
Transcript Format For Judicial Proceedings



March 19, 2014

Transcripts must be prepared in accordance with the format as outlined in this book. The statutory authority to develop a transcript format and application of a prescribed transcript format is found in New Jersey Statute 2B:7-4a and New Jersey Court Rule 2:5-3(e).

New Jersey Statute 2B:7-4a states "When a transcript of a stenographic record or other recording in any court or in any other proceeding recorded at the direction of the Supreme Court is made, at the request of any person, the original and copies thereof shall be prepared in the manner prescribed by the Administrative Office of the Courts"

New Jersey Court Rule 2:5-3(e) states "The court reporter, clerk, or agency, as the case may be, shall promptly prepare or arrange for the preparation of the transcript in accordance with the standards fixed by the Administrative Director of the Courts."

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A. INTRODUCTION

This prescribed transcript format has been developed to ensure equal treatment of all parties requesting transcripts from judicial proceedings. The format must be followed by all court transcribers, typists and others who prepare transcripts of judicial proceedings. Failure to follow this format will delay appellate review, significantly increase costs to litigants and the public, and may result in disciplinary action against the preparer.

B. PAGE REQUIREMENTS

Except as otherwise provided in the section "Compressed Transcript Format", the following requirements apply to transcripts produced from all New Jersey court proceedings.

1. Paper:

- a. Size- Paper size is 8 1/2 x 11 inches.
- b. Weight- The weight of the paper is to be at least 13 pounds for originals and copies.
- c. Type- The paper shall be of good quality and opaque. Unglazed coated paper may be used.
- d. Paper Color- White paper is to be used for originals and copies.
- e. Ink Color- Black ink is to be used for originals and copies. Typewriter and computer ribbons should be checked regularly to assure type is dark enough to not hinder the clear reproduction of the transcript.

2. Type size - The letter and numeral character size is to be 10 characters to the inch. Each line of the transcript must contain 55 typed characters, except in the instance when a word would extend beyond the right margin and wraps to the first word on the next line.

3. Computer print modes - Laser and ink jet printers are preferred to dot-matrix printers. Individuals who use a dot matrix printer must use a 24 pin head for regular printing. A nine pin printer is not acceptable for transcript production.

4. Preprinted marginal lines - The use of printed solid left and right (vertical) marginal lines is required. Due to electronic filing, we can no longer have preprinted top and bottom (horizontal) marginal lines on full page transcripts. Typing is to begin on each page at the left vertical line and continue to the right vertical line. The space between the vertical marginal lines must be at least 6.5 inches which provides for 55 typed characters on each line. (See #2, above)

5. Line numbers- Each page of transcription is to bear numbers identifying each line on the page, with each page of transcription containing 25 lines of text. The last page may contain fewer lines if it is less than a full page of transcription. Page headings, notations and page numbers are not considered part of the 25 lines of text.

6. Page numbers - The pages of a transcript are numbered using Arabic Numerals (1, 2, etc.). The index page follows the title page and is numbered beginning with page 2. If the title page takes two pages, the index starts at page 3, etc. Page numbers are typed at the top right of the page above the top marginal line. Title page(s) and Index page(s) are to be included with the testimony pages when totaling the number of pages for billing. Each volume of a transcript is numbered beginning with page 1 (the title page), except when a single day's proceeding exceeds 200 pages and a second volume is required. The second volume begins with a title page numbered 201.

7. Line spacing - Lines of transcript text are single spaced for compressed transcripts. Lines of transcript text are double spaced for non-compressed transcripts.

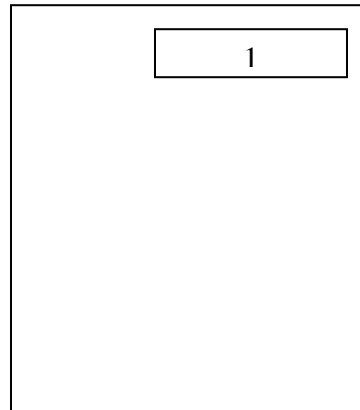
C. TITLE PAGE

1. Venue - Venue is the place in which an action or prosecution is brought before a judge. The venue always appears in the upper right hand corner, beginning at the center of the page. The venue includes the case docket number.

Venue on transcripts from a Municipal Court must include:

- The name of the Municipal court.
- The name of the county and state.
- The case docket number, example:

ORADELL MUNICIPAL COURT
BERGEN COUNTY, NEW JERSEY
DOCKET NO. MV-13-88



Title Page

Venue on transcripts from the Superior Court must include:

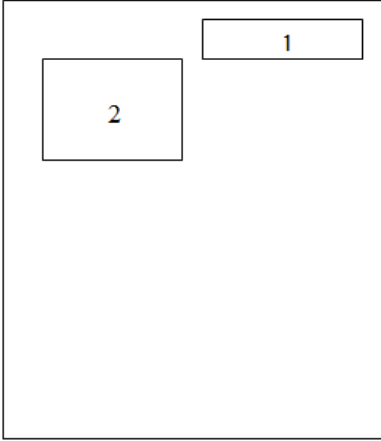
- The type of court.
- The name of the county.
- The lower court docket number and/or the indictment number.
- The appellate court docket number, if an appeal, example:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MERCER COUNTY, DOCKET NO. L-23631-94
APPELLATE DOCKET NO. A-3451-88-T1

If the appellate court docket number is not known at the time the transcript is completed a space is still provided for the number to be entered at a later date, example:

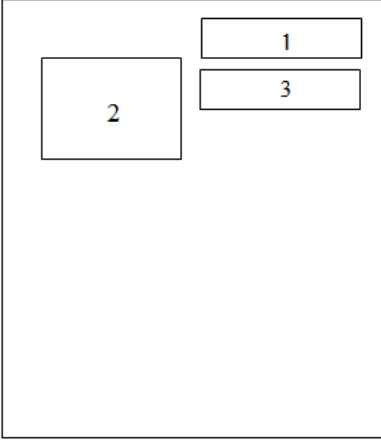
APPELLATE DOCKET NO. _____

2. The box - The box contains the title of the case typed in capital letters. Full names (first and last names and middle initials) of all parties in the case and A/K/A's, if known, are included. If there are third party plaintiffs and/or defendants, the "box" is extended downward to accommodate the additional parties. The box begins at the left hand margin and is closed to the right at the center of the page by either colons or parentheses, example:

| | | |
|---------------------|---|---|
| STATE OF NEW JERSEY |) |  |
| |) | |
| vs. |) | |
| |) | |
| MICHAEL GRADY, |) | |
| |) | |
| Defendant. |) | |

Title Page

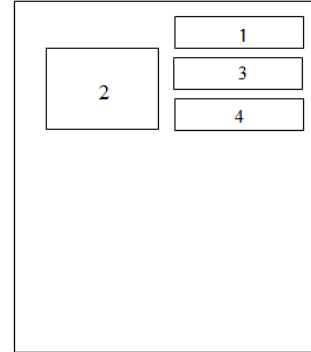
3. Box identification - A description of the "box" is placed to the right of the "box." The description identifies the type of proceeding typed in capital letters, i.e., TRIAL, PLEA, SENTENCE, MOTION. etc., example:

| | |
|--------------|--|
|) TRANSCRIPT |  |
|) OF | |
|) TRIAL | |

Title Page

4. Place - The address (including street name) of the court, institution, etc., where the matter was heard is typed starting in the center of the page, example:

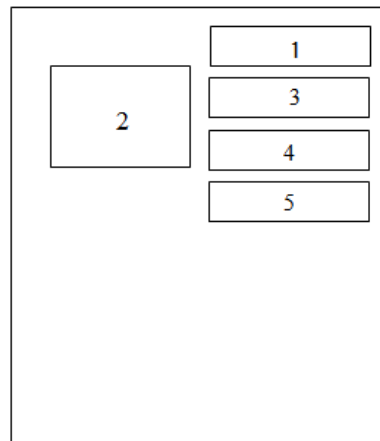
Place: Oradell Municipal Court
355 Kinderkamack Rd.
Oradell, New Jersey 07649



Title Page

5. Date - The hearing date is typed below the "Place" in the center of the page. Only one hearing date is to be included in a volume, no matter how short the proceeding. If more than one type of proceeding occurs on the hearing date both may be included in a single volume. Each proceeding type must be listed on the page. The page numbers where the proceedings start and end in the transcript are included as shown in the example below.

Date: January 24, 1994
Motion (3 - 42)
Plea (43 - 71)



Title Page

When preparing daily copy transcripts, where the portions of a transcript file are not merged into one document, identify the morning and afternoon proceedings, "Morning Session" or "Afternoon Session." This designation is typed under the date, example:

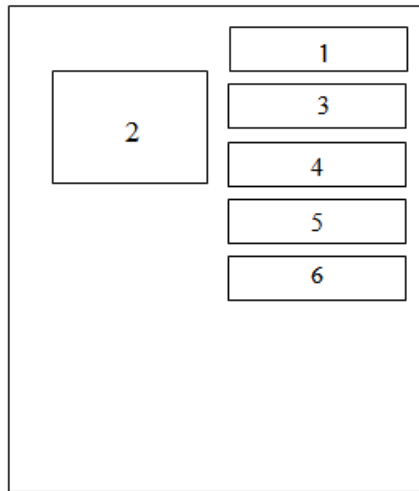
Date: January 24, 1994
Morning Session

6. Volume identification - A volume of transcript will contain a single day's proceedings of no more than 200 pages. When a single day's proceeding exceeds 200 pages, a second volume

is prepared for that day's proceedings. Volume identification is typed below the date on the title page, example:

Date: January 24, 1994
Volume 1 of 2
Pages 1 - 200

Date: January 24, 1994
Volume 2 of 2
Pages 201 - 275



Title Page

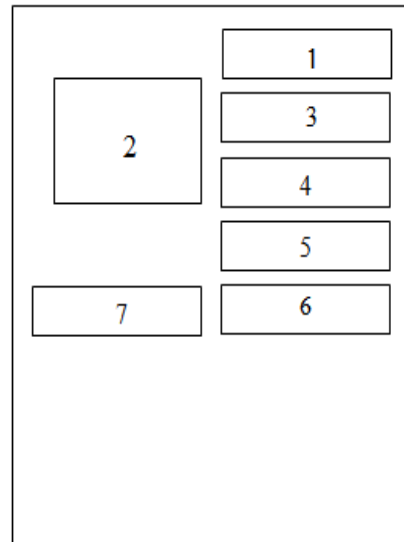
The last line of page 200 in the above example must indicate that the transcript for the day's proceedings continues in the next volume, example:

25| Continuation of the day's proceedings in Volume 2.

7. Before - This identifies the name of the judge presiding over the case and indicates if a jury was present. This is typed in capital letters beginning at the left hand margin, example:

BEFORE:
HON. NANCY A. READY, J.M.C.

BEFORE:
HON. JAY JONES, J.S.C. AND JURY



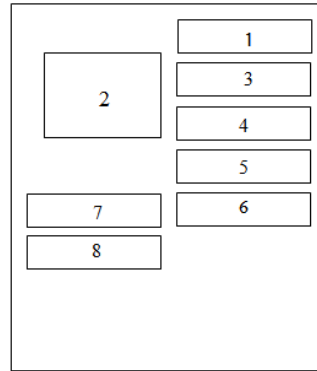
Title Page

8. Transcript ordered by - This notation is placed beneath the name of the judge and indicates the full name of the party ordering the transcript. If the party ordering the transcript is a member of a law firm, the firm's name is placed in parentheses next to the requesting party's name. If the party ordering the transcript is a pro se, the pro se's full name and address shall be noted. However, in matters involving domestic violence cases, the address of the pro se should not be included on the title page of the transcript. Example:

TRANSCRIPT ORDERED BY:
PAIGE A. NEWMAN, ESQ.
(Newman & Paine)

or

TRANSCRIPT ORDERED BY:
JAMES JONES, PRO SE,
14 E. State Street
Trenton, NJ 08049



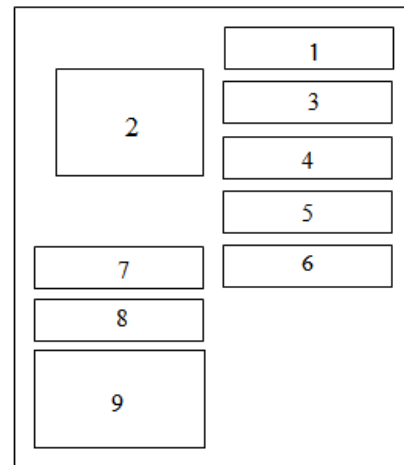
Title Page

9. Appearances - This notation indicates the attorneys for both parties; it is placed in the lower third of the page starting at the left-hand margin. The names of the attorneys are noted in capital letters. The names of the attorneys' law firms are placed in parentheses and are followed by the names of the parties represented; example:

APPEARANCES :

FRANK T. TRUTH, ESQ.
Prosecutor for the Borough
of Oradell,
Attorney for the State.

PAIGE A. NEWMAN, ESQ.
(Newman & Paine)
Attorney for the Defendant.



Title Page

If there is insufficient space to list all the attorneys present, the list should be continued on the next page, with the following notation:

APPEARANCES (continued):

10. Court reporter or transcriber identification - The court reporter's or transcribing agency's name and address is placed at the bottom of the page in line with the venue notation.

Official court reporters may use the courthouse address. A per diem reporter or a transcriber employed by an agency should enter their name, followed by the name and address of the agency. A per diem court reporter or transcriber who is not employed by an agency should enter their name and home or business address, example:

Janet Davis, CSR
209 S. Broad Street
Mercer County Courthouse
Trenton, NJ 08644
or
Transcriber Helen Sims
Transcriber, Inc.
Longline Road
Logsheet, NJ 07735

| | |
|---|----|
| | 1 |
| 2 | 3 |
| | 4 |
| | 5 |
| 7 | 6 |
| 8 | |
| 9 | 10 |

Title Page

11. Recording operator identification - The type of electronic recording system used and the name of the electronic recording operator are placed below the agency's name and address, example:

Video Recorded
Recording Operator, John Smith

or

Audio Recorded
Recording Operator, John East

| | |
|---|----|
| | 1 |
| 2 | 3 |
| | 4 |
| | 5 |
| 7 | 6 |
| 8 | |
| 9 | 10 |
| | 11 |

Title Page

D. INDEX PAGE

The index page lists the major events of the proceedings (i.e. Motion) and the page number where the events are located in the transcript.

1. Witness list - The names of all witnesses appearing in the transcript are listed. First those called by the prosecution/plaintiff, then those of the defense. The nature of the examination (Direct, Cross, Redirect or Recross, etc.) is indicated, as is the page number where the examination begins; example:

| | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
|----------------------|---------------|--------------|-----------------|----------------|
| <u>WITNESSES</u> | | | | |
| <u>FOR THE STATE</u> | | | | |
| Officer Grady Way | 5 | 10 | 15 | 29 |
| Sergeant David Best | 32 | 42 | | |

2. Exhibits - This section of the index lists all exhibits offered for identification (Ident.) and/or received in evidence (Evid.).

The listing must include the following:

- The exhibit's identification number.
- A brief description of the exhibit.
- The page number at which the exhibit was offered for identification.
- The page number at which the court enters the exhibit into evidence, example:

| <u>EXHIBITS</u> | <u>Ident.</u> | <u>Evid.</u> |
|------------------------------|---------------|--------------|
| S-1 Sgt. Best Certification | 33 | 34 |
| S-2 Inspection Certification | 36 | 36 |
| D-1 Test Record | 61 | 62 |

3. Summations - The last section of the index lists the final arguments, the findings by the court, and corresponding page number; example:

| <u>SUMMATION</u> | |
|-------------------------|----|
| BY: Ms. Paige A. Newman | 87 |
| BY: Mr. Frank T. Truth | 90 |

| <u>THE COURT</u> | |
|------------------|----|
| Decision | 98 |

4. Master index - When transcripts of a proceeding contain more than five dates, a master index is recommended, but not required. The master index contains a copy of each index page as it appears in each volume of the proceeding. The master index page and its cover page

are included in the total page count for billing. The master index is compiled in date order with a heading on each page identifying the date of the proceeding from which the index is copied.

a. The master cover - The master index must contain a cover page which includes the following:

- The Venue.
- The Box.
- The Box identification.
- The Place.
- The Before.
- Dates of proceeding contained in the master index.

b. Master index header - The cover page must contain a header centered across the top of the page typed in uppercase with two blank spaces between each letter denoting it as the master index, example:

M A S T E R I N D E X

E. INDENTATIONS

1. Colloquy - Colloquies are statements by the court or counsel and typed in the following manner. Speaker identification will begin on the eleventh space from the left marginal line followed by a colon. The statement will begin on the third space after the colon. The body of the colloquy will begin at the left marginal line, example:

| | |
|---|---|
| 1 | THE COURT: I am familiar with that case. I had |
| 2 | forgotten all about it. That was a surprise ruling by the |
| 3 | State Supreme Court. Based on that case, it appears that |
| 4 | I might dismiss the charge against the defendant in this |
| 5 | case. |

2. Question and Answer

a. "Q" and "A" designations - All "Q" designations will begin on the sixth space from the left marginal line. All "A" designations will begin at the left marginal line. A period following the "Q" and "A" designation is optional.

b. "Q" and "A" statements - All "Q" statements will begin on the eleventh space from the left marginal line. All "A" statements will begin on the sixth space from the left

marginal line. Subsequent lines of each "Q" and "A" statement will begin at the left marginal line.

c. Questioning of a witness - When a witness on the stand is being questioned, the witness' response is always designated with "A." The attorney is given the "Q" designation when talking directly to the witness. When the attorney addresses other parties in the court during the "Q" and "A," the attorney designation is the attorney's name, as in the colloquy format, example:

| | |
|----|---|
| 13 | Q. And how long have you lived there? |
| 14 | A. Oh, I guess just before my son was born. |
| 15 | MR. JONES: Your Honor, can you instruct the |
| 16 | witness to answer the question. |
| 17 | THE COURT: Will you please answer the question. |

d. Cross-examination by the judge - In extensive cross examination by the judge, the "Q" and "A" designation is used, with the judge given the "Q" designation. Examination by the court is indicated in the transcript, example:

| | |
|---|---|
| 2 | BY THE COURT: |
| 3 | Q. Please explain why you were at the mall. |
| 4 | A. To pick up a present for my brother. |
| 5 | Q. What time did you arrive at the mall? |

The colloquy format is used when the judge interjects a question during an attorney's examination.

3. Paragraphs - New paragraphs are to begin on the sixth space from the left marginal line.

4. Quotations - When read in court, quoted material, other than depositions, begins on the eleventh space from the left marginal line and shall be marked with an opening quotation mark. The continuation of the quoted material, if brief, is treated the same as colloquy, example:

| | |
|---|--|
| 2 | "On June 20, 1979, the defendant was on his way |
| 3 | home and was struck by an automobile which was traveling |

2 | at an excessive rate of speed. The defendant had
3 | sustained severe injuries and died an hour later."

The body of long quotes is indented to the eleventh space from the left marginal line. The conclusion of the quote is indicated with a closing quotation mark.

5. Depositions - A deposition being read at a trial has the same effect as oral testimony. Therefore, the same indentations and format for "Q" and "A", as described above, is followed. To indicate that this testimony is being read in court, each question and answer paragraph is bound by quotation marks, example:

2 | Q. "At what time did you arrive at the store?
3 | A. It was just getting dark so I would say it must have
4 | been around 6:00 at night."

F. PAGE HEADING

The heading is not considered a line of the transcript. A page heading must appear on each page of the transcript regardless of the contents on a transcript page. For example, if ten pages of a transcript are straight colloquy then each of the ten pages will have the heading "Colloquy". The page heading is entered on the same line as the page number. The heading will contain the last name of the witness or other party and the type of examination or event. If two or more parties in the proceeding have the same last name the first initial is then included in the heading, example:

L. Hannan - Cross/Redirect 26

1 |
2 |

G. READBACK/PLAYBACK

1. Regular readback/playback during a proceeding - All readbacks and playbacks requested during the trial are noted in parentheses in the transcript. The readback or playback statement is centered on the page.

a. Readback/playback occurring on the same page - If the question and/or answer read or played back appears on the same page of the transcript as the request, it should be noted as follows:

19 | MR. JONES: May we have the last question and
20 | answer read back?

21 | (The last question and answer are read back.)

b. Readback/playback occurring on a previous page - If the question and/or answer appears on a previous page of the transcript, the transcript must reference the page and line number of testimony, example:

19 | Q. May we have this morning's reply to that question
20 | played back?

21 | (The record was replayed page 73, line 12.)

2. Readback/playback during jury deliberations - When readback is requested from a previous day's hearing, a second court reporter or recorder operator may be requested to produce notes or a tape for the readback/playback. If court-reported, the court reporter assigned to the current day's proceeding must indicate in that day's stenographic notes the portion of transcript or notes read back to the jury. If electronically recorded, the recorder operator assigned to the proceeding will list the tape and index numbers on the log of the tape played. The transcript will indicate the portion of the proceeding read or played back to the jury, example:

7 | Whereupon Court Reporter Jane Klein read back to the jury
8 | the following testimony: Officer Michael Smith's
9 | testimony on July 3, 1987, page 33, line 7 to page 48,
10 | line 22.

3. Tape recordings played in the courtroom - A tape may be played in open court either to determine its admissibility as evidence or to introduce it as evidence. With the tape playing in court, the court reporter or recorder operator will record all proceedings to verify the authenticity and any instructions to counsel regarding the playing of the tape for inclusion in the transcript. The reporter or recorder operator must record the exact time that the playing begins and terminates and all comments made during its playing. If any portion is played, the reporter or recorder operator will indicate in the stenographic notes or log the portions played and mark in the transcript of the tape recording those sections which were played. It is the responsibility of the party seeking to play a tape recording before the court to provide the court, jury, and all other parties with properly authenticated transcripts of the tape(s) to be played.

4. Depositions

a. Read - The reporter or recorder operator will record verbatim a deposition that is read at a court proceeding. Upon request for transcript, that portion of a deposition read in court is transcribed by the reporter or transcriber.

b. Previously recorded - The reporter or recorder operator is not required to record verbatim a video or audio taped deposition that is used in trial. All comments made during its playing, however, must be recorded and transcribed. The reporter or recorder operator is to record the video or audio taped deposition in order that comments made during the playing are recorded for transcription by the transcriber. The reporter or recorder operator will record the exact time the playing begins and terminates, and the time is to become part of the official court transcript, example:

7 | (Videotape played at 10:40 a.m., concluded at 11:55 a.m.) |

H. INTERRUPTIONS OF SPEECH

Interruptions of speech are denoted by two dashes (–) at the unfinished or interrupted end of speech. One space will precede the two dashes, example:

15 | Q. Why did you -- |
16 | THE COURT: Pardon me, Counsel, for interrupting |
17 | you but I would like to ask the witness one question. |

Two dashes (–) are used when a speaker changes direction of thought in a sentence. One space will precede and follow the two dashes, example:

25 | Q. Did you know -- where did you say you lived? |

I. MEDICAL AND SCIENTIFIC TERMINOLOGY

Court reporters and transcribers must accurately spell technical terms or other difficult words. Court reporters and transcribers must utilize reference material such as the latest editions of Webster's International Dictionary, Black's Law Dictionary, and Tabor's Medical Dictionary.

J. SUMMATIONS

Summations follow the same format for transcription as colloquy.

K. VERDICTS

While the reporter's notes must reflect verbatim the polling of the jurors, when a verdict is unanimous, each juror's response is not to be indicated in the transcript, example:

13 | (The Clerk polled the jury and the verdict was 6 in favor
 14 | of the defendant in the amount of \$450,000.)

The poll is indicated in the transcript whenever the verdict is not unanimous.

L. TRANSCRIPT CONTENT - VERBAL

The transcript shall include the entire proceedings, including the reasons given by the trial judge in determining a motion for a new trial. The transcript shall not, however, include opening and closing statements to the jury by counsel, voir dire examinations or legal arguments by counsel during jury voir dire. If a question with respect to these portions of a proceeding is raised on appeal, the appellant must specifically order that these portions be transcribed. Except as noted below, the transcript contains all words and other verbal expressions uttered during the course of the proceedings.

1. Striking of portions of the proceedings - No portion of the proceeding is omitted from the transcript by an order to strike a statement from the record, regardless of the requesting party. The material ordered stricken, as well as the order to strike, must appear in the transcript, example:

10 | A. I was hired by Chem Staples, I mean, the deceased --
 11 | MR. PLASTY: I object. Your Honor, I would like the
 12 | witness' answer stricken from the record as non-
 13 | responsive.
 14 | THE COURT: Objection sustained. Please proceed.

2. Editing of speech - The transcript must provide an accurate record of words spoken in the course of the proceedings. All grammatical errors, changes of thought, answers, contractions, mis-statements and poorly constructed sentences are transcribed as spoken, example:

13 | A. No, never, 'cause Mr. Staples seen where I was living
 14 | and he knew I needed the money.

3. Off-the-record conversation - Off-the-record conversations are not included in the transcript. However, an indication of their occurrence must appear in the transcript. The judge will state that the following discussion will be off-the-record, example:

1 | (Off-the-record discussion at side bar) |

4. Spelling - If a transcriber cannot locate the correct spelling of a word in reference books, a phonetic spelling is acceptable and is noted as such. The term "phonetic" must only appear once per page at the first occurrence of the word that cannot be correctly spelled, example:

5 | A. I was with Mr. Witchentoesky (phonetic) |

5. Transcribing dates and times - Dates and times of day are transcribed numerically, example:

5 | The accident occurred at 9:20 a.m. on Wednesday, May 27,
6 | 1992. |

6. Transcribing monetary figures - Monetary figures shall be transcribed numerically, example:

14 | I lent him exactly \$2,695 for the rent. |

7. Swearing-in of witnesses - The swearing-in of witnesses must appear in the transcript. The witness' name is to be typed in upper case with one blank space between each letter of the name, and three blank spaces between each name and/or initial, example:

10 | A N N D. H A N N A N, DEFENDANT'S WITNESS, SWORN |

11 | THE CLERK: Please state your full name and address. |

12 | THE WITNESS: Ann Dell Hannan; I live at 425 Rockway |

13 | Place, Summit, New Jersey. |

8. Testimony through interpreters - When an interpreter is used, the swearing in of the interpreter must appear in the transcript, example:

22 | J O R G E L O P E Z, SWORN TO INTERPRET SPANISH TO
 23 | ENGLISH

The purpose of the interpreter is to literally translate the questions asked from English to the foreign language and the response from the foreign language to English. The text of the transcript will contain only the English translation using the standard "Q" and "A" format. Only when the interpreter is speaking on his/her own behalf are they identified in the transcript, example:

1 | Q. What is your name?
 2 | A. Mary Ramirez.
 3 | Q. Where do you live?
 4 | A. Now I live at 245 Davis Road, in Somerville.
 5 | Q. Do you remember the afternoon of --
 6 | THE INTERPRETER: I am sorry, I am having
 7 | trouble hearing you. Did you say July 14, 1991?
 8 | MS. JONES: Yes, July 14, 1991.

When the witness, rather than the interpreter, responds to a question in English, this is noted by the insertion of (In English) before the answer, example:

3 | Q. You are pointing at the defendant Lynn Roger, are
 4 | you not?
 5 | A. (In English) Yes, that woman right there.

M. TRANSCRIPT CONTENTS – NON-VERBAL

1. Descriptive material - All descriptive material is placed within parentheses, kept to one line, if possible, and centered. This includes all sidebar conferences, recesses, starting time of trials, jury entering or leaving, etc., examples:

(Recess)

(Jury retired at 10:45 a.m., returned at 3:10 p.m.)

(Tape off)

(No verbal response given)

(Discussed off-the-record in chambers; defendant not present)

2. Speaker/events identification - Notations of direct examination, cross- examination, swearing-in, etc., must be concise and contained on one line, starting at the left margin, and typed in uppercase, example:

19 | DIRECT EXAMINATION BY MR. SMITH: |

3. Identification of juvenile cases - In the case caption, a juvenile charged with an offense is often identified by initials. These cases are to be identified on the title page using the initials and not the juvenile's name, example:

IN THE INTEREST OF J.W.

All transcripts are to be verbatim records of what was said during the court proceeding. Transcribers and court reporters must identify by name a juvenile defendant who is addressed by name during a proceeding. Initials are used in the transcript only if an individual is identified by initials during a proceeding.

N. SIDEBAR CONFERENCE

All discussions at sidebar are transcribed unless the judge states that the discussion is off-the-record.

O. BINDING TRANSCRIPTS

Each transcript must be two (2) or three (3) hole punched and bound with split type fasteners. The transcripts must fasten in a manner that allows for easy page separation for photocopying. A clear cover (no colors) is used in binding the transcript so the title page can be easily read.

2. Transcribers

a. Non-compressed transcript format

CERTIFICATION

I, _____, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on tape number _____, index number from _____ to _____, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

| | |
|--------------------------------------|---------------------|
| _____ Signature | _____ AOC Number |
| _____ Agency Name (if applicable) | _____ Date |

b. Compressed transcript format

CERTIFICATION

I, _____, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on tape number _____, index number from _____ to _____, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

| | |
|--------------------------------------|---------------------|
| _____ Signature | _____ AOC Number |
| _____ Agency Name (if applicable) | _____ Date |

3. Certification for an official reporter not available to complete a transcript

a. Non-compressed transcript format

CERTIFICATION

I, _____, C.S.R. License Number _____ certify that this transcript is a complete and accurate transcript, to the best of my ability, of the proceedings, and testimony taken in this case by (name, title, and certification number of absent reporter), and that the non-compressed transcript is prepared in full compliance with the current Transcript Format for Judicial Proceedings. I also certify that (name of absent reporter) is unavailable to certify this transcript because the reporter (check one)

- a. _____ is deceased.
- b. _____ has resigned and is unavailable.
- c. _____ was removed from office and is unavailable.
- d. _____ has left the state.
- e. _____ other (Explain) _____

Signature

Date

b. Compressed transcript format

CERTIFICATION

I, _____, C.S.R. License Number _____ certify that this transcript is a complete and accurate transcript, to the best of my ability, of the proceedings, and testimony taken in this case by (name, title, and certification number of absent reporter), and that the compressed transcript is prepared in full compliance with the current Transcript Format for Judicial Proceedings. I also certify that (name of absent reporter) is unavailable to certify this transcript because the reporter (check one)

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- c. _____ was removed from office and is unavailable.

- d. _____ has left the state.
- e. _____ other (Explain) _____

Signature

Date

Q. CORRECTIONS TO FILED TRANSCRIPTS

Court reporters and transcribers who have corrections to a transcript previously filed must type the corrections on a separate page identifying the case name, judge, docket number (with appellate number if applicable), date of proceeding, and venue. Copies of the corrections shall be forwarded to all parties who received copies of the transcript. The correction sheet must identify the page and line number in the transcript where the corrections occur, example:

Page 4, Line 6: "now" should be "not"
Page 77, Line 18: "he was going" should be "he
wasn't going"

COMPRESSED TRANSCRIPT FORMAT

R. INTRODUCTION

A compressed transcript captures two standard pages of transcript and reproduces them onto a single page. Each page of the original transcript is reduced in size to fill 1/2 of the area (top and bottom) of a standard 8 ½ x 11 inch transcript page. That is, the first of the two pages is in the top half of the page and the second page is below. The compressed transcript is generated by the use of a transcript condensing program. Compressed transcripts must follow the standards outlined below.

S. FINISHED PAGE REQUIREMENTS

1. Paper

- a. Size - Paper size is to be 8 ½ x 11 inches.
- b. Weight - If printed on both sides, the weight of the paper must be sufficient to preclude bleeding through from one side to the other. Computer users should never submit transcripts on first-run paper.
- c. Type - The paper shall be of good quality and opaque. Unglazed coated paper may be used.
- d. Paper Color - White paper is to be used for originals and copies.
- e. Ink Color - Black ink is to be used for originals and copies.
- f. Preprinted Marginal Lines - The use of printed solid left and right (vertical) marginal lines are required for each page of text. The use of printed top and bottom (horizontal) marginal lines for each page of text are also required. Typing

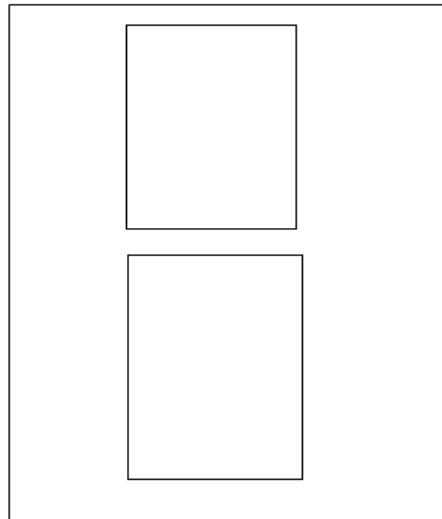
is to begin on each page at the left vertical line and continue to the right vertical line. The space between the vertical marginal lines must be at least 6.5 inches.

g. Line Numbers - Each compressed page image of transcription is to bear numbers identifying each line on the page, with each page of transcript containing 25 lines of text. The last compressed page image may contain fewer lines if it is less than a full page of transcription. Page headings, notations and page numbers are not considered part of the 25 lines of text.

h. Type Size - The letter and numeral character size is to be 10 characters to the inch. Each line of the transcript must contain 55 typed characters except in the instance when a word would extend beyond the right margin and wraps to the first word on the next line.

i. Title Page - The title page of a transcript must never be compressed. If the program utilized forces the title page into a compressed page format the reporter or transcriber must provide a full size title page in addition to the compressed title page. The reporter or transcriber can only bill for one title page.

2. Compressed page configuration - The compressed transcript format must consist of two compressed page impressions on one side of a page (also known as, two on one), example:



3. Computer print modes - Compressed transcripts can only be produced on a laser printer. The use of a dot matrix or ink jet printer is not permitted.

4. Page Layout - Each page when compressed must maintain its header and page number. The index page will reference the original non-compressed page number. All line numbers, indentations, and other components of a non-compressed transcript must be maintained in the compressed version.

5. Billing for a compressed transcript - A compressed transcript is billed at the standard rate for daily, expedited or regular delivery. The total non-compressed page count is used in computing the transcript cost.

APPENDIX

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MERCER COUNTY, NEW JERSEY
DOCKET NO. MER-L-1371-03
A.D. # A-1729-05T5

SUZANNE K. OGBORNE,)
)
Plaintiff,) TRANSCRIPT
)
-v-) OF
)
CITY OF TRENTON,) TRIAL
)
Defendant.)

Place: Mercer County Courthouse
175 South Broad Street
Trenton, NJ 08650

Date: September 28, 2005

BEFORE:

HON. PAUL INNES, J.S.C. AND JURY

TRANSCRIPT ORDERED BY:

PETER J. COHEN, Assistant City Attorney
(City of Trenton, Department of Law)

APPEARANCES:

RONALD GRAYZEL, ESQ. (Levinson Axelrod, PC)
Attorney for the Plaintiff

PETER J. COHEN, Assistant City Attorney
(City of Trenton, Department of Law)
Attorney for the Defendant

Transcriber, Jane Doe
J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, NJ 08619
(609) 586-2311
FAX NO. (609) 587-3599
E-mail: jjcourt@optonline.net

Audio Recorded
Audio Operator, Joy Baldwin

I N D E X

| <u>WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>REXCROSS</u> |
|------------------|---------------|--------------|-----------------|-----------------|
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FOR THE PLAINTIFF:

| | | | | |
|---------------------|--|---|----|----|
| Ms. Suzanne Ogborne | | 4 | 34 | 40 |
|---------------------|--|---|----|----|

FOR THE DEFENDANT:

| | | | | |
|-------------------|-----|----|--|--|
| Mr. Henry Arnold | 52 | 68 | | |
| Mr. Jerome Harcar | 107 | | | |
| Ms. Jean Shaddow | 122 | | | |

EXHIBITS:

| | <u>IDENT.</u> | <u>EVID.</u> |
|--|---------------|--------------|
|--|---------------|--------------|

| | | |
|------------|--|----|
| P-15 Photo | | 74 |
|------------|--|----|

Colloquy

MR. COHEN: Yes, Your Honor.

THE COURT: You may bring the jury in. Ms. Ogborne, I would ask you if you would just resume your seat up here.

MR. COHEN: Your Honor, I do believe we have a stipulation concerning changing the order of the witnesses in one particular case. We have one of my witnesses, Mr. Henry Arnold, has arrived this morning, and he was contacted yesterday some time during the day we projected that he would be testifying at nine. He came down Princeton and he's -- he's getting ready to embark on a trip abroad tomorrow. So, what I'm requesting is that if we -- if we could finish up Ms. Ogborne's testimony, if I could do my cross-exam, and then have Mr. Arnold testify before we play Dr. Lessing's video, because I believe that would -- that would constitute the completion of the plaintiff's case.

MR. GRAYZEL: I don't believe I have a problem with that. I'd only ask that the gentleman be sequestered during the plaintiff's testimony

THE COURT: All right. If this is Mr. Arnold, I'm going to ask him to step outside until after Ms. Ogborne's testimony is complete.

VOICE: If you want to go get coffee or --

1 (Pause)
2 MR. GRAYZEL: Your Honor, I have marked for
3 identification two hospital records and four X-rays and
4 at a time when my adversary has an opportunity to look
5 at them and we can let Your Honor know whether or not
6 they're admissible.
7 THE COURT: All right.
8 (Pause)
9 CLERK: Please rise. Jury enters the
10 courtroom.
11 (Jury in)
12 THE COURT: Please be seated, everyone. Good
13 morning, ladies and gentlemen.
14 JUROR: Good morning, Your Honor.
15 THE COURT: We are ready to proceed. And,
16 Mr. Cohen is about to conduct cross-examination of Ms.
17 Ogborne. Mr. Cohen, you may proceed whenever you're
18 ready.
19 MR. COHEN: Thank you, Your Honor.
20 CROSS-EXAMINATION BY MR. COHEN:
21 Q Good morning, Ms. Ogborne.
22 A Good morning.
23 Q Ms. Ogborne, you had stated in your direct
24 testimony that you commenced working at -- for the
25 Department of Personnel in I believe March of 2000; --

1 A That's correct.
2 Q -- is that correct?
3 A Yes.
4 Q And, shortly after your employment with the
5 Department of Personnel, --
6 THE COURT: Excuse me a second, Mr. Cohen,
7 please.
8 (Pause)
9 THE COURT: I'm sorry about that. You may
10 proceed.
11 BY MR. COHEN:
12 Q After you commenced working for the
13 Department of Personnel you discovered that there was a
14 cemetery that existed directly across from the
15 Department of Personnel building; is that correct?
16 A That's correct.
17 Q And you discovered that that cemetery had
18 been for all practical intense and purposes transformed
19 into a public access park; is that correct?
20 A That's correct.
21 Q And, you began going to visit that cemetery
22 park during your lunch breaks; is that correct?
23 A Occasionally, yes.
24 Q And, didn't you state you were going about
25 twice a week?

1 A Correct, but when you asked the question I thought
2 you meant that I was going there on every lunch break,
3 which would not be right.

4 Q Okay. Thank you for the clarification. And,
5 do you have a recollection of precisely when you began
6 going -- going there?

7 A No.

8 Q It was some time -- was it some time that
9 Spring of 2000?

10 A I really don't know, but I would imagine it was
11 probably in the spring or summer of 2000.

12 Q Why did you begin going there for your lunch
13 break?

14 A It's the only place near my building that's shady
15 or where there are benches or anything to sit, and at
16 that time I had to park in a remote lot that is on
17 Perry Street which I don't know how many blocks away it
18 was, so it wasn't really convenient to go to my car at
19 lunch time. So, if I planned to stay around the area
20 instead of going with somebody else at lunch time that
21 was really the only place to go and sit where there
22 were benches and trees and things like that.

23 Q Okay. When you went to visit the cemetery
24 during your lunch breaks were there ever occasions when
25 you had coworkers accompanying you there?

1 A No. Ordinarily if I chose to go there it was
2 because I wanted some quiet time by myself.

3 Q Okay. Were other employees that worked with
4 you aware that you were going there for your lunch
5 breaks?

6 A I would usually not tell anybody because if I
7 wanted to be alone and I told somebody that's where I
8 was headed then I wouldn't end up going alone, so
9 usually I would just go off by myself.

10 Q Okay. Were there occasions when the gates to
11 the cemetery were locked and you couldn't get in the
12 cemetery?

13 A I don't know whether they would be locked or not,
14 but occasionally, for example, if it were a rainy day
15 or a snowy day or something and I observed the front
16 gates I would see that they were closed. If I saw they
17 were closed I didn't necessarily walk up and check
18 whether they were locked or not. I assumed they were.

19 Q Now, on the occasions when you -- when you
20 visited the cemetery did you take your lunch -- did you
21 ever take your lunch along with you?

22 A No. I don't believe I ever brought food to eat
23 when I went there. I usually went to either read or
24 walk around or just sit.

25 Q Okay. On most of those occasions would you

1 leave your notepads in place there. You are excused to
2 the jury room. All rise, please.

3 (Jury Excused)

4 THE COURT: All right. Let's conduct a
5 charge conference with regard to the matter. I do have
6 the requests for charge. Let's begin with the
7 plaintiff's requests for charge.

8 MR. GRAYZEL: Does Your Honor want to hold
9 off on my Rule 4:50 motions? I have three.

10 THE COURT: All right. Let's do those first
11 then.

12 MR. GRAYZEL: All right. My first -- why
13 don't you have seats -- my first motion is, Judge, is
14 that I respectfully submit there is no proximate cause
15 issue in this case. There are two recognized tests for
16 proximate cause and while I would submit that the
17 substantial contributing factor test is the appropriate
18 one in this case. For purposes of this motion, I'd
19 like to look at the application of both.

20 There's no dispute in this fact that the
21 cause of injury was the escape from the cemetery that
22 my client was locked into as a consequence of
23 defendant's breach of duty. There is no allegation
24 whatsoever that there was some independent intervening
25 cause that had anything to do with this incident.

1 For instance, the history that this plaintiff
2 presents is you walk in the park with the gate open and
3 you walk out of the park. That history, however
4 commonsensical it may be, has been repeated over and
5 over and that when that access is provided, you get in
6 and out of the park safely.

7 My client's locked in and at that point she
8 needs to escape. I've given Your Honor the citations,
9 including Prosser (phonetic) which recognizes under the
10 Rescue/Escape Doctrine that one is -- when one is
11 placed in that kind of a situation and they make an
12 attempt to escape that the issue of proximate cause is
13 axiomatic and established. Not but for the fact that
14 she had been locked in, she would have never undertaken
15 an effort to escape the park. It was clearly a
16 substantial contributing factor and there is no
17 proximate cause issue here for the jury to resolve.

18 What the arguments and what's different is,
19 Judge, is when Judge Smithson reviewed that issue, he
20 was looking at transcripts of testimony. Your Honor
21 now has all of the testimony in before you, including
22 the testimony of the plaintiff and other related
23 witnesses. There is no factual dispute about those
24 constellation of factors. None whatsoever.

25 An independent intervening cause, Judge,

1 could only be something as extraordinary as if she were
2 in the cemetery locked in and some passing airplane
3 dropped it's fuselage and hit her, well, clearly, that
4 might be an intervening independent cause. The
5 relationship between an escape and putting someone in
6 peril is so interconnected with the breach of duty,
7 once the evidence is on the record that I submit that
8 there is no proximate cause issue.

9 What my adversary will jump to immediately is
10 discussions about plaintiff's conduct. Plaintiff's
11 conduct is not a proximate cause issue regarding
12 defendant's negligence. Plaintiff's conduct is an
13 issue regarding comparative negligence and whether or
14 not if there is comparative negligence it was a
15 proximate cause of her injuries.

16 Proximate cause, in light of a finding of
17 defendant's negligence is strictly whether or not its
18 breach of duty was a cause of the events that led to
19 injury and I respectfully submit now that we've tried
20 the case, and that's what Judge Smithson felt had to be
21 done here, there is no dispute about any of those
22 facts. The inextricable link between the entry into
23 the cemetery and being locked and going to that wall is
24 absolutely established. There is nothing for the jury
25 to decide.

1 In other words, if you take my jury charge
2 and you -- if -- just for purposes of discussion
3 because you may not accept them -- but where is there
4 room for disagreement over whether or not being locked
5 in the cemetery was a proximate cause of her escape?
6 None. And I respectfully submit that what we're
7 risking here, and it is a significant risk, is that my
8 adversary may lead the jury into thinking that the
9 plaintiff's conduct has something to do with whether or
10 not the defendant's negligence was a proximate cause of
11 the incident. It's not. It's a totally separate,
12 independent analysis that goes to the relationship
13 between the defensive comparative negligence and
14 whether or not it's a proximate cause and I ask for
15 judgment on that issue.

16 THE COURT: Do you have other 4:50 grounds,
17 as well?

18 MR. GRAYZEL: Yes.

19 THE COURT: That's -- why don't you make all
20 your arguments --

21 MR. GRAYZEL: Okay.

22 THE COURT: -- and then I'll hear from Mr.
23 Cohen.

24 MR. GRAYZEL: I'd like to move on the issue
25 of 4:50 on the issue of the relationship of the

C E R T I F I C A T I O N

I, JOY K. BRENNAN, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on tape number CI-297-05PI, CI-298-05PI and CI-299-05PI in their entirety, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, and to the best of my ability.

JOY K. BRENNAN AOC #505

J&J COURT TRANSCRIBERS, INC.

Date: _____

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MERCER COUNTY, NEW JERSEY
DOCKET NO. MER-L-1371-03
A.D. # A-1729-05T5

SUZANNE K. OGBORNE,)
)
Plaintiff,) TRANSCRIPT
)
-v-) OF
)
CITY OF TRENTON,) TRIAL
)
Defendant.)

Place: Mercer County Courthouse
175 South Broad Street
Trenton, NJ 08650

Date: September 28, 2005

BEFORE:

HON. PAUL INNES, J.S.C. AND JURY

TRANSCRIPT ORDERED BY:

PETER J. COHEN, Assistant City Attorney
(City of Trenton, Department of Law)

APPEARANCES:

RONALD GRAYZEL, ESQ. (Levinson Axelrod, PC)
Attorney for the Plaintiff

PETER J. COHEN, Assistant City Attorney
(City of Trenton, Department of Law)
Attorney for the Defendant

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Audio Recorded
Audio Operator, Joy Baldwin

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(Pause)

MR. GRAYZEL: Your Honor, I have marked for identification two hospital records and four X-rays and at a time when my adversary has an opportunity to look at them and we can let Your Honor know whether or not they're admissible.

THE COURT: All right.

(Pause)

CLERK: Please rise. Jury enters the courtroom.

(Jury in)

THE COURT: Please be seated, everyone. Good morning, ladies and gentlemen.

JUROR: Good morning, Your Honor.

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MR. COHEN: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. COHEN:

Q Good morning, Ms. Ogborne.

A Good morning.

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2 Q -- is that correct?

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25 Q Okay. On most of those occasions would you

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2 presents is you walk in the part with the gate open and
3 you walk out of the park. That history, however
4 commonsensical it may be, has been repeated over and
5 over and that when that access is provided, you get in
6 and out of the park safely.

7 My client's locked in and at that point she
8 needs to escape. I've given Your Honor the citations,
9 including Prosser (phonetic) which recognizes under the
10 Rescue/Escape Doctrine that one is -- when one is
11 placed in that kind of a situation and they make an
12 attempt to escape that the issue of proximate cause is
13 axiomatic and established. Not but for the fact that
14 she had been locked in, she would have never undertaken
15 an effort to escape the park. It was clearly a
16 substantial contributing factor and there is no
17 proximate cause issue here for the jury to resolve.

18 What the arguments and what's different is,
19 Judge, is when Judge Smithson reviewed that issue, he
20 was looking at transcripts of testimony. Your Honor
21 now has all of the testimony in before you, including
22 the testimony of the plaintiff and other related
23 witnesses. There is no factual dispute about those
24 constellation of factors. None whatsoever.

25 An independent intervening cause, Judge,

1 could only be something as extraordinary as if she were
2 in the cemetery locked in and some passing airplane
3 dropped it's fuselage and hit her, well, clearly, that
4 might be an intervening independent cause. The
5 relationship between an escape and putting someone in
6 peril is so interconnected with the breach of duty,
7 once the evidence is on the record that I submit that
8 there is no proximate cause issue.

9 What my adversary will jump to immediately is
10 discussions about plaintiff's conduct. Plaintiff's
11 conduct is not a proximate cause issue regarding
12 defendant's negligence. Plaintiff's conduct is an
13 issue regarding comparative negligence and whether or
14 not if there is comparative negligence it was a
15 proximate cause of her injuries.

16 Proximate cause, in light of a finding of
17 defendant's negligence is strictly whether or not its
18 breach of duty was a cause of the events that led to
19 injury and I respectfully submit now that we've tried
20 the case, and that's what Judge Smithson felt had to be
21 done here, there is no dispute about any of those
22 facts. The inextricable link between the entry into
23 the cemetery and being locked and going to that wall is
24 absolutely established. There is nothing for the jury
25 to decide.

1 In other words, if you take my jury charge
2 and you -- if -- just for purposes of discussion
3 because you may not accept them -- but where is there
4 room for disagreement over whether or not being locked
5 in the cemetery was a proximate cause of her escape?
6 None. And I respectfully submit that what we're
7 risking here, and it is a significant risk, is that my
8 adversary may lead the jury into thinking that the
9 plaintiff's conduct has something to do with whether or
10 not the defendant's negligence was a proximate cause of
11 the incident. It's not. It's a totally separate,
12 independent analysis that goes to the relationship
13 between the defensive comparative negligence and
14 whether or not it's a proximate cause and I ask for
15 judgment on that issue.

16 THE COURT: Do you have other 4:50 grounds,
17 as well?

18 MR. GRAYZEL: Yes.

19 THE COURT: That's -- why don't you make all
20 your arguments --

21 MR. GRAYZEL: Okay.

22 THE COURT: -- and then I'll hear from Mr.
23 Cohen.

24 MR. GRAYZEL: I'd like to move on the issue
25 of 4:50 on the issue of the relationship of the

C E R T I F I C A T I O N

I, JOY K. BRENNAN, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on tape number CI-297-05PI, CI-298-05PI and CI-299-05PI in their entirety, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded, and to the best of my ability.

JOY K. BRENNAN AOC #505

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