

## THE BAR



## REPORT

WEEKLY NEWS FROM THE NEW JERSEY STATE BAR ASSOCIATION

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## Cross-examination



## Privacy Law Committee chair on trends and hot issues, plans for the future

Attorney **FERNANDO M. PINGUELO** is the new chair of the New Jersey State Bar Association's Privacy Law Committee. Pinguelo, 41, is a partner at Scarinci Hollenbeck and head of the firm's cyber security and data protection practice group. He began writing and lecturing widely on electronic discovery after New Jersey



amended its rules for discovery of electronically stored information in 2006, and created a course in e-discovery at Seton Hall University School of Law in 2009. As an outgrowth of his teaching he also founded two blogs, eLessons Learned and eWhite House Watch. Pinguelo, a New Jersey native, graduated from Boston College and Boston College Law School. He clerked for former Appellate Division Judge Edwin H. Stern.

**Q.** Recent revelations about the National Security Agency's domestic phone tracking system have raised concerns that the government illegally invaded the privacy of countless Americans. Are those concerns valid?

**A.** It's hard to say without knowing all the facts. NSA programs are approved and overseen by the secret Foreign Intelligence Surveillance Court and NSA is required to destroy information on Americans that doesn't fall under exceptions to the rule, including information that is relevant to foreign intelligence, encrypted, or evidence of a

See *Pinguelo* on page 29

## The legal profession at its best

### Lawyers to be honored Oct. 17 at New Jersey Commission on Professionalism in the Law ceremony

A North Jersey lawyer who had dedicated his life and practice to giving back will receive New Jersey's highest professionalism honor.

**HAL BRAFF**, who has spent much of his career trying civil cases, used his legal skills to give back to the community. From serving as counsel to the Newark chapter of the Congress of Racial Equality; to building the American Inns of Court movement across the country; to raising hundreds of thousands of dollars in scholarship money for graduates of Weequahic High School in Newark, his *alma mater*, Braff has distinguished himself in the profession.

To honor his contributions, the New Jersey Commission on Professionalism in the Law is awarding Braff the 2013 Daniel J. O'Hern Award. The annual award, presented to a senior member of the bar with an outstanding record of commitment to professionalism, career achievement and service to the community, will be



2013 O'Hern Award recipient Hal Braff

presented Oct. 17 at the commission's professionalism awards luncheon in Somerset. In addition to the O'Hern award, bar associations around the state will name professional lawyers of the year to be honored at the event.

"Hal lives his daily life helping all comers. He is selfless. He is the ultimate professional," said Robert E. Margulies, of Margulies Wind in Jersey City, where Braff has been of counsel handling mediation, arbitration, and special discovery matters.

Yet of all his achievements, Braff says he is most proud of his role as co-president of the Weequahic High School Alumni Association. Since its founding 14 years ago, the association has raised more than \$600,000 for scholarships and other opportunities, including trips to France, Montreal, and Washington D.C.

In addition to Braff, a host of other attorney from county and specialty bar associations around the state will also be recognized. Former Justice John E. Wallace Jr. is being recognized as Professional Lawyer of the Year by the New Jersey State Bar Association.

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## Helping lawyers attain success

A sold-out collection of lawyers took part in the New Jersey State Bar Association's latest outreach efforts to help attorneys, especially those in small and solo firms, reach their potential. The Suddenly Successful event was a daylong gathering focused on ethics, marketing and other essential skills.

Photos by Jim Beckner





# 6th Annual Pro Bono Conference

A Night to Celebrate *Pro Bono* Volunteers in the Legal Profession

**Tuesday, Oct. 29 • 6–9 p.m.**  
**New Jersey Law Center**  
**New Brunswick, NJ**  
**\$15 per person**

New Jersey's Sixth Annual *Pro Bono* Conference is an evening that brings together lawyers from around the profession to discuss ways to encourage more lawyers to handle *pro bono* work and support those who are already doing it.

Join the New Jersey State Bar Association and its *Pro Bono* Committee for food, fun and CLE as we honor this year's *Pro Bono* Award winners and celebrate *pro bono* providers throughout New Jersey.

The event features a performance by

**COMEDIANS-AT-LAW—**  
**BAD AT LAW, GOOD AT COMEDY**

Appearing *gratis* through arrangements made by  
New Jersey Volunteer Lawyers for the Arts

CLE credits pending

**To register, visit [njsba.com](http://njsba.com)**

The conference enjoys continued funding from AT&T,  
Lowenstein Sandler, P.C., McCarter & English, L.L.P.,  
Merck, Pfizer and Verizon.





# Capitol Report

BY JENA MORROW

This is a status report provided by the New Jersey State Bar Association on recently passed and pending legislation, regulations, gubernatorial nominations and/or appointments of interest to lawyers, as well as the involvement of the NJSBA as *amicus* in appellate court matters. To obtain a complete copy of the *Capitol Report* and/or retrieve a former *Capitol Report*, visit our website at [njsba.com](http://njsba.com).

## RECENT AMICUS ACTIVITY

The NJSBA sometimes acts as *amicus curiae* in pending cases before New Jersey and federal courts where issues are believed to affect the legal profession or the system of justice.

### STATE V. CHUN

This case concerned the reliability of the Alcotest 7110 MKIII-C in the prosecution of driving under the influence cases. On Sept. 10, the Supreme Court heard oral argument. The New Jersey State Bar Association was represented by Jeffrey Gold, Esq. of Gold & Associates, who argued the Court should appoint a special master to oversee enforcement and implement the original court order as previously written.

On Sept. 18, the Court denied the defendants' motions for orders in aid of the litigants' rights, and granted the state's motion for relief from further compliance with the Court's original order. The Court authorized continued use of the current Alcotest 7110 and deemed the results admissible in prosecutions for driving under the influence, except in cases where the defendant is a woman over age 60, where other factors must be taken into consideration.

### STATE V. WILLIAM O'DRISCOLL

The issue in this case is whether the defendant was "informed" of the consequences of refusing to submit to a breath test as required to sustain a conviction for refusal under N.J.S.A. 39:4-50.4a(a), and whether the officer read

to the defendant an outdated version of the New Jersey Motor Vehicle Commission's standard statement that did not reflect the current increased penalties for refusal. On Dec. 21, 2012, the New Jersey State Bar Association filed an *amicus curiae* brief drafted by Jeffrey Gold, Esq. and Kimberly Yonta Aronow, Esq. On May 13, Gold argued before the Court, affirming the lower court's decision arguing that the proper form was not read and correct penalties were not conveyed.

On Sept. 18, the Supreme Court opinion held that the police officer's errors in the reading of the standard statement informing the defendant of the consequences of refusing to provide a breath sample were not material in light of the statutory purpose to inform motorists and impel compliance. The officer's misstatements could not have reasonably affected the defendant's choice to refuse to provide a breath sample, and do not require reversal of the defendant's conviction for refusal.

For a complete copy of the order and opinion, please visit the state bar association's website at [njsba.com](http://njsba.com).

## THE NEW JERSEY LAW REVISION COMMISSION

The New Jersey Law Revision Commission will meet on Thursday, Oct. 17, to discuss the following:

- 1. Pejorative Terms Regarding Persons With Physical and Sensory Disabilities**—Consideration of a draft final report, including changes made in response to comments received.
- 2. Title 9—Child Abuse and Neglect**—Consideration of a draft tentative report incorporating changes made in response to comments received.
- 3. Title 2C—Sexual Offenses**—Consideration of a revised tentative report incorporating changes to the previously released report and a short memorandum identifying the changes.
- 4. Tuition Aid Grants**—Consideration of a draft final report proposing a modest change to N.J.S. 18A:71B-2 in response to the New

Jersey Supreme Court decision in *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Authority*, 427 N.J. Super. 389 (2012).

- 5. Uniform Real Property Electronic Recording Act**—Consideration of a memorandum that does not recommend enactment of the Uniform Act in light of New Jersey's existing law.

For more information, visit the New Jersey Law Revision Commission website at [lawrev.state.nj.us](http://lawrev.state.nj.us).

## NEW LAW

**P.L.2013, c.165** – Provides for an indication of veteran status on driver's licenses and identification cards issued by the Motor Vehicle Commission. On Aug. 19, the bill passed in the Senate (36-0) and was sent to the governor. On Sept. 29, the governor signed the bill into law. (A-691)

## REMINDER: USE OF ATTORNEY IDENTIFICATION NUMBERS

Please note, there has been an update to the requirement of using attorney identification numbers. The new rule will be effective on Nov. 1.

Again, all attorneys will be required to use their attorney identification number on the first page of papers filed with the Court. This requirement is part of a series of court rule amendments adopted by the Supreme Court, specifically, R.1:41.

Attorney identification numbers can be found on the Court's website: [njcourtonline.com](http://njcourtonline.com). Under the heading Legal select Attorney Index. Type in your Name and click Search. ID will be shown in blue on the left-hand side ■



## Did you know...

New Jersey State Bar Association membership includes:

- Up to 30% off NJICLE seminars and products
- FREE online legal research
- Practice-enhancing opportunities
- FREE publications
- Deep discounts on products and services you can use every day

### Joining is easy

Visit [njsba.com](http://njsba.com) and enter **PROMO CODE 0946** to get **\$25 off** your first year of membership dues. Or call Member Services at 732-249-5000.

This offer applies to NEW members only. A new member is anyone who has not been a member in the past 12 months. This discount CANNOT be used when renewing your membership.



### New Jersey State Bar Association

One Constitution Square  
New Brunswick, NJ 08901-1520

Ralph J. Lamparello *President*  
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Angela C. Check *Executive Director*

Information in *The Bar Report* is compiled by the New Jersey State Bar Association, which welcomes tips and story ideas from its readers and members. Contact Kate Coscarelli at [kcoscarelli@njsba.com](mailto:kcoscarelli@njsba.com) or 732-937-7548.



## Professionalism

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## 2013 Professional Lawyer of the Year Award Winners

Atlantic County Bar Association . . . . .	<b>Randolph C. Lafferty</b>
Bergen County Bar Association . . . . .	<b>Thomas J. Herten</b>
Burlington County Bar Association . . . . .	<b>Stephen J. Mushinski</b>
Camden County Bar Association . . . . .	<b>Ann M. Gorman</b>
Cape May County Association . . . . .	<b>J. David Meyer</b>
Cumberland County Bar Association . . . . .	<b>Arnold Robinson</b>
Essex County Bar Association . . . . .	<b>John M. Bashwiner</b>
Gloucester County Bar Association . . . . .	<b>Kathie L. Renner</b>
Hudson County Bar Association . . . . .	<b>Leonard Meyerson</b>
Hunterdon County Bar Association . . . . .	<b>Robert I. Kuchinsky</b>
Mercer County Bar Association . . . . .	<b>Franklin L. Flacks</b>
Middlesex County Bar Association . . . . .	<b>Emily A. Kaller</b>
Monmouth Bar Association . . . . .	<b>Hon. Bette E. Uhrmacher</b>
Morris County Bar Association . . . . .	<b>Robin C. Bogan</b>
Ocean County Bar Association . . . . .	<b>Hon. James D. Clyne</b>
Passaic County Bar Association . . . . .	<b>Kevin P. Harrington</b>
Salem County Bar Association . . . . .	<b>Jean S. Chetney</b>
Somerset County Bar Association . . . . .	<b>Paul R. Rizzo</b>
Sussex County Bar Association . . . . .	<b>Robert T. Morgenstern</b>
Union County Bar Association . . . . .	<b>Hon. Miriam Span</b>
Warren County Bar Association . . . . .	<b>Marvin S. Fish</b>
Asian Pacific American Lawyers Association . . . . .	<b>Edward Sun Kiel</b>
Association of Black Women Lawyers . . . . .	<b>Lisa Hendricks Richardson</b>
Association of Criminal Defense Lawyers . . . . .	<b>Timothy M. Donohue</b>
Association of the Federal Bar of New Jersey . . . . .	<b>Jerry Fitzgerald English</b>
Garden State Bar Association . . . . .	<b>Fruqan Mouzan</b>
Hispanic Bar Association . . . . .	<b>Daniel Mateo</b>
Trial Attorneys of New Jersey . . . . .	<b>Hon. Jack L. Lintner</b>
New Jersey Association for Justice . . . . .	<b>Abbott S. Brown</b>
New Jersey Corporate Counsel Association . . . . .	<b>Valerie J. Camara</b>
New Jersey State Bar Association . . . . .	<b>Hon. John E. Wallace Jr.</b>
New Jersey Women Lawyers Association . . . . .	<b>Randi W. Kochman</b>

## Pinguelo

*Continued from page 18*

crime. These revelations have sparked a needed debate on the competing interests at stake—and that's a good thing.

**Q. In July the New Jersey Supreme Court imposed a warrant requirement for police tracking cell phone locations. What's the significant of that ruling?**

**A.** The court held that the New Jersey Constitution protects individuals' privacy interest in the location of their cell phones. The court recognized that using a cell phone to determine the location of its owner can be as intrusive as having a tracking device placed on oneself. New Jersey continues its tradition to protect privacy in the face of technological advances.

**Q. How has our state stood historically when it comes to safeguarding citizens' privacy?**

**A.** New Jersey has been at the forefront of privacy issues, compared to how the feds have dealt with them. For example, our courts have found that you don't relinquish privacy when it comes to garbage and bank records. There was one case concerning attorney-client communications conducted in the workplace where the court held that even though you agree not to use your employer-provided computer for personal purposes, email sent through your personal account should remain private.

**Q. How tech-savvy are our judges?**

**A.** It runs the gamut. I've seen very tech-savvy judges on both the state and federal level, and met them on panels, but there are not many.

**Q. Can people who use social media have any expectation of privacy with regard to their communications?**

**A.** Yes, but the expectation has limits. Even though users make disclosures to providers to use their services, they are not advancing the release of personal information to others and can reasonably expect that such information will remain private—at least in New Jersey. That said, if users broadcast information about themselves publicly, then all bets are off.

**Q. Maintaining cyber security seems to be a huge problem. How can organizations fend off hackers?**

**A.** By being ready for it. I recently spoke at an international conference of the American Bar Association in Brazil, which will host the 2016 Summer Olympics. One statistic I mentioned was that in Beijing (during the 2008 Olympics) there were more than 12 million hacking attempts per day to infiltrate the systems and wreak havoc. For many the object was financial gain. But global events provide a great opportunity for activists to promote their agenda. The term for them is hacktivists.

**Q. What are your plans for the NJSBA Privacy Law Committee?**

**A.** I'd like to create a forum where people like me—lawyers practicing in this area—can exchange ideas and become actively engaged in the dialogue about privacy and security. In Washington and in Trenton, legislation is being considered and drafted in these areas. We can help draft an agenda that's workable. ■



## MID-YEAR MEETING

NOVEMBER 9–16, 2013

THE WESTIN EXCELSIOR ROME, ITALY

