s Bill of Exceptions.
to offer instructions on whether Julia Garrett had purchased a ticket\(^{185}\) or failed to signal the train to stop,\(^{186}\) the defense abandoned these arguments. Deliberations took only a few hours, after which the jury awarded Ms. Garrett $2,500.\(^{187}\) The jury had apparently found every question of fact in favor of the plaintiff. But the victory provided no relief for Ms. Garrett. After the jury verdict was announced, the Defendant moved for a sixty-day stay of execution so that the defendant could appeal in the Supreme Court of Virginia in Richmond. The court granted the stay.\(^{188}\)

IV. The Appeal.

A. Petitioner Hines’s Writ of Error

On September 20, 1920, the defendant appealed to the Virginia Supreme Court seeking a writ of error.\(^{189}\) The court received the writ, and the defendant posted a $3000 supersedeas\(^{190}\) bond.\(^{191}\) Petitioner Hines submitted twelve assignments of error, but concentrated his efforts on two grounds.\(^{192}\) He first argued that his admitted negligence in carrying the plaintiff past her station was not the proximate cause of Julia Garrett’s injuries; rather, those injuries were inflicted by criminal assailants, unknown to both

\(^{185}\) See Trial Transcript at 56, 381, 481.

\(^{186}\) Julia Garrett’s mother testified that the RF&P always stopped at Seminary without being specifically notified. See Trial Transcript at 479.

\(^{187}\) Petition for Writ of Error, supra note 20, at 1. This was approximately $33,000 in 2009 dollars. See Tom’s Inflation Calculator, http://halfhill.com/inflation.html. See supra note 117 for information on rape damages today.

\(^{188}\) Fairfax Circuit Court Minute Book 10, at 162 (1919-1922).

\(^{189}\) 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. Fairfax Circuit Court Minute Book 10, at 369 (1919).

\(^{190}\) A supersedeas bond is an appellants bond to stay execution on a judgment during the pendency of the appeal. Black’s Law Dictionary 190 (8th ed., 2004).

\(^{191}\) Petition for Writ of Error, supra note 20, at 43.

\(^{192}\) Id. at 9-11.
plaintiff and defendant.\textsuperscript{193} As a result, Hines argued, the Court erred “in failing to strike out and exclude from the jury all evidence relating to the assaults . . . and also the consequences flowing from said assaults.”\textsuperscript{194} In the alternative, the petitioner also argued that although missing the stop constituted negligence, the plaintiff’s decision to disembark from the train constituted an assumption of risk that a criminal assault might occur.\textsuperscript{195}

Petitioner Hines’s second major ground for appeal was that the court erred in overruling his demurrer; Garrett’s free decision to disembark from the train had, Hines argued, terminated her status as passenger and thus put an end to any of the railroad’s common law duties toward her.

\textbf{B. Petitioner Hines’s Caselaw}

In support of his first ground for appeal, Petitioner Hines argued\textsuperscript{196} that the railroad’s negligence in ejecting Julia May Garrett from the train was not the proximate cause of her injuries. Rather, because it was unforeseeable that a solider would follow Garrett off the train and rape her, the existence of hoboes and tramps in the environs of the station was irrelevant.\textsuperscript{197} The harm of the first rape was, in essence, not within the risk created by offering to allow the plaintiff to disembark at this location.\textsuperscript{198} If the plaintiff wished damages solely for the second rape, which was likely committed by a tramp, that

\begin{itemize}
  \item \textsuperscript{193} \textit{Id.} at 9.
  \item \textsuperscript{194} \textit{Id.} Without this evidence Plaintiff Garrett would only be entitled to nominal damages for loss of her time; the only harm “proximately caused” by the defendant’s negligence.
  \item \textsuperscript{195} \textit{Id.}
  \item \textsuperscript{196} Note that this argument impliedly abandoned defendant’s successful claim at trial that only specific criminal acts (committed after the nomination of defendant as DGR) were admissible in evidence.
  \item \textsuperscript{197} Petition for Writ of Error, \textit{supra} note 20, at 12.
  \item \textsuperscript{198} \textit{See} Vosburg v. Putney, 47 N.W. 99 (Wis. 1890); \textit{see also} Michael I. Krauss, “Palsgraf: The Rest of the Story,” \textit{9 Green Bag 2d} 299 (2006).
\end{itemize}
too should be disallowed, according to the defendant, because the tramp who raped Julia Garrett was white. Hines’ attorneys conceded that rape by a black tramp might be foreseeable, but they contended that that vicious sexual predation by a Caucasian is unforeseeable as a matter of law:

Thanks to our civilization, crimes like these are rare and usually confined to a race not long out of the jungles of Africa . . .\textsuperscript{199}

The defendant’s blatant race-baiting aside, substantial Virginia caselaw supported his proximate cause claim. The defendant invoked \textit{Fowlkes v Southern Railway},\textsuperscript{200} where the plaintiff had purchased from Southern Railway a ticket from Richmond to Skinquarter, a station on the Farmville & Powhatan Railroad, which crosses the Southern Railway at Moseley Junction, 25 miles south of Richmond. A Southern agent had assured her that a train would connect at Moseley Junction with an F&P train, but upon disembarking she found that no train would leave for Skinquarter that day. The tragic dénouement was described this way by the court:

\begin{quote}
It seems that she was pregnant; that day was hot and sultry, and a storm was brewing, when she got off of the train. The Southern road had no depot there, and she failed to see a small ticket office of the Farmville & Powhatan Railroad, which had been recently constructed. She walked 300 or 400 yards from the place where the train stopped to a store, where she received such accommodations as it afforded. 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 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
\end{quote}

\textsuperscript{199}Petition for Writ of Error, \textit{supra} note 20, at 12. “Hoboes Hollow” had been frequented by both black and white tramps, according to the trial testimony, but the aggressor in question was white.

\textsuperscript{200}\textit{Fowlks v. Southern Railway. Co.}, 96 Va 742, 32 S.E. 464 (Va. 1899).
abdominal pains and hemorrhage, from the womb. These pains continued till August 23, 1896, when she suffered a miscarriage. Since that time she has been in bad health, and has had another miscarriage.\footnote{201}

The question on appeal was whether plaintiff’s evidence, summarized above, was admissible. The Virginia Supreme Court found that it was not, because defendant’s negligence was not the proximate cause of the damages of which she complained. 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.\footnote{202}

By analogy, claimed Director Hines, at the moment of the negligent act (missing the plaintiff’s station) the two rapes could not have been foreseen. The defendant’s argument from \textit{Fowlkes} was crucially weakened, however, by plaintiff’s claim that WSR’s decision to disembark her at Cameron’s Crossing was allegedly a second negligent action from which a sexual attack on the plaintiff was quite foreseeable.\footnote{203}

Defendant’s rather weak reply to this distinction was that, even if the offer to disembark between stations in an area frequented by tramps was negligent, the first attack by a fellow passenger was unforeseeable. And as the second rape would not have occurred absent the first and in any case was committed by a Caucasian, it too was unforeseeable.

\footnote{201} \textit{Id.} at 464.  
\footnote{202} \textit{Id.} at 465-66.  
\footnote{203} Reply Brief in Behalf of the Plaintiff in Error at 18-19.
Defendant Hines also cited *Winfree v. Jones*,\(^{204}\) in which a residential tenant had abandoned his rented house before the end of his lease, leaving the door unlocked. A trespasser subsequently entered the house and burned it down. The court held that the trespasser’s arson was not proximately caused by the tenant’s allegedly negligent behavior:

> [I]t would seem to be manifest that the alleged negligence and the damage complained of are not sufficiently conjoined to support the plaintiff’s action. To the credit of the civilization in which we live, it cannot be maintained that the natural and expected result of leaving the upstairs door of an empty house unlocked is that some one who has no legal right there will enter the house and burn it, even though the house be located in a negro community. The house was entered and burned by some one unknown to the plaintiff three weeks after it was vacated—a result which cannot be said to have followed the act of alleged negligence, in the usual, ordinary, and experienced course of events. On the contrary, such a result could not reasonably have been anticipated or expected.\(^{205}\)

Note that *Winfree* seems incompatible with the defendant’s race-baiting. The court indicates in *Winfree* that subsequent criminal behavior is unforeseeable, regardless of the culprit’s race. In addition, *Winfree* is arguably distinguishable because of the three-week lag between the allegedly negligent action and the intentional tort, and because the location of the rented building, unlike the location of Plaintiff Garrett’s disembarkment, was not known to be a dangerous one.

Another case cited by Hines in his Petition for Writ of Error was *Connell v. Chesapeake and Ohio RR*,\(^{206}\) in which a passenger asleep in his sleeping car was accosted by a robber who had entered his unlocked door.\(^{207}\) When the passenger refused to

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\(^{204}\) *Winfree v. Jones*, 51 S.E. 153 (Va. 1905)

\(^{205}\) *Id.* at 155.


\(^{207}\) *Id.* at 468.
relinquish his property to the robber, the latter shot and killed him.\textsuperscript{208} In the wrongful death suit that followed, the court held that robbery is foreseeable and can be proximately caused by the railroad’s negligent failure to secure cars and cabins, but that murder or other physical harm was 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 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.\textsuperscript{209}

The potential relevance of this case is clear, as Julia May Garrett was raped, not robbed. However, if the ultimatum that she disembark from the train was itself negligently made, it would seem that the main reason that it was negligent was that it exposed a young woman to the personal predations of miscreants off the train, not merely to robbery on the train.\textsuperscript{210} Thus Connell seems to be of little or no help to the appellant.

In addition to these Virginia cases, defendant cited prominent cases from out of state. One of these was \textit{Henderson v Dade Coal},\textsuperscript{211} where it was held:

\begin{quote}
[t]hat a “felony” convict, about 37 years old, who had been continuously in the penitentiary for about 12 years, and who had five times escaped therefrom, was “a
\end{quote}

\textsuperscript{208} \textit{Id.}
\textsuperscript{209} \textit{Id.} at 469.
\textsuperscript{210} Indeed, as plaintiff pointed out in her appellate brief, the Connell court noted particularly that there was no reason for the railroad to have anticipated any particular danger to the plaintiff in that instance. Reply in Behalf of the Defendant in Error at 19 (citing Connell v. Chesapeake and Ohio Ry. Co., R, 24 S.E. 467 (Va. 1896)).
\textsuperscript{211} Henderson v. Dade Coal Co., 100 Ga. 568, 28 S.E. 251 (Ga. 1897).
man in robust and vigorous health, immoral, brutish, devilish, of vicious habits, of violent passions, prone to desire for sexual intercourse,” and a person “not restrained by any convictions of right and wrong, or governed by any principles of morality,” and that “all of these conditions and things” concerning him “were well known, and were understood” by his custodians, “or ought to have been, because of what they knew of his said person, history, character, and surroundings,” did not, without more, afford such cause for apprehending that he would, when an opportunity occurred, commit the crime of rape upon an unprotected woman, as to subject his custodians to liability in damages for the perpetration by him of this offense at a time when, because of their fault, he was at large, and in the unrestrained control of his own movements.212

This Georgia precedent, if followed and applied to railroads in Virginia, would strongly favor the defendant. The Henderson court went so far as to say that there would be liability only “where it appears that the custodians of the convict were in some way connected with the perpetuation of the tort, or had reasonable grounds for apprehending that it would be committed,” such reasonable grounds apparently requiring more than a knowledge of the personality and morals of their convict.213 On the other hand, railroads have an affirmative duty of care toward their passengers, whereas prison directors have no affirmative duties toward strangers.214 If the claim in Henderson was that no duty was owed to the plaintiff, that case is inapposite to Julia Garrett, because the railroad would still owe a higher duty of care to her as a passenger, unless of course her departure from the train ended her special status as a passenger.

212 Id. at 251-52.
213 The problem of intervening causation by independent criminal acts is illustrated in a 1973 suit by Virginia’s Attorney General seeking an injunction to close or improve security at the District of Columbia owned Reformatory in Lorton Virginia. See Oakey, supra, at 290. Of course, for the reformatory to cause a nuisance, the independent actions of escaping convicts could not be intervening causes that would break the chain of causation between the poor security and the terrorized residents of Fairfax county and nearby Alexandria. Nonetheless, the court never heard the arguments. Virginia’s governor thought the lawsuit impolitic and reprimanded the attorney general, who subsequently withdrew the lawsuit. Id.
Petitioner Hines’s decision to invoke another out-of-state case, *Bowers v. Southern Railway*,\(^{215}\) to support of his proximate cause argument was likely a mistake. In *Bowers* a railroad employee was injured when a trespasser threw a switch, causing the wreck of a train that was allegedly running too quickly. The worker sued his employer for negligence, but the court held that the act of the trespasser was an intervening cause precluding liability to the worker. This would seem to favor Defendant Hines, but consider this statement from the *Bowers* court:

> As to one to whom the railroad company does not owe a higher degree of care than the standard of ordinary care and diligence imposes, and owes no affirmative duty of protection such as it owes passengers, the negligence of the railroad company in leaving a switch unlocked is not to be regarded as the proximate cause of an injury which ensues because a willful and conscious trespasser by a criminal act turns the switch, whereby the train is wrecked and a person is injured. The intervening independent act of the trespasser renders remote the negligence of the railroad company in leaving the switch unlocked.\(^{216}\)

Because Plaintiff Garrett was a passenger, not an employee, it is unclear how this case favored Defendant Hines. Rather, this case seems to vary proximate cause depending on the extent of the antecedent duty.

Hines made his second major argument along these very lines, arguing that the railroad owed Julia Garrett no duty of care because in deciding to disembark the train she voluntarily relinquished her passenger status.\(^{217}\) Hines cited a Minnesota case, *Finnegan v. Chicago, St. P.M. & O.R. Co.*\(^ {218}\) In *Finnegan* the defendant train stopped just outside the station to allow a mistaken passenger to walk to the correct train, and on his way over

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\(^{216}\) *Id.* at 678 (emphasis added).

\(^{217}\) Petition for Writ of Error at 30. Although Hines had argued at trial that Julia Garrett assumed the risk by voluntarily departing the train in the dangerous area, Hines conspicuously omits this argument from appeal. Possibly, Hines’s decision to appeal in the first place was to create law in the “intervening cause” or “scope of duty” areas of law. Hines may have believed that a favorable precedent in these two areas of law would be more beneficial in the long run than a narrow precedent on assumption of risk.

\(^{218}\) 51 N.W. 122 (Minn. 1892).
the mistaken passenger was injured by another train’s cow-catcher. The court held that the Railroad was not responsible for the injury. The Finnegan court ruled that the railroad no longer had a duty to protect the plaintiff, because he ceased being a passenger upon voluntarily opting to leave that train and walk down the track to another train.

Hines took special care to apply Stevens v. Kansas City Elevated Ry. Co.\(^{219}\) a Missouri case.\(^{220}\) In Stevens, the court ruled that after a train missed a station, a passenger who asked the train to stop and voluntarily disembarked terminated the carrier/passenger relationship, and extinguished the railroad’s duty of care. The court had further noted, however, that this “rule does not obtain in cases where the carrier’s servants either coerce or persuade the passenger into an unsafe place….”\(^{221}\) Hines argued, of course, that Julia Garrett, like the plaintiff in Stevens, had asked the train to stop, was not coerced or persuaded by the conductor, and voluntarily released the Railroad from any duty to protect her.\(^{222}\)

C. Plaintiff Garrett’s Caselaw

Plaintiff Garrett’s appellate brief both disputed the relevance of defendant’s cases and introduced caselaw of its own to rebut defendant’s claim that a subsequent intentional tort breaks the causal chain for a prior negligent action.\(^{223}\) More specifically, the plaintiff disputed the relevance of several cases invoked by defendant to support this proposition. Garrett distinguished the famous case of Laidlaw v. Sage, where defendant

\(^{219}\) 126 Mo. App. 619, 105 S. W. 26 (1907)  
\(^{220}\) Petition for Writ of Error, supra note 20, at 32-33.  
\(^{221}\) Stevens, 105 S.W. at 28.  
\(^{222}\) Petition For Writ of Error, supra note 20, at 32-33.  
\(^{223}\) Id. at 28.
was held not liable for endangering an employee injured by an anarchist terrorist’s carpet bomb, on the basis of the “lesser” strength of the duty toward one’s employee, and because *Laidlaw* involved nonfeasance, not alleged misfeasance.\(^{224}\) Similarly, plaintiff distinguished *Petitioner Hines’s use of Alexander v. Town of New Castle,\(^ {225}\) because the intentional tort of one person throwing another into an excavation pit on the side of a street was utterly unforeseeable. Plaintiff also distinguished *The Lusitania,\(^ {226}\) where the court found a steamship line not liable for the wrongful death of passengers killed when the ship was sunk by Germany in an illegal act of war, on grounds that the *Lusitania* passengers had been warned of the precise risk and on the alternate grounds that because it could not be presumed that a civilized nation would resort to such illegal action, the bombing was therefore a legally unforeseeable third party intervention.\(^ {227}\) Finally, Julia Garrett disputed Hines’s use of *Atkinson v. Pacific Railway,\(^ {228}\) which had held that a railroad that missed a station and disembarked its passenger at a subsequent station was not liable for his subsequent robbery.\(^ {229}\) This case was distinguishable because the court explicitly found that defendant had no way of knowing of dangers at the subsequent station, which was presumably under police protection and no more dangerous than the


\(^{225}\) *Alexander v. Town of New Castle*, 115 Ind. 51, 17 N.E. 200 (Ind. 1888) (holding that a town is not liable to one injured by falling into an excavation in the street, when the fall was wholly occasioned by the act of another, who willfully seized plaintiff and threw him into the pit; the negligence of the town, if any, not being the proximate cause of the injury); Brief on Behalf of the Defendant in Error, *supra* note 16, at 23.

\(^{226}\) *The Lusitania*, 251 F. 715, (S.D.N.Y. 1918).

\(^{227}\) *Id*. at 32-33. It was presumably to make the *Lusitania* case more relevant that defendant Hines emphasized that both rapes had been committed by Caucasians, allegedly members of a civilized race from which such behavior could not be anticipated.


\(^{229}\) *Id*. at *4.*
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station where plaintiff should have been allowed to disembark, unlike the unsettled and unprotected area where plaintiff Garrett was assaulted.\(^{230}\)

Plaintiff also produced her own caselaw to rebut defendant’s claim that subsequent criminal acts always “break the causal chain.” In *Chicago & A.R. Company v. Pillsbury*,\(^ {231}\) an Illinois case, the court had upheld a jury verdict against a railroad when a train carrying non-unionized workers was boarded by irate strikers, one of whom shot the plaintiff, a passenger. According to the court, the railroad arguably violated a duty to that passenger to exercise utmost care, skill and vigilance to carry plaintiff safely; and that the foreseeability of this subsequent intentional tort was for the jury to determine.\(^ {232}\) Plaintiff also cited *Valdosta Street Railway Company v. Fenn*,\(^ {233}\) which held that a “street railway company may be held liable for an injury due to the failure of its motorman to exercise extraordinary care in protecting a passenger from injury.” The *Fenn* court held that jury could find that a motorman, who left his car in such condition that it could be easily started by a child trespasser, was the proximate cause of injury to passengers who were permitted to remain in the car.\(^ {234}\)

Plaintiff also invoked *Lane v. Atlantic Works*,\(^ {235}\) a Massachusetts case in which the original negligence of a defendant in loading a truck was held to be a proximate cause of injury to plaintiff when a child climbed onto the truck and dislodged the improperly loaded charge.\(^ {236}\) In *Lane* the court held that “[t]he act of a third person, intervening and

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\(^{231}\) Chicago & A.R. Co. v. Pillsbury, 123 Ill. 9, 14 N.E. 22 (Ill. 1887).

\(^{232}\) Id. at 24-25.


\(^{234}\) Id. at 984.

\(^{235}\) Lane v. Atlantic Works, 111 Mass. 136 (1872).

\(^{236}\) Id. at 139-140.
contributing a condition necessary to the injurious effect of the original negligence, will not excuse the first wrongdoer if such act ought to have been foreseen.” 237 Similarly, Garrett cited *Houston & Texas Central Railway v. McKenzie*, 238 in which a woman with a young child was disembarked from a train in an unsettled area 300 yards past her station, after which she secured the help of a man to accompany her to the station, then sued for the fright and nightmares she allegedly subsequently suffered. The court determined that it was for the jury to decide if the fright was a proximate result of having to leave the train. 239

 Plaintiff also included *Bragg's Administratrix v. Norfolk & Western Railway Company*, 240 in her appellate brief. *Bragg's* cites approvingly *Hutchinson on Carriers*, which in discussing the subject of the right of a common carrier to eject females, or sick or intoxicated passengers, says: “Female passengers and passengers who are sick or suffering from some mental or physical infirmity necessarily cannot be ejected at times and places where the carrier should know that their sex or condition would especially expose them to insult or injury.” 241

 In response to Hines’s second argument, that Garrett had ceased being a passenger upon voluntarily departing the train, plaintiff argued that, by its verdict, the trial jury had implicitly determined Garrett’s decision to leave the train was not truly voluntary. 242 Findings of fact are not to be disturbed on appeal. Moreover, Garrett

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239 41 S.W. 831 (Tex. Civ. App. 1897); *Id.* at 832.
241 *Id.* at 595 (quoting J. Scott Matthews & William F. Dickinson, *A Treatise On The Law of Carriers As Administered In The Courts of the United States, Canada and England By Robert Hutchinson Hutchinson on Carriers* § 1083 (3d ed. 1906)).
242 *Brief in Behalf of Defendant in Error at 33.*
maintained that her decision to leave the train constituted the best exercise of judgment in a no-win situation created by the railroad.\(^{243}\)

D. The Virginia Supreme Court’s Decision

Strikingly, and in what surely constitutes a departure from prior Virginia common law, President Judge Joseph Luthar Keller,\(^{244}\) writing for the Virginia Supreme Court, rather summarily dismissed defendant’s argument that a subsequent criminal action by an unknown third party breaks the chain of proximate causation\(^{245}\) created by defendant’s negligence as a matter of law.\(^{246}\) In its very broad holding, the Virginia Supreme Court circumvented Hines’s clever argument that the soldier’s unforeseeable actions broke the chain of causation between the negligence in disembarking Garrett and the tramp’s somewhat-foreseeable behavior. Instead of focusing on the presence of tramps, the court

\(^{243}\) Id. at 36.

\(^{244}\) Judge Joseph L. 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. In better health, Judge Kelly filled the court vacancy as an associate Judge in March 1925. But his second term on the court was cut short by a horrible accident. On April 14\(^{th}\) Kelly accidentally fell and fatally shotgunned himself in the side descending the basement stairs to hunt for a rats. Chief Judge Kelly Killed By Accident While Seeking Rats, WASH. POST, April 15, 1925, at 3.

\(^{245}\) Despite the court’s announcement that it was adopting Garrett’s theory of the case, it actually adopted Hines’s: namely, that the negligence at issue was in disembarking Garrett from the train near Cameron Crossing. Garrett had argued consistently that the negligence at issue was in passing the train station and refusing to back up. The court announced its rule on proximate causation and damages, and the legal difference between causing an unforeseeable result and causing unforeseeable damages: “Foreseeableness is useful in establishing whether the act was negligent but does not measure liability for the negligence. Rather, the Defendant is liable for all consequences that flow naturally from the negligent act, whether the consequences were foreseeable or not. In determining whether the consequences flowed naturally, 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.” 108 S.E. 690 at 693-94, (Citing N & W Ry. Co. v. Whitehurst, 125 Va. 260, 99 S.E. 568, 69)).

\(^{246}\) Defendant’s argument here had been possibly ingenious, and certainly racially inflammatory (despite the fact that both the soldier and the tramp were identified by the plaintiff as Caucasians); but this ground for the defendant’s appeal was also supported by solid caselaw.
based its decision on other factors: the railroad’s elevated duty of care, the plaintiff’s age and sex, the secluded and unprotected character of the place\textsuperscript{247}, the time of day, and the type of people who frequented the crossing:

[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 and no prudent man, charged with her care would willingly cause her to do so.\textsuperscript{248}

The court recognized that intentional torts of third parties are ordinarily intervening causes.\textsuperscript{249} However, in this case, the court found an exception: if the railroad was negligent precisely because it exposed the unwilling plaintiff to dangerous criminals, then the acts of these very same dangerous criminals were not intervening causes.\textsuperscript{250}

Thus, if the railroad had been negligent by exposing the plaintiff to a slippery or rocky path, the acts of third party rapists would have been intervening factors. Where the negligence is to expose the passenger to a rapist, however, the harm was within the risk.

Despite this holding on the issue of proximate cause, the court’s discussion of Hines’s second major argument, Julia Garrett’s status as a passenger, made her proximate cause victory a hollow one. For the court also addressed Petitioner Hines’s alternative

\textsuperscript{247} The court specifically that a carrier is bound to know the character of a place where it discharges passengers as a matter of law. 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. 108 S.E. 690 at 694.

\textsuperscript{248} Hines v. Garrett, 108 S.E. 690, 694 (Va. 1921).

\textsuperscript{249} Id. at 694.

\textsuperscript{250} 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.”).
argument in support of his appeal, namely that Julia May Garrett’s decision to disembark constituted an assumption of risk and ended any duty owed to her by the railroad. On this point, the court held that the railroad’s duty extended until the passenger safely arrived at her destination station.\textsuperscript{251} However, a passenger could release the carrier’s duty by voluntarily disembarking from the train at another location. Certainly Julia May Garrett stepped off the train under her own power. But did she really have a “free” choice to do so? The court saw two possibilities in the evidence: either Ms. Garrett had no real choice whether to get off the train because she was forced into making a rash decision, or she knew exactly what she was doing and thus voluntarily released the railroad from its duty.\textsuperscript{252} The court quashed the verdict in Julia’s favor and remanded to the Circuit Court for determination of this narrow question. In providing guidance for the lower court on remand, the Virginia Supreme Court instructed:

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\text{[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.}\textsuperscript{253}
\]

Thus, the court remanded the case solely to determine whether Julia May Garrett voluntarily left the train.\textsuperscript{254} But the court assigned the costs of the appeal to Ms. Garrett. The fees totaled $679.09, in addition to the cost of the transcript.\textsuperscript{255}

\textsuperscript{251} \textit{Id.} at 692.
\textsuperscript{252} \textit{Id.} at 693-94.
\textsuperscript{253} \textit{Id.} at 693.
\textsuperscript{254} \textit{Id.} at 695.
\textsuperscript{255} Fairfax Circuit Court Minute Book 10, 1919-20, at 369 (1921).
IV. Aftermath.

In September 1921, Julia May Garrett’s case was remanded to the Fairfax Circuit Court. It sat untouched on the docket for several years most likely because Julia’s primary attorney, C. Vernon Ford, suffered from illness and eventually passed away in April 1922. Wilson Farr, now the Commonwealth attorney for Fairfax County, was working through C. Vernon Ford’s extensive outstanding legal affairs when he finally resolved Julia Garrett’s case. On December 1, 1923, perhaps after much cajoling from Mr. Farr, the plaintiff settled for $1000. Out of this sum, however, Julia Garrett paid court fees, attorney fees, doctor fees, and witness fees, which left her with at most $300.

After *Hines v. Garrett*, the Virginia Supreme Court has 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. *Hines* has been primarily used by later courts as an instance where a “special relationship” gave rise to a heightened duty of care: there the common carrier had duty to protect passengers from reasonably foreseeable third-party criminal acts. Since *Hines*, a similar special relationship has been found in an innkeeper/guest context and in an employer/employee context, but not for landlords/tenants, business owners/business invitees, or parole officers/parolees. As in *Hines v. Garrett*, in special relationship contexts Virginia courts have found that responsible party has a duty to protect the individual from reasonably foreseeable third-party criminal acts.

256 Fairfax Circuit Court Minute Book 10, at 394 (1919-1920).
258 108 S.E. 690 at 694.
259 See Taboada v. Daly Seven, Inc., 626 S.E.2d 428 (Va. 2006).
262 See Fox v. Custis, 372 S.E.2d 373 (Va. 1988) (holding that parole officer has no special relationship with parolee giving rise to a duty to control parolee’s conduct.)
foreseeable third-party criminal acts, and that a breach of this duty is the proximate cause of plaintiff's injuries, even where the intervening act is a criminal act.

Julia May Garrett’s life, however, moved forward. Not deterred by her assault by a man in uniform, in 1921 Ms. Garrett married another soldier, Ellis Lee Eustace. In 1922 they named their first son after his father Ellis, but called him by his middle name, Lee. In 1923 Julia’s stepfather, Charles Frinks, passed away while working as a janitor at the West End School in Alexandria. Julia’s mother, Rowena Frinks lived until 1954. In 1925 Julia May Eustace and husband Ellis had their second child, Robert Powell Eustace. But tragedy followed closely behind: Julia May’s husband died in 1926 of a stomach ulcer. Then Julia’s eldest son Ellis Lee enlisted in the Army in WWII as a skilled Railroad Brakeman. Ellis returned home safely, lived in Alexandria, and was employed by the RF&P at Potomac yard. He continued in the Navy, and seems to have lived until 1998. Meanwhile, Julia had remarried in the 1950’s, and became known as Julia M. Deavers. Records indicate that Julia Deavers may have died in 1980.

Wilson Farr, one of Ms. Garrett’s attorneys, later became Mayor of Fairfax. Before he died, Farr sold his farm to the Commonwealth of Virginia for use as a

263 Special Commissioner No. 2 at 47, 6-28A Account Books, Wilson Farr Collection, on file in the Virginia.
264 National Census, Fairfax County, 1930.
265 ALEXANDRIA GAZETTE, Feb 12, 1923, at 1.
267 ALEXANDRIA GAZETTE, September 6, 1926; Alexandria VA Death Records, Record location 221, WPA Project Administration Public Records Project 165-1-131-85.
268 US Army Enlistment Records, 3 April, 1943.
269 ALEXANDRIA GAZETTE, June 8, 1951.
271 ALEXANDRIA GAZETTE, June 8, 1951.
272 The Social Security Death Index lists Julia Deavers’s last residence 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.
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university. This farm is now the main campus of George Mason University. Toward the end of his life, Farr’s health caused him to retreat from the rigors of practice, leaving his partner Hardee Chambliss at the helm.\(^{273}\) Chambliss practiced for a short time with John A. Rothrock, but they divided their practice by 1964.\(^{274}\) Chambliss retired in 1970, and passed away shortly thereafter.\(^{275}\) Rothrock established his legacy as a prominent Fairfax County Judge, serving from 1954 until retirement in 1980.\(^{276}\) As for the defendant’s law firm, Barbour, Keith, McCandlish and Garnett has changed partners over the years but still operates in the City of Fairfax as Mackall and Gibb,\(^{277}\) billing itself as “The Oldest Continuous Law Firm in Northern Virginia.”\(^{278}\)

On January 1, 1952, Julia Garrett’s childhood home just outside Alexandria became part of Alexandria when that city annexed Fairfax County land reaching westward slightly beyond modern day Interstate 395, then known as Shirley Highway.\(^{279}\) Julia May Garrett’s old neighborhood on The Little River Turnpike, now Alexandria’s Duke Street, is home to a skateboard park, an assisted-living facility, and a McDonalds®. At the base of South Quaker Lane, at 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, home of a mini-golf course and a water park. On October 15, 2009, construction began to replace the original Cameron Run Bridge, built in 1904. The new two-track bridge replaced the original single-track bridge to

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\(^{275}\) *Retired Fairfax Lawyer Dies, Kin to CU Dean*, Wash. Post, Dec. 19, 1976 at 64.
\(^{277}\) E-mail from Mary Peterson, Granddaughter of Fairfax Shield McCandlish, 6:34 pm, Oct. 13, 2009.
\(^{278}\) http://www.mackgibb.com/pages/practxt.html (last visited June, 10 2010).
\(^{279}\) Appeals Court Authorizes Alexandria to Double in Size by adding Fairfax Land, WASH. POST, Dec. 4, 1951, at 1, 14.
facilitate more reliable Virginia Rail Express and Amtrak commuter trains. The new bridge was completed over Memorial Day Weekend in June 2010 when the old bridge was demolished, and the new bridge “rolled” into place.”