

**Memorandum in Opposition to Collateral Estoppel, United States District Court,  
Western District of New York in the matter of Akil Al-Jundi, et al. v. Estate of  
Nelson A. Rockefeller, et al.**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

AKIL AL-JUNDI, aka Herbert Scott  
Dente, et al,  
Plaintiffs,

vs.  
THE ESTATE OF NELSON A.  
ROCKEFELLER, et al.,  
Defendants.

RECEIVED  
JUL 15 1991  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

MEMORANDUM IN  
OPPOSITION TO PLAINTIFFS'  
PROPOSED ORDER EVOKING  
COLLATERAL ESTOPPEL  
BASED UPON THE CASE  
OF JONES V. THE STATE OF  
NEW YORK  
Civil No. 75-132E

Introductory Statement

Plaintiffs have requested an Order from the District Court ordering that the Court of Claims' factual determination affirmed in Jones v. State of New York, 498 N.Y.S. 2d 222 (A.D. 1985), has established that the State intentionally used excessive force during the reeking of Attica, and that under the doctrine of collateral estoppel the Defendants in Al-Jundi et al. v. Rockefeller et al. are estopped from relitigating the question of intentional excessive force.

In Jones, the widow of one of the State employees at Attica, who was taken hostage and subsequently killed by a State Trooper during the rescue and reeking, sued the State for wrongful death pleading negligence and intentional tort. The Court of Claims awarded damages to the widow for both causes of action. The Appellate Division reversed the Court of Claims and dismissed the claim in its entirety. The Court of Appeals affirmed the dismissal of the negligence claim but reversed and reinstated the intentional tort claim stating,

"Should the judge in the Court of Claims find that the force used against the decedent was more than necessary under all the circumstances, then plaintiff is entitled to recover." Jones v. State of New York, 352 N.Y.S. 2d 169, 172 (1973).

Memorandum in Opposition to Plaintiffs' Proposed Order Evoking Collateral Estoppel Based Upon the Case of Jones v. The State of New York, United States District Court, Western District of New York in the matter of Akil Al-Jundi, et al. v. Estate of Nelson A. Rockefeller, et al. The Memorandum is dated August 9, 1991 and prepared by Richard E. Moot, Attorney for Defendant Vincent Mancusi.

**Identifier**

NYSA\_W0100-21\_00007438

**Alternate Identifier**

**Case Files:** 75-132

**Source**

"New York State Department of Law special investigation files relating to the Attica uprising, circa 1971-2001. W0100-21."

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