

SURVEY OF RECENT DEVELOPMENTS IN NEW JERSEY LAW

In this section, the Seton Hall Law Review presents synopses of recent New Jersey cases of interest to practitioners. In so doing, we hope to assist the legal community in keeping abreast of some of the more interesting changes in significant areas of practice.

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EMPLOYMENT LAW—STANDARD OF REVIEW—HOSPITAL DECISION TO TERMINATE PHYSICIAN'S STAFF PRIVILEGES NEED ONLY BE SUPPORTED BY SUFFICIENT RELIABLE EVIDENCE—*Nanavati v. Burdette Tomlin Memorial Hosp.*, 107 N.J. 240, 526 A.2d 697 (1987).

In 1979, Dr. Suketu H. Nanavati was granted staff privileges as a cardiologist at the Burdette Tomlin Memorial Hospital. 107 N.J. at 244, 526 A.2d at 699. Dr. Nanavati subsequently became involved in a dispute with Dr. Robert Sorensen, chief of cardiology, concerning the allocation of electrocardiogram (EKG) readings. Following Dr. Sorensen's denial of Dr. Nanavati's request to read EKG's more than once a week, Dr. Nanavati began to criticize Dr. Sorensen. Consequently, the hospital's medical staff executive committee initiated proceedings to revoke Dr. Nanavati's staff privileges, alleging that he was unable to work harmoniously with other members of the hospital staff.

Dr. Nanavati filed suit in the New Jersey Superior Court, Chancery Division, which held that the hospital proceedings had been conducted improperly. *Id.* at 245, 526 A.2d at 699-700. The court enjoined the revocation of Dr. Nanavati's privileges and remanded the action to the hospital for further proceedings consistent with the hospital bylaws. A newly appointed hearing committee again recommended dismissal of Dr. Nanavati and the hospital Board of Governors affirmed. *Id.* at 245, 526 A.2d at 700.

In 1983, Dr. Nanavati again brought suit in the chancery division, which held that the hearing committee's ex parte proceedings "violated fundamental fairness." *Id.* at 246, 526 A.2d at 700. The chancery division remanded the action to the hospital. The chancery division determined after an independent review of the hospital record that the proceedings were unfair by a "preponderance of the evidence." *Id.* at 247, 526 A.2d at 700. The court stated that revocation of a physician's staff privileges on grounds of disharmony must be supported by evidence "of actual interference with patient care." *Id.* Concluding that such evidence was lacking, the chancery division permanently enjoined the hospital from revoking Dr. Nanavati's staff privileges. The appellate division affirmed the trial court's decision that the hospital proceedings were conducted improperly. The appellate division, however, held that the lower court "should not have made independent findings of fact," but rather should have only deter-

mined whether the decision of the hospital "was supported by sufficient reliable evidence." *Id.*

The supreme court affirmed and modified the decision of the appellate division and remanded the case to the hospital. *Id.* at 256, 562 A.2d at 705. Justice Pollock, writing for the court, held that the decision of a hospital to revoke a doctor's staff privileges must be supported by "sufficient reliable evidence." *Id.* at 249, 526 A.2d at 702. The court further held that while proof of actual patient harm is not needed to dismiss a disruptive physician, a hospital should establish that "prospective disharmony probably will have an adverse impact on patient care." *Id.* at 254, 526 A.2d at 704 (quoting *Sussman v. Overlook Hosp. Ass'n*, 92 N.J. Super. 163, 182, 222 A.2d 530, 540 (Ch. Div. 1966), *aff'd*, 95 N.J. Super. 418, 231 A.2d 389 (App. Div. 1967)).

Justice Pollock first noted the well established principle that hospital decisions concerning staff privileges were subject to judicial review. *Id.* at 248, 526 A.2d at 701 (citing *Greisman v. Newcomb Hosp.*, 40 N.J. 389, 396, 192 A.2d 817, 821 (1963)). The justice explained, however, that in 1986 the court relaxed the standard of judicial review regarding hospital decisions to grant staff privileges. *Id.* As such, Justice Pollock stated that a court "should sustain a hospital's standard for granting staff privileges if that standard is rationally related to the delivery of health care." *Id.* at 249, 526 A.2d at 701. While denial of privileges to a new applicant is pejorative, the justice observed that revocation of such privileges from an established physician was more devastating because of possible disruption of the operation of a hospital. *Id.* at 250, 526 A.2d at 702. Despite this distinction, Justice Pollock held that a court should employ the same level of judicial review. *Id.*

The court's deference to hospital decisions concerning staff privileges was predicated on several factors. *Id.* at 250, 526 A.2d at 702. Justice Pollock noted that hospitals utilize established procedures to insure that such decisions are made fairly. *Id.* at 250-51, 526 A.2d at 702. Additionally, he recognized that hospitals are subject to extensive regulation. *Id.* at 251, 526 A.2d at 702. Finally, Justice Pollock acknowledged that a unique expertise is required in both hospital administration and medical treatment. *Id.* The justice observed that, unlike other corporations hospitals are "vitally affected with a public interest and regularly function in a crisis atmosphere." *Id.* at 252, 526 A.2d at 703. Justice Pollock thus concluded that the cooperation among staff

members was essential to the efficient functioning of a hospital, and promotion of such cooperation was best left to those who govern the hospital. *Id.* Justice Pollock cautioned, however, that the court's deference to hospital decision-making was not a license to terminate or deny staff privileges based upon a physician's color, gender, race or religion. *Id.* at 253, 526 A.2d at 703. Nor should a doctor be punished, he added, for constructively criticizing other doctors or hospital procedures. *Id.*, at 253, 526 A.2d at 703-04.

Justice Pollock next considered the justification for terminating a physician's staff privileges. *Id.* at 253, 526 A.2d at 704. He stated that actual interference with patient care was sufficient grounds for revoking a doctor's privileges. *Id.* Justice Pollock added that disharmony, absent actual patient harm, could be grounds for terminating staff privileges if evidence of specific incidents of misbehavior were presented and the hospital could demonstrate that potential disharmony was likely to interfere with health care. *Id.* at 254, 526 A.2d at 704.

The *Nanavati* decision illustrates the deference that New Jersey courts have afforded hospitals when reviewing their decisions regarding staff privileges. In deferring to the judgment of a hospital with respect to its day-to-day operations, the court recognized that such decisions are beyond their expertise. Nonetheless, in adopting the sufficient reliable evidence standard of review, the *Nanavati* court has insured that hospitals are afforded greater latitude in their daily operations, while guarding against abuses that could jeopardize the public's need for quality health care.

Richard Mongelli

PRODUCTS LIABILITY—DEFENSE OF CONTRIBUTORY NEGLIGENCE IS NOT CONTINGENT UPON WHETHER A PRODUCT WAS USED FOR ITS INTENDED PURPOSE—*Rivera v. Westinghouse Elevator Co.*, 107 N.J. 256, 526 A.2d 705 (1987).

On January 19, 1981, Jose Rivera, an employee of City Federal Savings and Loan, was a member of a work crew organized to move an eight foot conference table from one floor to another. 107 N.J. at 258, 526 A.2d at 706. As had been past work practice,

the crew used the elevator top for this task, planning to control its motion manually. The workers, however, were unaware that the control mechanism had been left in the automatic operating mode. Consequently, Rivera, who was on top of the elevator, was killed instantly when it was activated by someone on a higher floor.

Rivera's spouse brought suit against Westinghouse Elevator Company (Westinghouse) alleging negligent failure to warn of the risks associated with untrained use of an elevator top. At trial, the court instructed the jury that Rivera was contributorily negligent if "he had not acted as a reasonably prudent person under the circumstances." *Id.* at 259, 526 A.2d at 706. Despite the charge, the jury found Westinghouse wholly liable without any contributory negligence on the part of Rivera and awarded \$150,000 in damages.

The appellate division reversed and remanded the case for a new trial. Specifically, the court concluded that allocation of 100% liability to the defendant was "against the weight of evidence." Both the trial and appellate courts assumed that the applicable standard regarding contributory negligence was negligence "arising from mere carelessness or inadvertence." *Id.* at 259, 526 A.2d at 707. The New Jersey Supreme Court, in a per curiam opinion, affirmed the decision of the appellate division insofar as it was premised upon an improper apportionment of liability. *Id.*

The supreme court noted, however, that some confusion with respect to the defense of contributory negligence might arise from a footnote in the appellate division's opinion. *Id.* The footnote suggested that the availability of the defense depended upon whether a product was used in an unintended manner. *Id.* at 259-60, 526 A.2d at 707 (citing *Rivera*, 209 N.J. Super. 543, 549 n.1, 508 A.2d 264, 267 n.1 (App. Div. 1986)). The court inferred that the appellate division had assumed that the contributory negligence defense would have been unavailable had Rivera been using the elevator for its intended purpose. *Id.* at 260, 526 A.2d at 707.

The supreme court determined that the appellate division "placed improper emphasis upon the relevance of the intended or unintended use of a product." *Id.* The court stated that, as a matter of law, the unintended use of a product is not a defense to strict liability because liability may still exist if the use is foreseeable. *Id.* The court also observed that whether an unintended

use of a product constitutes contributory negligence is a question of fact, not law. *Id.* Therefore, the court held that the issue of whether Rivera's use of the elevator was unintended by the manufacturer was not determinative of the availability of the contributory negligence defense. *Id.*

The court stated that it was uncertain whether the appellate division would have held "contributory negligence in its ordinary sense" to be applicable had it not given undue consideration to the question of Rivera's unintended use. *Id.* The court noted certain situations involving workplace injuries due to defective products where contributory negligence was not an available defense. *Id.* The court contended that in such instances the plaintiff's misconduct would have to rise to a level more serious than a departure from a standard of reasonable care in order to be deemed contributorily negligent. *Id.* at 260-61, 526 A.2d at 707. The court declined, however, to decide both the proper standard of care and the availability of the contributory negligence defense, as those issues had not been fully presented. *Id.* at 261, 526 A.2d at 708. Instead, the court directed that the matter be addressed by the trial court. *Id.*

The *Rivera* court concluded correctly that the availability of the contributory negligence defense in a product liability action should turn on foreseeability of use and not whether a particular use is deemed "unintended" as a matter of law. To hold otherwise would create an unbending and perhaps artificial standard. Such decisions must, for the sake of fairness, be decided on a case-by-case basis and should not be taken away from the trier of fact.

Marybeth Scriven

REMEDIES—DAMAGES—OWNER OF AUTOMOBILE DAMAGED BY TORTIOUS ACTS OF ANOTHER NEED NOT RENT SUBSTITUTE VEHICLE AS PREREQUISITE TO RECOVERY FOR LOSS OF USE—*Camaraza v. Bellavia Buick Corp.*, 216 N.J. Super. 263, 523 A.2d 669 (App. Div. 1987).

Ramiro Camaraza's car, while in the custody of Bellavia Buick Corporation (Bellavia) for servicing, was stolen by a third party and damaged in an accident. 216 N.J. Super. at 265, 266,

523 A.2d at 670. Camaraza was without the use of his automobile for five months while it was being repaired. He brought suit against Bellavia for negligent care of his automobile.

The trial court granted the plaintiff's motion for summary judgment, but limited damages to the plaintiff's collision deductible as stipulated in his insurance policy. *Id.* at 265, 523 A.2d at 671. Refusing to grant a remedy for hypothetical losses, the lower court held that Camaraza could not recover "for loss of use of his automobile" because he had not rented a substitute vehicle. *Id.* at 265-66, 523 A.2d at 671. The appellate division reversed the damages portion of the judgment and remanded the case for further proceedings. *Id.* at 269, 523 A.2d at 672. The appellate division concluded that a plaintiff need not rent substitute transportation as a prerequisite to recovery for the "loss of use" of his vehicle. *Id.* at 267, 523 A.2d at 671.

Judge Skillman, writing for the appellate division, stated that recovery for property damages is not limited to "pecuniary losses which are capable of precise measurement." *Id.* at 266, 523 A.2d at 671. He noted that as a general rule all damages naturally and proximately caused by a tort are recoverable. *Id.* The judge opined that a plaintiff may be inconvenienced by the need to take public transportation or the curtailment of certain activities because of the unavailability of his car. *Id.* at 267, 523 A.2d at 671-72. Therefore, the court held that any substantial inconvenience as a result of loss of use of a vehicle was compensable. *Id.* at 267, 523 A.2d at 672.

The court next addressed the appropriate measure of damages when a plaintiff does not rent a substitute vehicle. *Id.* at 268, 523 A.2d at 672. Judge Skillman observed that while the approximate rental value of a substitute vehicle should be admitted into evidence, it was not determinative of the amount of recovery. *Id.* The court held that the appropriate remedy should be made on a case by case basis with consideration given to a plaintiff's individual circumstances. *Id.*

The *Camaraza* holding stands for the proposition that an individual need not demonstrate out-of-pocket expenses to recover damages he may have sustained as a result of the loss of use of his vehicle. Although the court was willing to allow damages for "loss of use" of an automobile, it provided little guidance regarding what constitutes an "inconvenience" due to such loss, and what damages would be an appropriate remedy. Consequently, a dramatic increase in litigation is likely due to the difficulties in

discerning real from feigned inconveniences. Additionally, the court's failure to establish guidelines for an appropriate remedy will result in mercenary individuals attempting to obtain windfall damages.

John E. Bruder

ADMINISTRATIVE LAW—HEARSAY NEED NOT BE SUPPORTED BY COMPETENT EVIDENCE IN EXCLUSIONARY PROCEEDINGS PURSUANT TO THE CASINO CONTROL ACT—*Dep't of Law and Pub. Safety, Div. of Gaming Enforcement v. Merlino*, 216 N.J. Super. 579, 524 A.2d 821 (App. Div. 1987).

In 1982, the Division of Gaming Enforcement (Division) petitioned the Casino Control Commission (Commission) to bar the admittance of Philip Leonetti and Lawrence Merlino from the state's licensed casinos. 216 N.J. Super. at 582, 524 A.2d at 822-23. Both men were reputed crime figures and "associates" of members of organized crime. *Id.* at 582, 524 A.2d at 823. The Division alleged that the presence of Leonetti and Merlino in licensed casinos would be "inimical to the interests of the State of New Jersey and to licensed gaming." *Id.* Therefore, the Division sought to have both men placed on an exclusion list pursuant to N.J. STAT. ANN. § 5:12-71 (West Supp. 1987). *See id.*

In 1983, the first of two hearings before an Administrative Law Judge (ALJ) was held. The ALJ held in favor of the defendants, ruling that the hearsay evidence upon which the Division relied was inadequate to support the exclusion of Leonetti and Merlino from licensed casinos. The judge noted that the residuum rule requires that "hearsay evidence be supported by competent evidence." *Id.*

On May 1, 1984, the Commission issued an order rejecting the ALJ's decision and remanded the matter for a new hearing with instructions that compliance with the residuum rule was not mandatory. On remand, the Commission introduced new evidence that Leonetti had been indicted as a "leading associate in an organized crime cartel and [as] being responsible for the efforts of that cartel to control and influence the government of Atlantic City." *Id.* at 583, 524 A.2d at 823. The ALJ held that Leonetti should be placed on the Commission's exclusion list

pending the outcome of the criminal charges against him. The judge, however, denied the petition seeking to exclude Merlino.

In November 1985, the Commission again issued a decision excluding both Leonetti and Merlino from the state's licensed casinos. The Commission determined that the ALJ erred in applying the residuum rule which applied to administrative proceedings, not to Casino Control Act proceedings. Additionally, the Commission concluded that adverse inferences may be drawn from the defendants' assertion of their fifth amendment privilege at an administrative hearing.

In March 1986, the defendants appealed the Commission's order to the New Jersey Superior Court, Appellate Division. *Id.* at 581, 524 A.2d at 822. The appellate division affirmed the decision of the Commission to include the defendants' names on an exclusionary list. *Id.* at 584, 524 A.2d at 824. Writing for the court, Judge Scalera held that hearsay need not be supported by competent evidence in exclusion proceedings. *Id.* at 585, 524 A.2d at 824. The court agreed with the Commission that pursuant to the Casino Control Act, the Commission was not "restricted by the requirements imposed on other administrative agencies." *Id.* Thus, the court determined that the residuum rule was inapplicable to proceedings before the Commission. *Id.*

The court next addressed the constitutionality of the exclusion statute. *Id.* The defendants contended that the language of the Act was vague and indefinite, particularly with regard to the "inimical" standard. *Id.* The court noted that the "inimical" test had successfully withstood similar constitutional attacks. *Id.* The court observed that such attacks could be successful only if the statute's language was so obscure that its meaning could be deduced only by conjecture. *Id.* at 586, 524 A.2d at 825. The court held that the plain language of the statute clearly applied to the defendants. *Id.*

Additionally, the court dismissed the defendants' argument that the exclusion statute did not explicitly authorize the Commission's use of the "associates of career offenders" classification. *Id.* The court observed that the statute's plain language implied that the list of persons subject to exclusion was not exclusive. *Id.* at 586-87, 524 A.2d at 825. Therefore, the court asserted that the Commission was empowered to include additional classifications to the statutory list of excludable persons. *Id.*

Finally, the court rejected the defendants' claim that adverse inferences could not be drawn from the assertion of the fifth

amendment privilege against self-incrimination. *Id.* at 587, 524 A.2d at 825. The court observed that the defendants had a right to invoke the privilege but that adverse inferences may be drawn in administrative proceedings when there is additional evidence to support such a finding. *Id.* Furthermore, the court emphasized that the penalty barring the defendants from gambling casinos was "relatively insubstantial." *Id.* at 587, 524 A.2d at 826.

Undoubtedly, some will express earnest concern that the *Merlino* decision will make individuals potential targets for arbitrary state action. Such concern must be viewed in its proper perspective, however. Fundamental rights are not at issue. Legalized gaming is and must remain a tightly controlled, heavily regulated industry to insure its legitimacy. The plethora of laws governing licensed gambling evidences the concern of the state. In this regard, the *Merlino* decision advances the legislative intent of the Casino Control Act.

Judy A. Verrone

ADMINISTRATIVE LAW—ROOMING AND BOARDING HOUSE ACT—THE ROOMING AND BOARDING HOUSE ACT IS INAPPLICABLE TO NON-PROFIT ORGANIZATIONS—*Market St. Mission v. Bureau of Rooming and Boarding House Standards*, 217 N.J. Super. 56, 524 A.2d 1283 (App. Div. 1987).

The Market Street Mission (Mission) was a non-profit, religious corporation that provided free food, clothing, shelter and rehabilitative programs to individuals recovering from alcohol or drug dependency. 217 N.J. Super. at 59-60, 524 A.2d at 1284-85. In January 1984, pursuant to the Rooming and Boarding House Act, N.J. STAT. ANN. §§ 55:13B-1 to -17 (West 1979) (Act), the Bureau of Rooming and Boarding House Standards (Bureau) inspected the Mission and found numerous safety violations. *Id.* at 58, 524 A.2d at 1284. Although the Bureau Commissioner had ordered that the violations be rectified, the Bureau discovered upon reinspection that the violations had not been corrected. Consequently, the Commissioner assessed monetary penalties in the amount of \$3,050.

The Mission challenged both the Bureau's jurisdiction and the applicability of the Act to a non-profit, religious corporation.

Id. at 59, 524 A.2d at 1284. On administrative appeal, the Administrative Law Judge (ALJ) held that the Act applied to the Mission and that the penalties assessed by the Bureau were reasonable. The Commissioner affirmed the ALJ's opinion, but agreed to waive the penalties provided that the Mission abated the safety violations.

The Mission found the Commissioner's requirements unacceptable and appealed the decision. The appellate division reversed the Commissioner's determination and vacated the penalties. *Id.* at 72, 524 A.2d at 1291. The appellate court held that the act applied solely to commercial enterprises and did not control the Mission's activities. *Id.* at 68, 524 A.2d at 1289.

Writing for the appellate division, Judge Deighan emphasized that "[i]n interpreting a statute, primary regard must be given to the fundamental purpose for which the legislation was enacted." *Id.* at 65, 524 A.2d at 1287 (citing *New Jersey Builders, Owners & Managers Ass'n v. Blair*, 60 N.J. 330, 338, 288 A.2d 855, 859 (1972)). Judge Deighan further noted that the spirit of the law controls the letter of the law when a literal reading of a statute would lead to a result at variance with the statute's essential design and purpose. *Id.* As such, the judge averred that the meaning of a statute should "be gathered from the object and nature of the subject matter, the contextual setting, and the mischief sought to be eliminated as well as the proposed remedy." *Id.* (citing *Brewer v. Porch*, 53 N.J. 167, 249 A.2d 388 (1969); *San-Lan Builders, Inc. v. Baxendale*, 28 N.J. 148, 145 A.2d 457 (1958)).

Applying these principles of construction, Judge Deighan recognized that the intention of the Act was to provide "for the health, safety and welfare of persons residing in rooming and boarding houses." *Id.* at 66, 524 A.2d at 1288 (quoting N.J. STAT. ANN. § 55:13B-2 (West 1979)). Additionally, he observed that the Act was concerned with the protection and encouragement of the boarding home industry. *Id.* at 62, 524 A.2d at 1286. Finally, Judge Deighan recognized that these goals were supplemented by the Boarding Facility's Bill of Rights, N.J. STAT. ANN. §§ 55:13B-18 to -21 (West Supp. 1987), which protects the rights of all rooming and boarding house residents. *Id.* at 63, 524 A.2d at 1286.

Judge Deighan concluded that the regulations promulgated by the Commissioner pursuant to the Act covered numerous areas which were either inapplicable to or incompatible with the Mission's purpose. *Id.* at 69, 524 A.2d at 1289. He noted that

many of the mandates were concerned with the orderly operation of a profit-making business, as opposed to a charitable institution. *Id.* at 70, 524 A.2d at 1290. Other standards, the judge stated, were enacted to protect the dignity and rights of a boarding house occupant. *Id.* Judge Deighan observed that such standards were unnecessary to the regulation of an organization, such as the Mission, whose intention was to promote and develop human dignity. *Id.* at 70-71, 524 A.2d at 1290. Thus, the court held that the Act was inapplicable to non-profit organizations. *Id.* at 68, 524 A.2d at 1289.

The *Market St. Mission* opinion demonstrates the importance of a reasoned statutory analysis. Statutory applications based upon literal readings without regard to legislative intent may frustrate rather than facilitate a statute's remedial purpose. Here, application of the Act to the Mission would not have advanced the Act's goal of providing for the welfare of boarding house residents; indeed, adherence to the Act would have been costly and would have discouraged the Mission from offering care to those in need of its help. Therefore, where a literal reading of a statute may produce unintended results, courts should not be hesitant to look beyond a statute's plain language in order to effectuate the legislature's intent and avoid unjust results.

Robin A. Newman

CRIMINAL PROCEDURE—SEARCH AND SEIZURE—EVIDENCE
LAWFULLY SEIZED UNDER FEDERAL LAW IS INADMISSIBLE IN
STATE COURT PROSECUTION IF SEIZURE VIOLATES DEFEN-
DANT'S STATE CONSTITUTIONAL RIGHTS—*State v. Mollica*, 217
N.J. Super. 95, 524 A.2d 1303 (App. Div. 1987).

Primo Mollica and Augustine Ferrone were indicted for possession of gambling records and promoting gambling. *See* 217 N.J. Super. 95, 524 A.2d 1303. At trial, the judge determined that the telephone toll billing records, upon which probable cause was based, were acquired pursuant to an independent federal investigation and were subsequently provided to state authorities. *Id.* at 96, 524 A.2d at 1304. The trial judge determined that the toll records had been the product of an illegal search and seizure in violation of the New Jersey Constitution. *Id.* at 97, 524

A.2d at 1304. Thus, he concluded that the warrant issued was invalid and ordered the evidence seized pursuant to it suppressed.

The State appealed to the New Jersey Superior Court, Appellate Division. *See id.* The appellate division affirmed the lower court's decision. Judge Antell, writing for the court, held that evidence lawfully seized under federal law by independent federal authorities was inadmissible in a state court prosecution if seizure was in violation of the defendants' state constitutional rights. *Id.* at 100, 525 A.2d at 1305-06.

The court first noted that the seizure of telephone toll records did not violate the fourth amendment. *Id.* at 97, 524 A.2d at 1304. Thus, the court acknowledged that the records would be admissible in a federal prosecution. *Id.* at 98, 524 A.2d at 1305. Judge Antell observed, however, that New Jersey courts had "frequently resorted to our own State Constitution in order to afford our citizens broader protection of certain personal rights than that afforded by analogous or identical provisions of the federal Constitution." *Id.* at 97, 524 A.2d at 1304 (quoting *State v. Novembrino*, 105 N.J. 95, 145, 519 A.2d 820, 849 (1987)). On this basis, the court held that the more stringent state law standard should be applied to protect the defendants' constitutional right to privacy. *See id.* at 98, 524 A.2d at 1304.

The court distinguished *People v. Blair*, 25 Cal. 3d 640, 602 P.2d 738, 159 Cal. Rptr. 818 (1979), from the case at bar. *Mollica*, 217 N.J. Super. at 98-99, 524 A.2d at 1305. In *Blair*, the California Supreme Court held that a legal seizure of toll records by federal authorities in Pennsylvania were admissible in a California proceeding despite that such a seizure would be illegal in California. *Id.* at 98, 524 A.2d at 1305. The *Mollica* court stated that, unlike the present case, the *Blair* defendant's "expectation of privacy was not impaired under the laws of the state in which he resided." *Id.* at 99, 524 A.2d at 1305 (quoting *Blair*, 25 Cal. 3d at 656, 602 P.2d at 748, 159 Cal. Rptr. at 828).

Finally, the court reasoned that the application of the exclusionary rule in the matter at issue was consistent with federal case law. *See id.* at 100, 524 A.2d at 1306. The court observed that in *Elkins v. United States*, 364 U.S. 206 (1960), evidence seized by state officials pursuant to state law, but in violation of the United States Constitution, was suppressed in a federal prosecution. *Id.* Thus, the court opined that evidence seized in violation of the

New Jersey Constitution must be suppressed in a state proceeding. *See id.* at 101, 524 A.2d at 1306.

The appellate division recognized that the New Jersey Constitution affords broader protection of privacy rights than the federal Constitution. The purpose of insuring greater protection from unreasonable search and seizure would be eviscerated if state officials could circumvent New Jersey's constitutional standards by obtaining evidence from federal authorities who were not bound by the same stringent standards. The *Mollica* decision will insure that New Jersey's higher standards of privacy protection are met in state prosecutions, regardless of federal involvement in such matters.

Madeline E. Cox