John Fitzgerald Kennedy &
Hilda Tobias Kennedy, *Pro Se*
2834 Atlantic Ave., NJ 08401
Atlantic City, New Jersey 08401
John@JohnFKennedyInHisOwnWords.com
(646) 630 - 5569

John Fitzgerald Kennedy &
Hilda Tobias Kennedy
husband & wife.
Plaintiff(s),

v.

Cooper Levenson, & Randoph C. Lafferty
Defendant.

SUPERIOR COURT OF THE STATE OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET: NO. ATL-003744-21

CIVIL ACTION

FIRST AMENDED COMPLAINT & JURY DEMAND with DOCUMENT DEMAND attached.

Plaintiffs, as their complaint, respectfully show:

1.) Plaintiffs Hilda T Kennedy (Hilda) and John F Kennedy (John, collectively Plaintiffs) at all relevant periods of time resided in Atlantic County, New Jersey.

2.) Plaintiffs Hilda Tobias Kennedy (Hilda) and disabled as defined by the Americans with Disability Act (ADA)[1].

3.) John Fitzgerald Kennedy are disabled as defined by the Americans with Disability Act (ADA)[2].

[1] Physical impairments that substantially limit major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, speaking, eating, sleeping, walking, standing, lifting, bending, speaking, learning, reading, concentrating, thinking, communicating, and working etc.

[2] Physical impairments that substantially limit major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, speaking, eating, sleeping, walking, standing, lifting, bending, speaking, learning, reading, concentrating, thinking, communicating, and working etc.

4.) Defendant Cooper Levenson (CL) is, upon information and belief, a duly formed New Jersey corporation engaged in a law practice. It may be a partnership. In any event, upon information believed, it consists of attorneys authorized by the State of New Jersey to practice before the courts of this state. On its website, it lists 27 areas of practice, one of which is personal injury. On the website, it claims 175 employees, which makes it the largest law firm in Atlantic County and one of the largest in the state. It has its principal place of business in Atlantic County, New Jersey.

5.) Randolph C. Lafferty (Lafferty or the Defendant), upon information and belief, is an individual who is admitted to the bar of New Jersey and authorized to practice law in this state. He is employed by the Defendant, and his acts with regard to this action were always authorized by the Defendant and performed and in the furtherance and in the scope of his employment.

6.) On or around December 2014, Plaintiffs duly retained Defendant to prosecute a personal injury case against the driver of a jitney bus. The incident occurred in Atlantic City, New Jersey. In the incident, the vehicle negligently ran over and crushed Hilda under its tires. John witnessed this incident and was within the zone of danger created by the jitney driver. Lafferty was the plaintiffs' attorney assigned to the case. A written retainer agreement was entered into at the hospital where Hilda was still recuperating and under a doctor's care after being crushed by the Jitney.

7.) In spite of a clear case of liability against the driver of the jitney bus in the underlying accident case (the underlying case), a jury in Atlantic County Superior Court rendered a defendant's verdict. This outcome was solely due to the Defendant's negligence in the prosecution of the Plaintiff's case. Defendant's rendition of service to the Plaintiffs fell well below what is expected of attorneys practicing personal injury law in the state of New Jersey.

8.) Defendant's negligence was interspersed throughout the various stages of the underlying action, however examining the acts which compose defendants' negligence, it can be discerned that defendants did not take its duty to the Plaintiffs seriously and nor did it take seriously its duty of care to the Plaintiffs, especially Hilda when considering the nature of the injuries inflicted upon her by the jitney driver.

9.) The facts and circumstances which constitute the negligence of Defendant can be seen in the record of the trial and in the discovery. Indeed, but for the acts, the jury would not have rendered the Defendant's verdict, and the verdict would have been in the plaintiffs' favor. Considering the severe injuries afflicted upon Hilda and the emotional distress inflicted upon both plaintiffs, a large verdict to them would have been rendered.

10.) The facts of the underlying case shall now be succinctly stated:

11.) Plaintiffs John F. Kennedy and Hilda T. Kennedy boarded a jitney a few stops from home.

The Jitney *failed* to stop at the designated stop. The Fire Department Chief designates the stops for safety reasons per Atlantic City Ordinance.

A few minutes later, at 3:44 p.m. on Pacific Avenue near the intersection of Rhode Island Avenue in Atlantic City, New Jersey, the Plaintiff Hilda Kennedy was run over by a 14,000 ton jitney (bus) after exiting it, causing her catastrophic injury.

12.) **Atlantic City Police Accident Report# 14-129221 indicated the following:**

- The accident event occurred November 17, 2014, at 3:44 p.m. on Pacific Avenue near the intersection of Rhode Island Avenue in Atlantic City, New Jersey.
- Mr. Frederick Pollock was driving a 2011 Jitney Bus. Mrs. Hilda Kennedy was an involved pedestrian.
- The posted speed limit on Pacific Avenue was 25 M.P.H.
- The accident happened on Pacific Avenue near the intersection of Rhode Island Avenue.
- There was heavy rain and wind at the time of the accident.
- The Jitney Association has video coverage of the passenger exiting the bus.
- Mr. Pollock's Jitney bus came to a stop on Pacific Avenue near the intersection of Rhode Island Avenue and first discharged Mr. Kennedy. Mrs. Kennedy, an elderly passenger, then slowly followed her husband off the Jitney bus. Mr. Pollock without assuring Mrs. Kennedy was safely on the sidewalk pulled forward from a stopped position and ran over Mrs. Kennedy. The collision caused serious injuries to Mrs. Kennedy.

13.) **Here are the facts:**

- Mr. Pollock, driving the 2011 Ford Jitney bus, had a clear and unobstructed view of Mrs. Kennedy as she slowly walked down the steps and departed his bus as seen in the security video tape found in and depicted by photograph #9.

- Based on the exterior bus measurements, Mr. Pollock pulled his Jitney bus forward approximately 104.5 inches (8.7 feet) after Mrs. Kennedy departed the bus and eventually ran her over with the rear tandem wheels.

- The following is an applicable Atlantic City regulation that was violated by Mr. Pollock in the operation of his jitney bus the day of the accident, ultimately leading to the serious injuries of Mrs. Kennedy.

- Atlantic City Ordinance Section 233-41 (O) which provides as follows:

- "It shall be unlawful for any jitney to stop for the purpose of receiving or discharging passengers within 10 feet from the intersection of streets unless in the process of legally passing another jitney, and in all cases such embarking and disembarking passengers shall be at a point as near the **curb as may be practical le**."

- The video of the jitney bus clearly showed that it was nowhere near the curb for Pacific Avenue when discharging Mrs. Kennedy. When Mrs. Kennedy fell, she was positioned between the jitney bus and the curb due to the large gap between the Jitney and the curb.

14.) **Here are the relevant ordinances:**

- The following are applicable Commercial Driver's License (CDL) recommendations that Mr. Pollock did not follow during the operation of his jitney bus the day of the accident ultimately leading to the serious injuries of Mrs. Kennedy.

Commercial Driver's License Manual Section-2 Seeing:

- ***2.4*** — Seeing To be a safe driver you need to know what's going on all around your vehicle. Not looking properly is a major cause of accidents.

- ***2.4.2*** — Seeing to the Sides and Rear It's important to know what's going on behind and to the sides. Check your mirrors regularly. Check more often in special situations.

15.) **Here is what the video shows:**

- The security video tape along with audio showed the Jitney bus traveling eastbound on Pacific Avenue approaching the collision location prior to the intersection of Rhode Island Avenue. The Jitney bus came to a stop within the outer travel lane of Pacific Avenue before the intersection of Rhode Island Avenue in an attempt to discharge passengers during inclement weather. Mr. Kennedy (Mrs. Kennedy's husband) first departs the Jitney bus at approximately 15:41:42 hours with Mrs. Kennedy walking behind him as seen in photograph #10 (in the Mediation Brochure *EX. A*).

- Mrs. Kennedy, walking with an unsteady walking pattern, followed her husband and started to depart the Jitney bus following her husband at approximately 15:41:5 I hours as seen in photograph #11 (in the Mediation Brochure *EX. A*).

- The Jitney bus, operated by Mr. Pollock, pulled forward approximately 8.7 and ran over Mrs. Kennedy at approximately 15:42.10 hours with Mr. Kennedy shouting at Mr. Pollock as seen in photograph #12 (in the Mediation Brochure *EX. A*).

- The only expert conclusions contained within the body of this report, are based upon materials reviewed, his professional education, training and experience, and are held within a reasonable degree of scientific certainty and may be summarized as follows according to his report:

> A 2011 Ford I itney bus, operated by Mr. Pollock was traveling eastbound within the outer travel lane of Pacific Avenue approaching the intersection of Rhode Island Avenue in Atlantic City, NJ. Mr. Pollock's Jitney bus came to a stop on Pacific Avenue near the intersection of Rhode Island Avenue and first discharged Mr. Kennedy. Mrs. Hilda Kennedy, an elderly passenger, then slowly followed her husband off the bus. Mr. Pollock without assuring Mrs. Kennedy was safely on the sidewalk pulled forward from a stopped position and ran over Mrs. Kennedy.
>
> Mr. Pollock had a clear and unobstructed sightline toward the location of Mrs. Kennedy after she departed the bus. He failed to view Mrs. Kennedy before pulling forward and running her over.

By using his properly positioned passenger side exterior mirrors, Mr. Pollock would have a clear and unobstructed sightline toward Mrs. Kennedy. Mr. Pollock failed to properly use his exterior mirrors, causing the collision

16.) **Expert Bill Analysis:**

The hospital and provider billing was analyzed to determine the reasonableness and necessity of the charges. Enclosed, please find a work sheet which details the charges by bill with a determination of the reasonableness and necessity of the charges and if any adjustments should be made. The sources for usual and customary charges included Medical Fees in the United States for South Jersey and American Hospital Directory. The summary below will total the re-priced (for usual and customary) bills by the provider:

a) **Egg Harbor Care Center-** *This charge would be reasonable for subacute rehabilitation for a two-and-a-half-week period. The average daily charge was $620.00/day. Total reasonable chargcs-* **$46,552.00**
b) **Shore Memorial-** *This charge would be reasonable for a one day admission for irrigation and debridement procedure. Total reasonable charges-* **$15,191.00**
c) **The Plastic Surgery Center-** *The charge for an initial visit was higher than anticipated for the C.P.T. code used. Thc total adjusted and reasonable charge-* **$212.25**
d) **Mid Atlantic Rehabilitation-** *Charges related to office visits and EMG/NCS studies were reasonable. Total reasonable charges-* **$1025.00**
e) **Advanced Anesthesia Associates-** *Charges related to anesthesia for irrigation and debridement procedure aré reasonable. Total reasonable charges-* **$2268.00**
f) **South Jersey Infectious Diseases-** *Charges for office visits are reasonable. Total reasonable charges-* **$690.00**
g) **Dr. Previti-** *Charges for office visit and vascular studies are reasonable. Total reasonable charges-* **$1430.00**
h) **Salartash Surgical Associates-** *Charge reasonable for office visit. Total reasonable charge-* **$259.00**
i) **Quality Medical Billing-** *Charges for nursing home medical care and outpaticnt medical care are reasonable. Total reasonable charges-* **$1400.00**
j) **Dr. Daneshvar-** *Charges related to hospital care are reasonable. Total reasonable charges-***$750.00**
k) **Dr. Sturr-** *Charges related to. initial rehabilitation hospital evaluation are reasonable. Total reasonable charge-* **$298.00**

l) **Bacharach Rehabilitation Physical Therapy- evaluation** *charges were higher than anticipatcd and were adjusted to usual and customary. Therapy charges were reasonable. Total reasonable charge-* **$3950.00**

m) **Bacharach Rehabilitation Acute Rehabilitation- charges** *for acute inpatient rehabilitation were reasonable. Total reasonable charges-* **$45,176.05**

n) **Bacharach Rehab ilitation Physician Care-** *charges for physician hospital care were reasonable. Total reasonable charges-* **$2958.00**

o) **AtlantiCare Regional Medical Center Medical Transport-** *charges for transportation were reasonable. Total reasonable charge-* **$75.00**

p) **Shore Orthopedics-** *Charges for open reduction of the shoulder and rotator cuff repair were higher than anticipated based on the C.P.T. codes used. Other surgical, office visit, and x-ray charges were reasonable. Total reasonable charges-***$19,570.88**

q) **Atlantic Cardiology-** *Charges for cardiac evaluation and echocardiogram were reasonable. Total reasonable charges-***$1266.00**

r) **ARMC Anesthesiologists-** *Charges for anesthesia for orthopedic procedures were reasonable. Total reasonable charges-* **$8600.70**

s) **ARMC Trauma-** *Charges for critical care and hospital care were reasonable. Total reasonable charges-* **$1987.00**

t) **Atlantic Medical Imaging-** *Charges for professional lees for x-rays, C.T. scans, M.R.I., ultrasound, and arterial studies were reasonable. Total reasonable charges-* **$6,482.00**

u) **AtlantiCare Regional Medical Center-** *Charges for hospital admission which included three days in the I.C.U. wei-e reasonable and related to the motor vehicle accident. Total reasonable charges-* **$267,116.42**

v) **AtlantiCare Regional Medical Center Mobile I.C.U.-** *charges for mobile E.M.S. for a critically injured patient were reasonable. Total reasonable charges-* **$3254.00**

w) **Exceptional Medical Transport-** *charged for transportation were reasonable. Total reasonable charge-* **$390.46**

Minimum Total Charges Related to November 17, 2014 Motor Vehicle Incident- $430,901.76 excluding additional costs.

17.) For organizational purposes only, the acts of negligence of the Defendant will be given in this complaint in rough chronological order. It should not be presumed that the order of the acts is in any way a determination of their importance in the Defendant's overall negligence which caused the trial jury to render a defendant's verdict.

18.) During the disclosure in this case, Hilda was deposed by the attorney for the jitney driver. It is widely believed that disclosure is the most significant stage of any civil case: the Defendant's performance in this stage of the case fell well below what would be expected of an experienced personal injury attorney practicing in the state of New Jersey.

19.) Initially, Defendant completely failed to prepare either Hilda or John for their depositions. This was clearly noted by the defense, who called Laferty out on the fact that he did not prepare his client for deposition (-seen clearly in the following two pages). Depositions are difficult. There is no judge to whom one may object to an improper question. Plaintiffs would learn, too late, that Lafferty believes in never objecting no matter how improper an attorney's question and no matter how abusive and attorney's conduct may be as seen below.

20.) Lafferty so poorly prepared Hilda for her deposition that the Defendant's attorney, Chancey, stated at pg. 147 (below): "...that your client is not prepped and is giving bad testimony that's devastating to your case," For the following reason, this is extraordinary.

the courtesy to allow me to state my position.

M.R. CHANCEY: I understand your position. Your position is --

M.R. LAFFERTY: Counsel--

M.R. CHANCEY: -- that your client is not prepped and is giving bad testimony that's devastating your case.

M.R. LAFFERTY: Counsel, that's totally inappropriate. It's an 84 year old woman, who you've been peppering now for four hours.

M.R. CHANCEY: With a big lunch break in the middle.

M.R. LAFFERTY: With a 32 minute lunch break in the middle. Now, Counsel --

M.R. CHANCEY: If she needed more time, we could have had more time. Do you want to come back next week?

M.R. LAFFERTY: Let me state my objection.

M.R. CHANCEY: Your objection was easily stateable. Go ahead and do it.

M.R. LAFFERTY: Well, if you would extend me the courtesy to speak, I will.

Page 148

You're harassing an elderly woman who is obviously --
M.R. CHANCEY: No --
M.R. LAFFERTY: Counsel, stop it.
M.R. CHANCEY: I'm not going to let you put on the record you say I'm harassing her.
I'm not harassing her at all. I'm asking her questions.
M.R. LAFFERTY: Counsel, you are.
M.R. CHANCEY: And what is the nature of the harassment?
M.R. LAFFERTY: Let me state --
M.R. CHANCEY: Put it on -- let's get a judge on the phone so you can explain to the Judge what harassment it is because that is --
M.R. LAFFERTY: Counsel --
M.R. CHANCEY: Do you want to talk about professional, you're accusing me of harassment because I'm asking your client questions.
M.R. LAFFERTY: And you're not allowing me to speak.
M.R. CHANCEY: Right. Because you're accusing me of harassing somebody for having

21.) According to experienced attorneys, although the conduct of attorneys at a deposition can often resemble that of pre-k3 students, an attorney is loath to call out and embarrass his adversary in front of his client.

22.) This is based solely upon the principle of professional courtesy. Attorney A does not do this to attorney B only because he doesn't want it done to him.

23.) For Chancey to have done this to Lafferty might surely be an unprecedented event in this county and state.

24.) Moments later, realizing how badly the deposition of his witness is going, Lafferty accuses Chancey of "prepping" and "harassing an elderly woman."

25.) This is absurd. Hilda, as stated, is the primary witness against Chancey's client. He is allowed to ask her questions, no matter how uncomfortable they are to her, as long as they seek admissible evidence or facts that can lead to questions that elicit admissible evidence.

26.) It is nothing less than bizarre, though, that this would be the hill upon which Lafferty makes his final stand, while at the trial, he allowed Chancey to ask Hilda, twice, accused, finally from his slumber, he objected.

27.) These first negligent acts show what the overall basis of Lafferty's failure to perform as one would expect an experienced New Jersey personal attorney to do: there was no cohesive strategy for the entire case needed to have been followed. Rather, Lafferty merely careened from one error to the next resulting in catastrophe for his clients. Nor did he ever understand his duty to his clients, nor the nature of adversarial court proceedings. Instead, he simply went along to get along. He went with the flow. He failed in his duty to his clients.

28.) Not only did he fail in his duty to his clients, but he also failed in his duty to the civil justice system, which requires an attorney to do anything and everything in his power to uncover the truth in a trial. But this presumes that an attorney will have a single-minded loyalty to his client(s). It is through this adversarial system that the truth can be uncovered. But, only if each of the attorneys in the case is fighting like the dickens for their client. This was not the case in the underlying case. The truth did not emerge, and the jury rendered an incorrect unjust verdict because Lafferty did not fight for his clients.

29.) Similar to Lafferty's failure to prepare his clients for discovery, Lafferty wholly failed to prepare his witnesses-clients for trial. Again, this is a practice, preparing witnesses for trial, that a reasonably-competent personal injury attorney in this state would perform for any important witness expected to testify at trial. It is inconceivable that an attorney would not do this for his own clients, especially where, as here, they would have been delighted to meet with the attorney at his office. Again, Lafferty stated that it was his practice to never prepare a client or non-party witness for more than one or two hours just before trial. How bizarre the practice is, nothing less than a recipe for disaster. -Hilda went to Court on her own to desperately understand the process of how things were; Laferty called her in to scold her, saying he knew people in the Court that informed him of her going. She does not have to go to Court; he has everything under control. Yet, he still failed to meet with his clients more than that single time two days before trial to prepare them for the depositions or trial. This is inexcusable.

30.) The results of this omission proved to be disastrous. Initially, the proper strategy would have been for John Kennedy, the husband of the injured Plaintiff, to have described the incident he witnessed from a distance of several feet. He saw everything from a decent vantage point. Additionally, he is an extremely bright man with an excellent command of English.

31.) Rather, at trial, the Plaintiffs' attorney put the burden on Hilda, who wound up under the wheels of the jitney bus, to describe the incident. Certainly, as a witness to the incident, John's vantage point was much better than Hilda's. Had this been the case, the burden in cross-examination would have fallen upon John and not Hilda. This proved to be hugely significant.

32.) Initially, John is a native English speaker, Hilda, who arrived here in her 20s, is not. Her facility in English is not good. On direct examination, these facts would have allowed Plaintiff's story to be stated much more clearly.

33.) Additionally, this would have obviated the abusive behavior of the Defendant's attorney at the trial of the underlining case (the trial). This unchecked abuse of that Defendant's attorney will be discussed after one last point is made regarding the failure of Lafferty to prepare his client-party-witnesses for the trial.

34.) Although it shouldn't have been as important as it was, Lafferty's failure to prepare his witness led to a yawning gap in their styles on the witness stand. John an affable master of ceremonies, was a hale fellow well met. Hilda, on the other hand, waxed lachrymose. Although content is more important than style, the clashes of styles of these two witnesses confused the jury to no end. This led the jury to disbelieve the two plaintiffs' testimony. Apparently, when the jury filed on the deliver its Defendant's verdict, it was laughing.

35.) As stated before, the attorney for the insurance carrier for the jitney driver was abusive to the frail, elderly, severely injured Hilda as he learned he could do in his deposition of her. He used her lack of English skills as a sword rather than a shield. His abuse of her is, perhaps, sui generis in the in courts of this state. Yet Lafferty did absolutely nothing!

36.) Specifically at the trial, the Defendant's attorney fixated on two questions, both of which he asked approximately 20 times each and which Hilda answered, yet Lafferty failed to object to this abuse of his client witness. This negligence, in turn, will lead to another area of negligent conduct, which will also be discussed.

37.) Here are the questions in the first series.

(Beginning at page 48 of the September 7, 2017 transcript, Chancey asks Appellant Hilda if she was able to step on the sidewalk after exiting the Jitney an unbelievable 18 times, despite Appellant's own objections on the question's initial reiteration, and answering it on the fourthreiteration):

Q. Okay. Were you able to step up onto the sidewalk ..? (T3,48,6-7)

Q. [ ] My question pertains to.... were you able to get up on the sidewalk?

A. You asked me that before. (T3,48,14-19)

Q. [ ][D]o you have a specific memory on that day of being able to get to the sidewalk....? (T3,48,15)

Q. My question really pertains to... whether you were able to then move...up onto the sidewalk? (T3,49,6-8)

Q. Were you then able to step up onto the sidewalk.:.?

A. Yes (T3,49,23-25)

Q. Okay. So you were. You did get up onto the sidewalk. (T3,48,1-2)

Q. Okay. But were you in the street, were you on the sidewalk? (T3,49,12-13)

Q. Okay. Were you on the sidewalk? (T3,49,15)

Q. Were you on the curb? (T3,52,22)

Q.-Okay. So, the curb and the sidewalk, you were on neither the curb nor the sidewalk. (T3,52,25- 53, 1)

Q. Okay, So were you still in the roadway? (T3,53,6-7)

Q. And you're telling us that you were in the roadway at the moment that the Jitney caused you to fall. And so my question for you is were you unable to get from the Jitney into the roadway and up onto the curb and sidewalk.: (T3,53,14-18)

A. I -- you are confusing me because you are asking the same thing and the same thing and- - (T3,54,1-2)

Q. My question simply is when you exited the Jitney, were you able to step into the roadway and then up onto the sidewalk before the Jitney moved? (T3,54,5-8)

A. Yes.

Q. And you're telling us that you were in the roadway at the moment that the Jitney caused you to fall. And so my question for you is were you unable to get from the Jitney into the roadway and up onto the curb and sidewalk.: (T3,53,14-18)

A. I -- you are confusing me because you are asking the same thing and the same thing and- - (T3,54,1-2)

Q. My question simply is when you exited the Jitney, were you able to step into the roadway and then up onto the sidewalk before the Jitney moved? (T3,54,5-8)

A. Yes.

Q. Okay. And so ma'am, I -- at this point, I think it's unclear whether you were standing on the sidewalk or in the roadway when the Jitney caused you to fall as you said it did.

MR. LAFFERTY: *Objection* (T3,54,9-13)

(This is trial by ordeal; this is torture. Please also note as the objectionable use of "us" as if the jury panel and Chancey were on the same team, rather than the correct and proper "the jury." This was not an accident, its significance will be fleshed out shortly. -No objection?)

-

38.) Here is the second series of abusive questions:

Q. Ma'am, do you know how far, can you estimate in your mind how far from the sidewalk the Jitney was when it stopped? (T3,54,20-25)
Q. In the middle of the street? (T3,54,11-24)
Q. [ ] [C]an you estimate how far from the sidewalk, from the curb he was? (T3,53,1-3)
Q. Okay. Can you estimate in your head how far, it was in terms of feet? (T3,55,7-8)
Q. [ ] [H]ow many steps did you have to take to walk to the sidewalk? (T3,55,10-12)
Q. [ ] - - how many steps did you have to take to walk to the sidewalk? (T3,55,17-18)
Q. How many - -
Q. [ ] [H]ow many steps did you have to take to get to the sidewalk?
A. I think 4 or 5. I don't know. (T3,55,22-24)
Q. You had to take 4 or 5 steps to get to the sidewalk? (T3,55,25 — 56,1)
Q. [ ] Do you recall that it was 4 or 5 steps to get to the sidewalk?
A. Yes.
Q. Okay. Did you take the 4 or 5 steps to get to the sidewalk and step up onto the sidewalk? (T3,56,8-9)

Q. [ ]My question is whether you took the 4 or 5 steps to get to the sidewalk.:? (T3,56,12-15)
Q. You don't know if you did or not? (T3, 56,17)

(Respondent's client crushed her under his 15000-pound bus. It's beyond cruel for the attorney to play upon this fact, confuse the witness, and create the expectation in the jury that she was not being truthful, and he was the only one who could wring the truth out of her. Worst, she had no defender, no one to say this is not okay to the jury.)

39.) However, not only were these unchecked questions above abusive of Hilda, but, because it was unobjected to (and, hence, a juror could believe it was reasonable), it made Hilda look as if she were not speaking the truth and the Defendant's attorney had to drag it out of her. On the other hand, if John Kennedy had given the narration of the accident, he, himself, would have strenuously objected to the Defendant's attorney's abusive line of questioning. He probably wouldn't have dared to do this abusive questioning had not Hilda been the witness.

40.) Hilda, victimized by being run over by the jitney bus, was victimized again at the trial. She was victimized by a conspiracy of silence between the two attorneys and the Judge, who also remained mute during these disgusting displays.

41.) But wait. There's more. The worst is yet to come.

42.) Lafferty, many of many firsts, none of them good, has already introduced the reader to his doctrine of "no objection to the adversary." I dare say that this has never been encountered in our system of common law, which dates back to 1066 and the Battle of Hastings.

FILED, Clerk of the Appellate Division, September 25, 2018, A-000845-17

MR. LAFFERTY: I think the only modification is to remove comparative negligence, proximate cause on comparative and the allocation.

THE COURT: Yeah. So that comes out. Okay. So I got some work to do.

MR. CHANCEY: Three, four --

MR. LAFFERTY: We all have some work to do.

THE COURT: Yeah. Yeah, 3, 4, 5.

MR. LAFFERTY: I'm glad you gave us the 15 minutes.

THE COURT: Yeah. 3,4,5 comes out.

MR. CHANCEY: Yeah.

THE COURT: And then the medical expenses which is not to exceed the -- what's the total amount?

MR. LAFFERTY: Not to -- can I approach, Judge?

THE COURT: Yeah.

MR. LAFFERTY: Not to exceed this number.

THE COURT: 439,0176. All right.

MR. LAFFERTY: And Judge, I only had one other application. And I didn't interrupt Mr. Chancey in his opening but he kept referring to experts as hired guns. And I believe that's inappropriate. I would direct the Court's attention to Brady v. Pulgar, P-U-L-G-A-R. It's an unreported 2009 Appellate

FILED, Clerk of the Appellate Division, September 25, 2018, A-000845-17

Division decision. And basically what the Court said there, looked at several of those cases, and there's a lot of cases on this issue, believe it or not.

MR. CHANCEY: All of which were called to my attention before now.

MR. LAFFERTY: But my argument, Judge, is if you look at that decision what it says is there has to be, first of all, some evidence that they're a hired gun. We have no evidence -- in some of those cases, in Brady it said it's inappropriate comment but it's not plain error.

THE COURT: Okay.

MR. LAFFERTY: And the other cases that looked at the issue --

MR. CHANCEY: Do you want me to not say they're hired guns?

MR. LAFFERTY: That's all.

THE COURT: Do you want me to make any --

MR. LAFFERTY: No.

THE COURT: -- give them any instruction with regard to his opening?

MR. LAFFERTY: No.

THE COURT: But you just --

MR. LAFFERTY: No.

THE COURT: Okay.

MR. LAFFERTY: And I would have never have interrupted him on it either, to be honest with you, because I think that's --

MR. CHANCEY: Because he didn't know at that point.

MR. LAFFERTY: No, I think it's inappropriate. I just don't interrupt attorneys.

MR. CHANCEY: Um --

MR. LAFFERTY: That's the only thing I'm asking.

MR. CHANCEY: Let's be clear about what we're talking about here. I won't call them hired guns and make a big deal out of it. But I anticipate that you're going to point out that I did not retain an expert and so I would think that I would have the right to say Mr. Lafferty retained an expert for the purpose of attempting to show that my client was in some way negligent. Are you saying I can't refer at all --

MR. LAFFERTY: Oh, no.

MR. CHANCEY: -- to having hired the expert or calling them hired guns?

MR. LAFFERTY: Hired guns.

MR. CHANCEY: Okay. I will not use the words hired, and I can't think of any reason to use the word gun in a closing.

43.) But as loathsome as the above may be, the absolute height of his negligence and lack of due care, or any care at all to his clients, John and Hilda, is manifested in his failure to object to the trial court's malign instruction on the charging of the jitney driver's negligence to the jury at the trial of the underlying case.

44.) In short, the actual charge to the jury on the driver's negligence (the actual charge) differed materially and significantly with the charge agreed to at the charging conference (this agreed to charge).

45.) In fact, the actual charge was an instruction to the jury to deliver a directed defendant's verdict on the issue of negligence.

46.) Here is the first iteration of what would eventually turn into a "Frankenstein's monster" charge. It is on the issue of Defendant's liability.

> **The Court:** So, Mr. Frederick Pollock asserts that he is not negligent in causing the incident. Right?
>
> *Trial, September 7, 2017, p 66, lines 3-5.*

47.) This charge is fundamentally okay, but an estate attorney would have insisted on the word "accident," It was no incident. Indeed, the Court may as well have referred to it as an "event" or "occurrence," which are definitions of "incident".

49.) But then Chancey changes the charge:

> ***Chancey:*** "He was not negligent in the operation of jitney and any negligence on his part was not the proximate cause of the accident, of the incident" *Id at lines 12-17*

50.) Now, any reasonably intelligent individual could have figured out this charge is confusing to a jury. How can there not be negligence and still be negligence which was not a proximate cause of the accident? Lafferty should have, but didn't, clear this mess up at the first instance.

51.) Lafferty goes with the flow.

Lafferty: "I agree with the crux of the defense." *Id at lines 18-19.*

52.) Yet somehow at the actual charging of the jury, this instruction on Defendant's negligence was given:

The Court: "Frederick Pollock assets that he was not negligent in causing the incident [,] and that his conduct was not a proximate cause of any injury suffered by Mrs. Kennedy, and he is not responsible for any of her damages." *Id at p. 120 lines 19-23.*

53.) First of all, this charge, which in actuality was an instruction for a directed verdict, in Defendant's favor, is wholly and materially different from either of the two agreed-to charges.

54.) Yet Lafferty failed to object or even bring this issue to the Court's attention.

55.) When heard on the audio, the charge is even more damming as the Judge pauses slightly before stating the third independent clause, "and he is not responsible for any of her damages." This informs the jury how to vote on the issue of Defendant's liability.

56.) And so they voted. Fredrick Pollock was not liable for any of Hilda's injuries. What else could they have done? The Judge told them to do so.

57.) Significantly, in a 25-page charge, the charge on the issue of the driver's negligence is on the third page. It is the first substantive charge the Court gave to the jury.

58.) So, even as the Court continued to the end of the charge, 22 pages later, these words were echoing in the ears of the jury panel *"and he is not responsible for any of her damages."*

59.) Hilda, even with her poor comprehension of English, immediately knew something was wrong and elbowed her husband.

60.) Yet, Lafferty blightly sat there as the Judge blew up his case, his most costly error.

61.) Two more matters must be mentioned, although plaintiffs are presently going through the trial transcripts to locate further evidence of Lafftery's negligence.

62.) Lafferty failed to spend an hour or so to file a motion for a new trial. This is done as a matter of course when an unfavorable jury verdict is rendered. It was not done in the underlying case, though.

63.) This error was costly as well.

64.) Plaintiffs attempted to appeal the verdict, but Lafferty's omission foreclosed the opportunity to argue to the appellate Court the weight of the evidence favored the Plaintiff (as it surely did, the Defendant had not one witness or expert) and a new trial should be ordered.

65.) Finally, in two instances, Lafferty, a New Jersey certified trial attorney, demonstrated his lack of knowledge as to what hearsay is.

66.) At one point, at trial (the first day of trial outlined page 6), Lafferty stops playing a video of the accident alarmed by a comment by a passenger in the Jitney as hearsay.

FILED, Clerk of the Appellate Division, September 25, 2018, A-000845-17

you do have a full day. I think after Dr. Islinger Mr. Kennedy's going to testify and then that might take the whole morning. And then we'll do -- the afternoon is full as well. All right? Thank you so much.

MR. LAFFERTY: Judge, can we dim the lights?

THE COURT: We can't dim them but we can turn them off, like yesterday.

MR. LAFFERTY: Okay.

THE COURT: Yeah.

MR. LAFFERTY: Judge, plaintiff would call Dr. Richard Islinger.

(Video Testimony of DR. RICHARD ISLINGER played in open court from 9:10 AM to 10:19 AM. Not transcribed)

THE COURT: That's it, right?

MR. LAFFERTY: Yes. That concludes the video, Judge.

THE COURT: Okay. Do we want to take the morning break?

MR. LAFFERTY: Yeah.

THE COURT: And then we'll get set up. So 15 -- remember don't talk about the case until it's over.

(Jury exits)

THE COURT: Okay. Be seated. So I'll see you back in 15 minutes.

MR. LAFFERTY: Thank you, Judge.

FILED, Clerk of the Appellate Division, September 25, 2018, A-000845-17

(off the record from 10:20 AM to 10:43 AM)

THE COURT: Okay. So Forrest was bringing the jury down. Are we ready for that?

MR. LAFFERTY: Yes, ma'am.

THE COURT: Sounds good.

(pause)

THE COURT: So Mr. Kennedy, and then anybody else before lunch or --

MR. LAFFERTY: I suspect that will be lunch break.

THE COURT: Okay. He's going to be on like an hour and a half? Okay.

(pause)

MR. LAFFERTY: Judge, we might have one issue. I don't know if we do or we don't. On the video I had it stopped at a certain point in time because after that there are certain hearsay statements by passengers, unidentified passengers --

THE COURT: Okay.

MR. LAFFERTY: -- about fault and responsibility and such.

THE COURT: Okay. Hold on one second. Okay.

MR. LAFFERTY: And I guess this would be a motion to likewise restrict that playing.

THE COURT: Yeah.

FILED, Clerk of the Appellate Division, September 25, 2018, A-000845-17

MR. LAFFERTY: To likewise restrict on cross-examination the playing beyond that point as well.

THE COURT: So did it get played yesterday?

MR. LAFFERTY: Not beyond.

THE COURT: Okay. So once they all started talking they, it stopped?

MR. LAFFERTY: I had it stopped.

THE COURT: Okay.

MR. LAFFERTY: At a particular time. I don't know if we have an issue on that or not.

THE COURT: Any objection to that, that it would stop?

MR. CHANCEY: Well, a video tape of people speaking contemporaneously with an event is not hearsay. This isn't an out of court statement being offered for the proof of the matter asserted. This is what's captured on the drive cam footage of the accident. I have no objection. I have no intention of using that, that footage, but I certainly don't believe it's objectionable as hearsay. And look, let's spare the whole nine yards, we can stipulate that we won't play it past that point.

MR. LAFFERTY: That's fine.

THE COURT: Okay. All right. Fine. We're ready.

67.) But how could it be hearsay as it was not offered as evidence at trial.

68.) Additionally, at another time, Lafferty believed a statement by one of his clients was hearsay. But they were parties who could have been called as witnesses and cross-examined on this statement. Again, it was not hearsay.

69.) The totality of these errors, lack of due care to his clients, and lack of knowledge regarding evidence and the trial process cost plaintiffs a decision which, without these errors, would have been in their favor.

EXHIBIT A: DESCRIPTION OF THE ACCIDENT
EXHIBIT B: THE ONLY EXPERT ACCIDENT WITNESS REPORT WITH PHOTOS OF THE SCENE
EXHIBIT C: EXPERT BILL ANALAYSIS REPORT
EXHIBIT D: FIVE DIAGRAMED INJURY DESCRIPTIONS,
EXHIBIT E: A PHOTO OF INJURED HILDA AFTER TWO WEEKS

AS AND FOR A FIRST CAUSE OF ACTION

70.) Plaintiffs repeat and reiterate paragraphs 1-69 with the same force and effect as though they were fully set forth.

Lafferty committed professional malpractice in his rendition of legal services to the Plaintiff(s).

AS AND FOR THE SECOND CAUSE OF ACTION

71.) Plaintiffs repeat and reiterate paragraphs 1-69 with the same force and effect as though they were fully set forth.

Lafferty's acts may be imputed to Cooper Levenson based on the doctrine of agency and respondent superior.

PRAYER FOR RELIEF

Plaintiff Hilda Tobias Kennedy has sustained a significant, deliberating, permanent injury to her right humerus in Atlantic City. She acquired a $430,901 bill in over 140 days by way of her I.C.U. stay; surgury; hospitalizations; and wound care in 2014-2015 alone, which the United States taxpayers had to pay through Medicare. In addition to the pain and suffering and permanent disability as set forth above, Mrs. Kennedy also has visible scarring as a result of the surgeries. More, she has spent the last four years into her 90's in Courts attempting to remedy the acts of malpractice set forth in this complaint.

Hilda Kennedy suffered extensively. No one has debated cause and effect of the issues raised herein or as to what happened or can debate the situation in this complaint as it is all well documented by the New Jersey Courts.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against each Defendant for $3,430,900 each (COOPER LEVENSON for $3,430,900 and Randolph C. Lafferty for $3,430,900) totaling $6,861,800.

WHEREFORE, Plaintiff(s) respectfully request the impaneling of a jury of six members, the entry of judgment as against Defendant Cooper Levenson and Randolph C. Lafferty in such amount as may be deemed just and proper, and such other and further relief as may be just. Justice is this Court's highest function.

Respectfully submitted,

Hilda Tobias Kennedy DATE

John Fitzgerald Kennedy DATE

CERTIFICATION OF NO OTHER ACTIONS

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Respectfully submitted,

Hilda Tobias Kennedy DATE

John Fitzgerald Kennedy DATE