

---

---

# CRIMINAL LAW UPDATE

---

---

EDITED AND AUTHORED BY JOSEPH P. REM, JR.

ALL COMMENTS AND SUBMISSIONS, 201-488-9001; FAX 487-8030; E-MAIL JREM@REMZELLER.COM

---

April 2003

## new jersey cases

The sweeping changes in the *Right to Know* (N.J.S.A. 47:1A-3b) law require that the police, upon request, within 24 hours, release to the public (i.e. the press) information including where an arrest has been made, the victim's name, address and age (with certain exceptions, sexual assault victims being the most likely), as well as your client's name, age, residence, occupation, marital status and similar background information. While this new law requires that the "text" of any charges, such as the complaint, accusation and indictment be revealed, all of which makes sense, it is difficult to believe that such private personal information as your client's occupation and marital status be made public knowledge. Is it terribly relevant that your client is an accountant, or a bricklayer? That he is divorced, or currently separated from his wife? That she is 39 years old, or lives at 242 Hereiam Street? The legislature has decided that your client's right to privacy, and the public's right to know, not only does not stop at his doorstep, but continues into his/her home and bedroom. As the kids today say, "YMI," as in "that's too much information."

When you are under arrest and lean over to the police officer and ask "Can I say something off the record?" and then confess, are you (a) a person who has given an involuntary

statement, (b) a person who has been deprived of his *Miranda* rights, or (c) an idiot? In the opinion of the Appellate Division in *State v. Pitar*, the answer is (a) and (b). As to (c) you can draw your own conclusions. While in custody on child sex abuse charges, the defendant admitted fondling the children (but denied penetration—hey, he's no *pervert*) after making his "off the record" request. The court held the statement was made in violation of *Miranda* because the officer should have known there is no such thing as "off the record" (duh—"anything you say can and will be used against you") and the statement was only made after the officer's misleading assurance. And although police officers legally can, and frequently do, make misrepresentations to suspects to encourage confessions, if the misrepresentation induces the statement, it renders it involuntary. Fun note: the officer testified he did not know what the defendant meant by the rather common phrase, "off the record." The court found that "implausible." You think?

## miscellaneous

When a Law Division judge tries a Disorderly Persons offense as if sitting as a municipal court judge, does the defendant who is ultimately convicted then have a municipal appeal to the Law Division? No. It is now clear (see amended R. 3:23-2) that his/her appeal is to the Appellate Division, and the time limits of R.2:4-1(a) govern.

---

## A Publication of the Bergen County Bar Association

The comments contained in this publication are not necessarily those of the Bergen County Bar Association; if you disagree with them, they are not even necessarily those of the author.

---

**D**rug Court. A great way to get your client the drug rehabilitation he or she needs, set them on the path of righteousness and...oh, not that it is important, but also keep them out of the slammer. It is a program that is currently underutilized. Attorneys being creatures of habit, we tend to look at clients' problems, and their potential solutions, in a traditional way, forgetting there are non-traditional approaches available. If you are unsure about whether this court would benefit your client, call Karen Gwynn, A.P. and ask her if your client would qualify, and if so, what the advantages and disadvantages are. Remember also that many defendants on probation are violated for drug usage. Did you know that these clients, whose cases were not originally handled in drug court, may in fact be eligible for drug court on the VOP? Heck, these are the types of defendants the program is *designed for*: people whose problems stem from drug addiction. And what better way to demonstrate reliance on drugs than to show that your client, who knows he/she will go to jail for using drugs while on probation, who knows that drug testing is mandatory and inevitable, still cannot stay away from this poison? Consider drug court another arrow in your defense quiver.

**N**Y drivers charged with DWI and Refusal in NJ will *not* have their NY licenses suspended for a Refusal conviction, but *will* for a DWI conviction. If the DWI proofs are weak, and you can plead it to a Refusal, do so. That plea bargain will have benefits for a NY licensed driver that a NJ licensed driver would not get.

**E**thics. The polar star of all lawyering. Gann publishes an excellent treatise on the NJ Rules of Professional Conduct, and that should be your first stop in your search for answers to your ethics questions. But when your search must expand beyond that, to other jurisdictions or cutting edge issues, consider the following cites: *American Legal Ethics Library*, [www.law.cornell.edu/ethics/](http://www.law.cornell.edu/ethics/); *The Law Office*

*Hornbook*, [www.hornbook.com/index.htm](http://www.hornbook.com/index.htm); The Association of Professional Responsibility Lawyers, [www.aprl.net](http://www.aprl.net); and *Legal Ethics Opinions Summaries*, [www.mcquirewoods.com/services/leo](http://www.mcquirewoods.com/services/leo). A particularly good cite is the American Bar Association's web cite, ABA Center for Professional Responsibility, [www.abanet.org/cpr/home.html](http://www.abanet.org/cpr/home.html), which contains references to national sources, to the Model Rules of Professional Conduct, as well as an e-mail service that fields ethics questions and returns citations to authorities that may contain the answers to your questions.

**D**iscovery. It is still amazing that requests for discovery to municipal prosecutors are often met with the response from the police that the matter is a "State Police case" and no discovery is available from the local police department. In point of fact, State Police policy is not to give *any* discovery to defense attorneys directly, but to direct it solely to the municipal prosecutor for distribution to defense counsel. Despite this long-standing edict, some police departments, prosecutors and municipal court administrators who deal with the State Police do not yet understand it.

**N**eed the law on a particular criminal law topic, or want to know what the judge will charge on a particular charge or issue? Check out the criminal law charges on the NJ Judiciary Home Page, <http://www.judiciary.state.nj.us/charges/juryindex.htm>.

*For those who believe that you should first grab jurors' hearts, and their minds will follow, a little support: "They may forget what you said, but they will never forget how you made them feel." Carl W. Buechner.*

*Nobody outside of a baby carriage or a judge's chamber believes in an unprejudiced point of view. Lillian Hellman (1905-84), American playwright, "The Children's Hour," "Toys in the Attic."*

