

18-66870  
No.

In the  
Supreme Court  
of the United States

Supreme Court, U.S.  
FILED  
SEP 12 2018  
OFFICE OF THE CLERK

HILDA T. KENNEDY and JOHN F.  
KENNEDY, wife and husband  
*Petitioners,*

*Petitioners,*

V.

FREDERIC A. POLLOCK(deceased); THE  
ESTATE OF FREDERIC A. POLLOCK;  
JOHN DOE; MARY DOE; ABC  
PARTNERSHIPS; and XYZ  
CORPORATIONS, jointly, severally  
And/or in the alternative

### Respondents

*On Petition for Writ of Certiorari to the  
Supreme Court of the New Jersey*

**PETITION FOR WRIT OF CERTIORARI**

Hilda T. Kennedy and John F. Kennedy, *Pro Se*  
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September 12, 2018

i  
**QUESTION(S) PRESENTED**

1. The federal courts allow the waiving of a transcription fee for pauperis filers in all cases. In 1989 the New Jersey Supreme Court wrote: "The Court's per curiam opinion did not state that Mrs. Dotson [*pauperis* petitioner] had a constitutional right [in civil cases] to a transcript at public expense, although, in his concurring opinion, Justice Pashman stated that such a constitutional right exists." [emphasis added] *Robinson v. St. Peter's Med. Ctr.*, 236 N.J. Super. 94 (1989) 564 A.2d 140:

Is a waiver of the fee for transcribing a trial court on appeal a constitutional entitlement?

2. Under the authority of *Robinson v St Peter's Med Ctr.*, 236 N.J. Super, 94 (1989), an indigent party appealing an adverse decision in which a constitutional right was abridged, may be entitled to have her fee for transcribing the trial waived:

Can New Jersey limit it's waiver of the fee for transcribing a trial court, on appeal, on a case by case basis?

3. Is the exorbitant fee, highest in the nation, for transcribing a trial court on appeal an illegal form of discrimination against *pauperis* petitions in New Jersey seeking due process protection?

## **PARTIES TO THE PROCEEDING**

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioners, who were plaintiffs and appellants below, are Hilda Tobias Kennedy, and John Fitzgerald Kennedy. Respondents, who were defendants and appellees below, are Fredrick A. Pollock (deceased); to the Estate of Fredrick A. Pollock; Counsel of Atlantic County.

TO: Ashor Brooks Chancey, Esq.  
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Attorney for Defendant  
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Estate of Frederic A. Pollock  
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TO: Counsel of Atlantic County  
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Atlantic City, New Jersey, 08401

**TABLE OF AUTHORITIES****CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

- The Fifth and Fourteenth Amendments to the United States Constitution which contain a due process clause.....1,9
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## APPENDIX

Appendix A: New Jersey Supreme Court Motion for leave to file waiver of transcript for indigent filers.

Appendix B: Reconsideration of Motion for leave to Stay pending *writ of certiorari* to the United States.

Appendix C: Wisconsin transcribing fees.

Appendix D: Washington DC transcribing fees.

**IN THE SUPREME COURT  
OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

None.

**JURISDICTION**

The date on which the highest state court decided my case was June 15, 2018. A copy of that decision appears at Appendix A. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

- The Fifth and Fourteenth Amendments to the United States Constitution which contain a due process clause.

## HISTORY OF THE CASE

- On September 5-7 2017, Hilda and John Kennedy, wife and husband had a trial in Atlantic City New Jersey for horrific personal injuries sustained in 2014 in Atlantic City after Hilda Kennedy was crushed by a 14,000 transportation vehicle in the process of returning home from purchasing Thanksgiving ingredients using a senior/disabled reduced fare ticket.
- Medical bills nearing half a million dollars were paid by Medicare. No issue of character, events, injuries or bills were in dispute at any time in court.
- Your petitioners made their case for liability, defendant, deceased, did not put any sort of case at all.
- The jury found no cause of action in a 7-1 verdict on September 7<sup>th</sup> 2017.
- A *pro se* notice of appeal filed in the New Jersey Appellate Court followed.
- Plaintiff were granted indigent status.
- The appeal cannot proceed without a trial court transcript. Under the authority of *Robinson v St Peter's Med Ctr.*, 236 N.J. Super, 94 (1989), an indigent party appealing an adverse decision in which a constitutional right was abridged, may be entitled to have her fee for transcribing the trial waived. This is done on a case by case basis.
- A motion to have the transcription fee waived was filed and denied.
- A motion to appeal the above was filed in the New Jersey Supreme Court because the fee for transcribing is too high. It was denied.
- A motion for a Stay pending the outcome of this *writ of certiorari* was filed and denied and an order expediting the transcript to September 28, 2018 issued (Appendix B, Exhibit C).
- A motion for reconsideration is currently under review (Appendix B) for Stay in the New Jersey Appellate Court.
- This writ of certiorari follows.

## STATEMENT OF THE CASE

This personal injury case was tried a year ago. In the incident, Hilda Kennedy was crushed a under a jitney and, among injuries, had 14 broken ribs and numerous other fractures (Appendix B, Exhibit A) as her husband, John Kennedy witnessed. Despite overwhelming evidence in plaintiff's favor, including an admission in an interrogatory that the decedent driver heard Mr. Kennedy bang on the side of the jitney before accelerating and crushing Hilda Kennedy, the jury split 7-1 in favor of the Defendant-Respondent. It is your petitioners' position that they were deprived of procedural due process, and hence a fair trial, due to three factors: a defective verdict sheet, a plainly erroneous jury charge, and failure to instruct the jury of the effect of the driver's death.

They have listened to the tape of the trial, and upon doing so, they discovered how such a miscarriage of justice occurred. In fact, the court instructed the jury to return this verdict, and it did so. In other words, the court instructed the jury to find in favor of the Defendant, and the jury followed the charge.

Prior to the jury charge the court stated: "I'm going to read you jury charges, and I do have to read it, because I have to make sure that I give you the correct charges." The court then stated it would give a copy of the jury charges to the panel to take back to the deliberating room, so it could refer back to them. The court then charged the jury: "Now I'm going to tell you about the principles of law governing this case. You are required to accept my instructions as the law..... Any ideas if what the law should be, or any statements by the attorneys as to what the law, may be, or must be disregarded by you if they are in conflict with this charge." The court then stated: "Mrs. Kennedy alleges that Mr. Pollock was negligent in the operation of his jitney, and his negligence caused her physical injuries. Mr. Kennedy alleges that as a result of his injuries sustained by his wife, Hilda Kennedy, he has also been caused to suffer damages."

The court then stated: "Frederick Pollock asserts that he was not negligent in causing the incident, and his conduct was not the proximate cause of any injuries suffered by Mrs. Kennedy, and he is not responsible for any of her damages."

The members of the jury needn't have given this last instruction any undue weight, which the court admonished it not to do, to take this instruction as a direction to find in favor of Defendant, that he "[was] not responsible for any of [my wife's] damages." This was so clear in the jury charge that at the time my Hilda Kennedy asked John Kennedy why the judge was telling the jury the defendant was not responsible for her damages. Indeed, the last charge attributed to the court consists of three independent clauses separated by commas and coordinating conjunctions. An independent clause expresses a complete thought, and the last complete thought consists of the fact that the defendant "is not responsible for any of her damages." This charge is in the form of a syllogism with two premises: (1) his conduct was not the proximate cause of any injuries suffered by Mrs. Kennedy; and a conclusion: therefore, (2) he is not responsible for any of her damages. The sentence is simply too long for the jury to connect the last clause to the first about what the Defendant asserts. Even if it contained "that" at the beginning of it, it would still be difficult for the jury to connect it to what Defendant asserted. It sounds simply like a statement of law the jury was bound to follow.

If this Court is unsure of what this affiant states, petitioners implore it to go to the taped copy. What the jury heard can leave little of no doubt that the court was instructing it to find for the Defendant against Hilda Kennedy. Further, the court instructed the jury that since the Defendant was dead, that case was brought against the estate. But it gave the jury no other instruction as to the legal effect of Mr. Pollock's death. I believe that this, too, influenced the jury is bringing back, so quickly a finding which inconsistent with the Defendant's admission and the weight of the evidence. The Defendant's answer to our interrogatory is instructive. It was not a yes or no question. In detail, in his own words, the Defendant stated that after Hilda Kennedy fell in the roadway, he heard me bang on his door. Then he accelerated. How could he possibly claim he didn't have time to stop? He never should have accelerated in the first place prior to checking his mirrors to make sure not to hit the elderly passenger who just left the jitney.

It is quite possible that the jury was led to believe, by the court's confusing charge, that the death of the Defendant fixed his assertion of non-negligence and lack of responsibility as facts which could not be attacked. Since John and Hilda Kennedy's best evidence in this case was the Defendant's damning admission of liability, this possible confusion of what effect Defendant's death had on the case is particularly troubling.

Putting my claims aside, the facts in this case should give the court pause. Hilda Kennedy, at age 82 at the time of the incident, had all of her ribs broken when the 15,000-pound jitney ran over her as she lay helpless in the road. The driver admitted that he heard banging on the door before he started driving the jitney. The jury found in favor of the Defendant. None of this makes any sense at all, no matter how the Defendant's attorney tried to spin the facts at the trial.

Finally, the jury might have been confused by the single question it answered in the negative or the jury verdict sheet. The question was: "1. Has the Plaintiff, Hilda T. Kennedy [,] established by a preponderance of the evidence that the Defendant Frederick A. Pollock was negligent." The clear meaning of these words is that it was up to Hilda Kennedy to prove negligence. In other words, it was up her testimony to show negligence.

It is established that Hilda Kennedy had difficulty in establishing anything as she could not be dispassionate in recalling specific facts as she lay in the road being rushed under a 15,000 vehicle, hearing her ribs crash being cracked, and not knowing if she would live or die. Plus, English is not her first language. The best proof of Pollock's negligence came from Pollock himself: The interrogatories. The next best proof came from the expert witness. And the third source of proof was the video. But it is admitted that Hilda Kennedy did not prove negligence. However, at the same time, it is clear that the plaintiffs did make out a case of negligence against Pollock through his submission, the testimony of the expert witness and the video. In contrast, the Defendant provided no evidence at all to the jury. He called no eye witness nor any expert witness. It is inconceivable that a properly instructed jury with a proper question put before it would not come back with a different verdict.

The attached order of the New Jersey Appellate court only provides until September 28 2018 to produce the transcript to this trial at the highest rate in the nation for transcription of a trial court plus have it expedited at almost double that amount (Appendix B, Exhibit B).

Hilda Kennedy and John Kennedy are both disabled, and their sole income are disability and Social Security payments. John Kennedy receives \$1,350 after deductions in disability payments Hilda Kennedy receives \$550 after deductions in Social Security payment. This just barely covers or rent of \$950, utilities, food and other necessary expenses such as prescription medications, we have no retirement of funds, stocks, estate of any other investments from which to draw liquid cash. If they are required to, unless someone will lend them the money, they will not be able to come up with the transcription fee of \$5,200 in time to appeal required by the New Jersey Appellate Court, and the manifest injustice done to them is permanent, as described here. It will stand on default, this is not due process.

Petitioners have contacted dozens of transcribers and have found one who gives them the best terms, but they will not be able to comply with this order as it stands due to having to pay for expedited service.

Clearly, the interests of justice require that a second set of eyes and minds review what was done, so hostility in the court below. But also, public policy is implicated here, in the extensive medical costs remain unpaid, it will be up to Medicare to cover them (Appendix A. Exhibit D). This is not in the public interest. The fact that the private insurance company involved in this case will be able to keep its money, likewise, serves no public interest.

Additionally, both petitioners are disabled, and Hilda Kennedy is a senior citizen, both living in Atlantic City. The jitney received both grants and subsidies from the federal government to operate for the benefit this segment of the population. It is in the public interest to oversee this case to completion by denying due process.

## REASONS FOR GRANTING THE PETITION

In 1989 the New Jersey Supreme Court wrote: "The Court's per curiam opinion did not state that Mrs. Dotson [*pauperis* petitioner] had a constitutional right [in civil cases] to a transcript at public expense, although, in his concurring opinion, Justice Pashman stated that such a constitutional right exists." [emphasis added] *Robinson v. St. Peter's Med. Ctr.*, 236 N.J. Super. 94 (1989) 564 A.2d 140. Yet for nearly 29 years New Jersey has not only not offered fee for transcribing the trial waived to all indigent filers but it has made the cost of a transcribing the highest in the country, making it more of a bar than a rational pricing practice.

While all federal and state courts provide *indigent* fee waiver for civil and criminal cases, only some states, like New York, and all federal courts offer fee for transcribing the trial waived for *indigent* individuals in civil cases, while others, allow only portions of the transcript to be used or allow the use of court audiotape, like Alaska, in certain instances.

Clearly, the reasons why the federal courts offer the fee for transcribing the trial waived are known to the United States Supreme Court to be a constitutional entitlement.

More too, while federal courts recognize this universal entitlement, only in New Jersey, can an indigent party appealing an adverse decision in which a constitutional right was abridged, may be entitled to have her fee for transcribing the trial waived on a case by case basis. Even though New Jersey recognizes this entitlement, it limits it by prejudice and preferential bias. All waivers are decided by the New Jersey Appellate Court on a case by case basis, which make this not only prejudicial but discriminatory for indigent litigants who cannot properly describe the constitutional protection adequately.

Regardless, the cost of court transcripts varies from state to state. Except for New Jersey most state pricing is within the Washington DC (1) pricing:

1. In Wisconsin by the law, for a transcript under SCR 71.04, a fee at the rate of \$1.50 per 25-line page for the original (Appendix C).
2. In Washington DC the cost of transcripts (per page) are: \$3.65 for Regular Delivery (30 calendar days for non-appeal and 60 calendar days for appeal), \$4.25 for Intermediate Delivery (15 calendar days), \$4.85 for Expedite (7 calendar days), \$5.15 for Express (3 business days), \$6.06 for Daily (9:00 am following business day), \$7.25 for Hourly (Approval Required), \$0.90 for Copy (Regular or Expedite Delivery) \$1.20 for Copy (Daily Delivery). (Appendix D)
3. In New Jersey Appeals effective until 2020 the standard and 1 copy (disc) are \$5.01 per page for 30-day; \$7.52 per page for 7 day; \$10.02 per page daily (Appendix B, Exhibit B).

By the three examples listed, not only does New Jersey not allow for fee waivers for transcribing trials for indigent civil litigants but it has the highest rate for transcripts in the United States and does not offer 14-day expedited service, only 7-day and daily rates which exceed the hourly rate delivery in Washington DC.

Once entered in the New Jersey Appellate Court part of R. 2:10 provides that “the appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate court.” This means that even when no party to the appeal raises a particular issue, the appellate court may raise it “where upon the total scene it is manifest that justice requires consideration of an issue central to a correct resolution of the controversy and the lateness of the hour is not itself a source of countervailing prejudice.” *Center for Molecular Medicine and Immunology v. Twp. of Belleville*, 357 N.J. Super. 41, 48 (App. Div. 2003) (quoting *In re Appeal of Howard D. Johnson Co.*, 36 N.J. 443, 446 (1962)).” This means that only New Jersey civil and family cases who can it get white glove justice. A relatively minimal cost for such an important service for a person of means and a denial of justice to those with no means; manifest injustice.

To restate, all indigent fliers have their filing fee waived and the fee for transcribing not waived (unless they can correctly describe their constitutional protection). More too, if no protection constitutional issue is shown, New Jersey has made it virtually impossible, due to high transcribing fees, for indigent filers to enter. Making three systems of justice in New Jersey appeals: (1) federal justice; (2) non-indigent justice; and (3) indigent justice.

Examples of this non-indigent, white glove treatment include: *Szczecina v. P.V. Holding Corp.*, 414 N.J. Super. 173, 185 (App. Div. 2010), where defense counsel made extensive disparaging remarks about plaintiffs and their attorney in opening and closing statements, but plaintiff's counsel never objected. The Appellate Division reversed for plain error, emphasizing that the trial judge had had a duty to intervene.”

The above is remarkably like our case except it was the judge who made remarks that prejudiced the jury. Our case could be a perfect example of a just system. This perfect justice is within our reach, easily provable; however, as indigent petitioners, we cannot enter because we were not able to describe our constitutional protections so the fee for transcribing could be waived; We are held at the gate of courthouse knowing we have an appealable issue which was always plainly obvious is now is even more obvious. This problem is made that much more unobtainable by the illogically high cost of the transcription in New Jersey.

Respectfully, since New Jersey offers fee waivers for some it must offer fee waivers for all otherwise the court is both prejudicial and discriminatory in its operation. Furthermore, this is not logical given the many low-cost methods of providing verbatim transcription or in the alternative, audio which can offer relief when a small portion of the record is needed for indigent filers at virtually no cost, like ours.

Notably, we did not learn of our constitutional issue until later since we did not have a transcript to prove what we had an inkling of happened at trial and only found out much later, after the appeal and motion for a fee waiver for transcription was entered that we could get and listen to the tape and point out our constitutional harm by affidavit, verbatim, to the Appellate Court (Appendix B). We were thus denied due process by such a plain error in an unjust verdict with the weight of evidence so overwhelming it is visible to the average person with the naked eye at the case vs the verdict. It could have been solved almost a year ago with white glove appellate court treatment but we cannot enter the appellate court to get its white glove overview due to our inability to explain the constitutional description barrier or the high cost of transcribing even though all we need to prove our case is a small portion of the record which is available now in audio.

Braking it down for analysis, the cost of transcribing is not forever fixed, nor does it have to be exorbitant as New Jersey: It could be as low as Wisconsin which would lessen the cost, but the average is Washington DC. At the very least, again, with today's technology use of the verbatim record is affordable to all. People need some sort of way to have a verbatim record that is reachable (audio) for indigent civil and family case filers in New Jersey and all states in the interest of justice. This is of importance to the public to the issue.

Realistically, it is respectfully submitted that this Court that the federal courts cannot operate in New Jersey and watch the white glove justice served in civil and family cases for the non-indigent fly in the face of indigent filers who are deprived of due process and humiliated by the outrageous cost of transcripts for which they cannot afford.

California decided that fee waiver for transcription must be provided to *pauperis* filers. "Michael Shipley, who argued before the California Supreme Court on behalf of prison inmate Barry Jameson who brought the underlying lawsuit in 2002, said, "I practice in state court all the time for nonindigent litigants and we're all sensitive to the fact that the courts don't have unlimited amounts of money. But the court was clear that the solution to that problem cannot exist to deny access to justice for poor litigants."

Clearly in the second largest casino city in the United States, a disabled, elderly, indigent filer in such a horrific incident who proved her case by undisputed expert testimony, a video and no case against her who's judge ordered the jury to come back in the negative must be given a this white glove treatment on appeal to protect her due process guarantee as well as the public coffers which shelled out nearly half a million dollars for treatment of her injuries: Indeed, a fee waiver for transcribing the trial court must be given to her and to all and not to some on a case by case basis or she must be allowed to use an audio which is within her budget so that a second set of eyes can give her white glove treatment to protect the public interest and the people's money. It is, of course, in the public interest to protect the disabled and elderly from any undue harm. The cost of waiving the fee for transcribing the trial is estimated to be \$5,200 (\$3,066<sup>1</sup> in Washington DC, \$1, 500 in Wisconsin, \$20 by audio) by court order. This is less than the interest on this public money for a month and almost Hilda Kennedy's entire income for one year. No one should lose the people's money of nearly \$500,000 by default of due process. Respectfully, this Court must apply Rule 1 to your petitioner writ if accepted:

### **Federal Rules of Civil Procedure**

#### **Rule 1. Scope and Purpose**

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

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<sup>1</sup> Since there is such a difference between New Jersey and most other state court transcript pricing it is clear that New Jersey has more of a bar than a rational billing price.

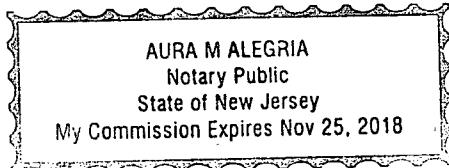
It is not possible for anyone to believe that any state court would operate in an opposite manner to FRCP Rule 1; Indeed, all state court procedures include the word *just* in their rules nucleus so why is New Jersey doing it knowing it is a constitutional entitlement? It is not rational for any court to deny access to poor litigants who have access when filing fees are universally waivable and virtually free methods are available for producing verbatim records of the trial court on appeal. No case by case determination should exist which divides justice served so why is New Jersey doing so?

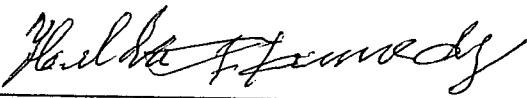
## CONCLUSION

The petition for a writ of certiorari should be granted.

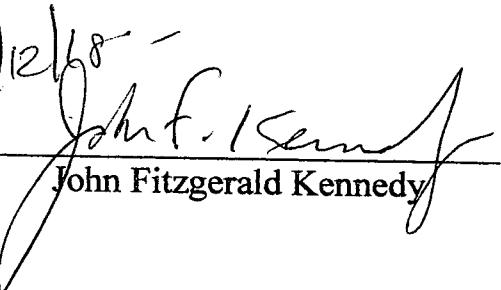
Respectfully submitted,

Date: September 12, 2018



  
Hilda Tobias Kennedy

  
Aura M. Alegria

  
John F. Fitzgerald Kennedy  
9/12/18