

Justice Gary S. Stein
Public Interest Center
at Pashman Stein Walder Hayden P.C.

Impact Report

2021-2022



Our Mission

The Justice Gary S. Stein Public Interest Center at Pashman Stein Walder Hayden is dedicated to a broad range of public interest impact litigation and appellate advocacy that advances social, racial, and economic justice; protects civil liberties and constitutional rights; and promotes an open and transparent government. Under the leadership of Director CJ Griffin, the Stein Public Interest Center will continue to promote and advance justice by taking on impactful cases and partnering with local, regional, and national organizations.

- 2** 2021-2022 at a Glance
- 3** Message from Our Director
- 4** Making an Impact
- 12** Promoting and Open and Transparent Government
- 14** Protecting Civil Liberties and Constitutional Rights
- 17** Advancing Social, Racial, and Economic Justice
- 19** Defending and Advancing the Rights of the Criminally Accused
- 27** Honors and Awards
- 28** Our Partners
- 29** Our Pro Bono Attorneys and Staff
- 30** Contacting the Stein Public Interest Center

A grayscale background image of the Statue of Liberty, showing her head with the crown and her right arm holding the torch.

12,000 +
pro bono
hours

2021-2022 at a Glance

New Jersey Supreme Court

- Filed 47 briefs
- Appeared in 38 oral arguments
- 29 opinions

U.S. Supreme Court

- Filed 2 briefs

New Jersey Appellate Division

- Filed 7 briefs
- Appeared in 12 oral arguments
- 14 opinions

Message from Our Director

Game-changing. Landmark. Sea change.

These are some of the words that were used to describe recent New Jersey Supreme Court decisions related to police transparency and racial discrimination. As Director of the Justice Gary S. Stein Public Interest Center at Pashman Stein Walder Hayden, I am proud to say that our center played a crucial role in each of those cases.

Those decisions, and other courtroom wins, highlight our attorneys' skilled advocacy and commitment to public interest law. Each of these cases has a significant impact on the rights of New Jersey citizens.

This report details our impact.

Our work is far from done, but we've already demonstrated that hard work in the name of just causes can lead to great change. We believe New Jersey is moving in the right direction and hope other states can learn from its example.

Of course, we would not have had such great successes without our client partnerships, our passionate attorneys, and our dedicated staff. We also owe a debt to the firm, which continues to invest in the Stein Public Interest Center and make our work possible. I'd also like to thank Judge Ellen Koblitz (Ret.) and Judge Stuart Peim (Ret.) for the significant pro bono time they donated to help our attorneys improve their briefs and prepare for oral arguments.

I've served as Director of the Stein Public Interest Center since it was founded four years ago, and yet I am still awed by our attorneys and their accomplishments. They are not just competent lawyers; they are good people who believe in themselves, their work, and a future in which "justice for all" is not just a phrase. It is a privilege to lead them.

I am also honored to lead an organization named after Justice Gary S. Stein (Ret.), one of my legal heroes. Justice Stein retired from the bench in 2002, yet continues his tireless efforts to advance the public interest. His commitment is an inspiration, the push we need on late nights/early mornings and the reason we keep fighting even when the odds are against us.

To strengthen our team and increase our impact, we are launching the Justice Gary S. Stein Public Interest Center Fellowship in fall 2023. This two-year program will give selected attorneys the opportunity to work with us on public interest impact litigation and appellate advocacy.

Looking ahead, we will continue to advocate for legal principles that are consistent with fairness and equal justice for all. I look forward to updating you about our work again.



CJ Griffin | Director, Stein Public Interest Center at Pashman Stein Walder Hayden

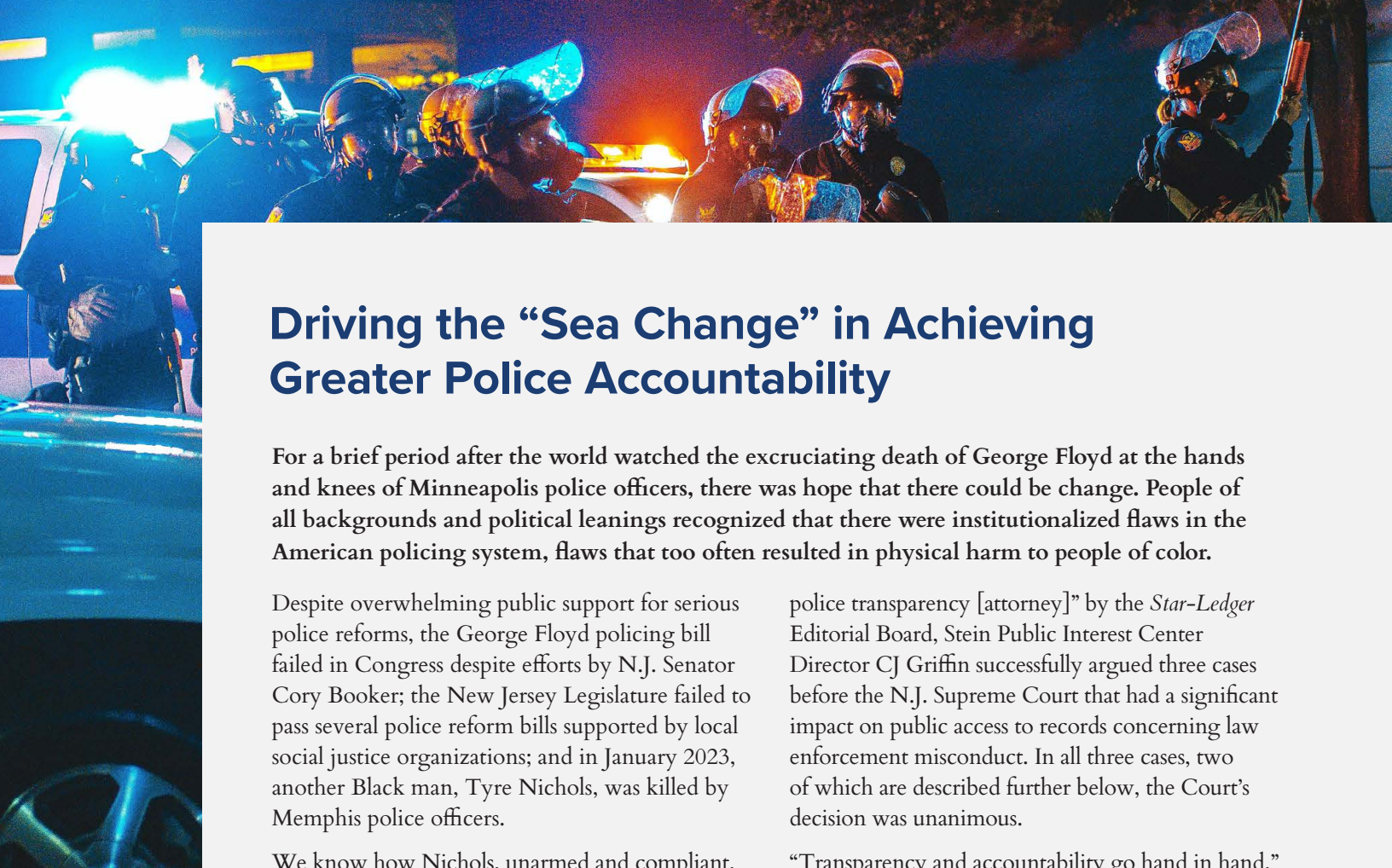
A handwritten signature in black ink, appearing to be 'CJ Griffin', written in a cursive style.

CJ Griffin
April 30, 2023

Making an Impact

We have been involved in numerous favorable decisions from the New Jersey Supreme Court and Appellate Division over the past two years that have made a significant impact on communities in New Jersey, including:

- Police transparency rulings that significantly increased public access to records concerning law enforcement misconduct,
- Racial justice decisions that changed the state's jury selection process and curbed law enforcement's ability to make pretextual traffic stops, and
- Social justice reform decisions in the cannabis space, which has pushed New Jersey forward in legalization and expungement while also righting past wrongs.



Driving the “Sea Change” in Achieving Greater Police Accountability

For a brief period after the world watched the excruciating death of George Floyd at the hands and knees of Minneapolis police officers, there was hope that there could be change. People of all backgrounds and political leanings recognized that there were institutionalized flaws in the American policing system, flaws that too often resulted in physical harm to people of color.

Despite overwhelming public support for serious police reforms, the George Floyd policing bill failed in Congress despite efforts by N.J. Senator Cory Booker; the New Jersey Legislature failed to pass several police reform bills supported by local social justice organizations; and in January 2023, another Black man, Tyre Nichols, was killed by Memphis police officers.

We know how Nichols, unarmed and compliant, died; the officers who beat him wore body cameras. Without that footage, the officers might have stuck to their original report that said Nichols had “started to fight” with them and tried to grab one officer’s gun. The videos contradicted that.

In March 2023, Najee Seabrooks was killed by Paterson police officers, resulting in the New Jersey Attorney General’s office assuming control of the Paterson Police Department.

Recognizing that a first step in police accountability is greater police transparency, the Justice Gary S. Stein Public Interest Center at Pashman Stein Walder Hayden has been a driving force in effecting what has been described as a “sea change” in New Jersey. From the N.J. Supreme Court ruling in 2017 establishing the right to obtain police dash-cam footage and use of force reports (*North Jersey Media Group v. Township of Lyndhurst*, 221 N.J. 541 (2017)), to the issuance of Attorney General Directive 2020-5 in connection with the dismissal of a case brought by the Stein Public Interest Center, police transparency and accountability have been a top priority.

Over the past two years, we’ve made significant progress. Described as “the state’s most prominent

police transparency [attorney]” by the *Star-Ledger* Editorial Board, Stein Public Interest Center Director CJ Griffin successfully argued three cases before the N.J. Supreme Court that had a significant impact on public access to records concerning law enforcement misconduct. In all three cases, two of which are described further below, the Court’s decision was unanimous.

“Transparency and accountability go hand in hand,” Griffin said. “Without access to internal affairs reports and information about police misconduct, the public cannot determine the extent of the problem and if appropriate disciplinary measures were taken. Moreover, it’s our hope that the threat of public exposure will make some bad actors think twice before they offend.”

While significant progress has been made, New Jersey still has a long road ahead when it comes to police reform. Many states, including Florida and Georgia, already provide public access to police disciplinary records, but in New Jersey, a bill to provide such access has stalled in the state legislature. Moreover, while the N.J. Supreme Court upheld the 2020 directive requiring public disclosure of the identities of officers who commit serious disciplinary violations, a 2022 directive clawed back some of that progress. The latter directive removed a provision requiring 20 years of retroactive disclosures for state police, and added an order that allows police agencies to issue a summary of an officer’s misconduct rather than the actual investigation report.

The Stein Public Interest Center remains committed to pursuing justice until true police transparency, and resulting accountability, is achieved.

Richard Rivera v. Union County Prosecutor's Office, 250 N.J. 124 (2022)

In February 2019, employees from the Elizabeth Police Department filed a complaint with the Union County Prosecutor's Office (UCPO) alleging that the long-time police director routinely referred to employees using racial and sexist slurs. UCPO's two-month investigation upheld the complaint. The complainants talked to the press and, as a result of public pressure and a request by the Attorney General, the police director resigned.

In July 2019, Richard Rivera — currently a police director himself — filed an Open Public Records Act (OPRA) request seeking the former police director's internal affairs reports. UCPO denied Rivera's request, claiming the report was exempt under the Attorney General's Internal Affairs Policy and that disclosure of the report could hamper future investigations and violate the witnesses' privacy. The Stein Public Interest Center's CJ Griffin filed a lawsuit on Rivera's behalf.

The case ultimately reached the N.J. Supreme Court, which issued a unanimous decision in March 2022. The decision, authored by Chief Justice Stuart Rabner, concluded that although the reports were exempt from access under OPRA, access should be granted under the common law right of access because such transparency is in the public interest.

"Racist and sexist conduct by the civilian head of a police department violates the public's trust in law enforcement," Rabner wrote. "It undermines confidence in law enforcement officers generally, including the thousands of professionals who serve the public honorably. Public access helps deter instances of misconduct and ensure an

appropriate response when misconduct occurs."

Importantly, the decision did not just compel release of the police director's internal affairs report; it also created specific factors—now called "*Rivera* factors"—for agencies to consider when receiving future requests for other internal affairs reports.

The decision, Rivera said, "opened the door wide on internal affairs. For years, I've been debating as to whether police can police themselves and, little by little, we're demonstrating that they can't."

This wasn't the first time Rivera worked with Griffin on a police transparency issue — they have litigated more than 50 police records cases together. Nor will it be the last, Rivera said. He said he's hopeful that Griffin's tenacity and approach to arguments will result in further positive change.

"We have a long way to go regarding police accountability," Rivera said. "I was a police officer when Rodney King was beaten, and there was much to do in the wake of that regarding reforms and oversight. Yet here we are again, 30 years later, having the same conversation."

Libertarians v. Cumberland County, 250 N.J. 46 (2022)

In 2017, a woman incarcerated at the Cumberland County Jail filed a lawsuit alleging she was sexually abused by correctional officers, including Tyrone Ellis. The county filed disciplinary charges against Ellis. Ellis admitted he had "inappropriate relationships with two inmates" and agreed to cooperate with investigators. The county then dismissed the charges and allowed Ellis to retire in good standing with a reduced pension.

When Libertarians for Transparent Government (LFTG) sought full details of Ellis's settlement through OPRA, Cumberland County officials refused, saying the agreement was a personnel record and therefore exempt from OPRA. The county instead offered a brief, sanitized summary of what occurred, stating it had "charged Ellis with a disciplinary infraction" and "terminated" him. Griffin sued on LFTG's behalf to seek the agreement and hold the county responsible for falsely stating it had terminated Ellis when he was instead permitted to retire in good standing.

In a March 2022 unanimous decision written by Chief Justice Rabner, the Court found that the county was obligated to disclose the settlement agreement because it contained Ellis' real "reason for separation," — information that OPRA requires to be disclosed even if it is contained in a personnel record.

The Court noted that disclosure of the agreement itself was important because "without access to actual documents in cases like this, the public can be left with incomplete or incorrect information. Access to public records fosters transparency, accountability, and candor. That applies to questions about sexual abuse in prison as well as the overall operation of prison facilities and other aspects of government."

Griffin said the Court's decision reinforced a fundamental principle: The public has a right to examine the original records and does not have to accept a governmental agency's summary of events.

"We can review public records and see for ourselves what the truth is," said Griffin. "The trial court called the county's assertion that it terminated Ellis a 'misrepresentation.' It was more than that. It was an outright attempt to deceive. Access to the agreement revealed the truth."



Tackling Racial Discrimination and Implicit Bias in the Criminal Justice System

New Jersey has a long history of racial discrimination in its criminal justice system. In the 1990s, racial profiling by state troopers patrolling the New Jersey Turnpike was so egregious that a federal monitor was appointed to oversee reform efforts. More recently, a 2020 ACLU analysis concluded that in New Jersey, people of color are 3.5 times more likely to be arrested for cannabis-related offenses than white Americans despite comparable usage rates.

The Stein Public Interest Center has long fought that discrimination and recently made significant progress in our quest to balance the scales. In the past two years, the Center has been on the winning side in New Jersey Supreme Court decisions that have changed the state's jury selection process and curbed law enforcement's ability to make pretextual traffic stops.

Pashman Stein attorney Raymond M. Brown, who represented *amici curiae* before the high court, said it was impossible to overstate the impact the ruling in *State v. Andujar* will have on criminal justice in New Jersey and beyond. In that case, the New Jersey Supreme Court recognized that unconscious bias was as unjust as overt discrimination, and the court system needed to take extra care to avoid it. The decision also established the Committee on Jury Selection, which recommended 25 ways the state could make jury selection more fair.

The Center also participated in two other cases before the New Jersey Supreme Court that resulted in decisions that put limits on law enforcement's "unfettered

discretion" to justify traffic stops. One decision brought much-needed specificity to a state law involving license plate frames. The other addressed the level of suspicion required to justify a warrantless vehicle stop.

"No matter what statistic you look at, you'll see that Black and Brown people are disproportionately stopped, searched, cited, or charged by police," said Stein Public Interest Center Director CJ Griffin, who authored the briefs in the cases discussed in this section. "Those interactions are emotionally traumatizing and dehumanizing, and can turn physically harmful. Our goal has been to try to limit the discretion of police to stop almost anyone they want because that discretion is used to make pretextual stops, which disproportionately impact people of color."



"This is a momentous decision. When Chief Justice Stuart Rabner wrote that implicit bias is 'no less real and no less problematic than intentional bias,' he was acknowledging the unseen and sometimes unknown bias in all of us while also setting a new standard for fairness," Brown said. "This decision goes a long way towards ensuring people of color are not unfairly targeted by police or otherwise disproportionately impacted by our criminal laws."

Raymond M. Brown Esq. | *Pashman Stein*

***State v. Andujar*, 247 N.J. 275 (2021)**

In 2017, Edwin Andujar was tried and convicted of first-degree murder by an Essex County jury. In his appeal, Andujar argued that he did not receive a fair trial because prosecutors went to excessive lengths to remove one person, a Black man named “F.G.” from the jury.

During voir dire, F.G., a resident of Newark, said he had friends, family, and neighborhood acquaintances who had served time in jail, but also others who had been victims of crime. He repeatedly asserted he could be a fair and impartial juror. Nonetheless, prosecutors asked the judge to remove F.G. from the jury pool for cause, arguing he could not be a fair juror because he had “an awful lot of background,” used “all of the lingo about... the criminal justice system,” and that because his “close friends hustle [and] engaged in criminal activity,” it “draws into question whether [F.G.] respects the criminal justice system.”

Defense counsel objected. The trial judge said there was “no doubt in [his] mind” that F.G. would be a fair and impartial juror and denied the prosecutors’ motion. The prosecutors did not exercise a peremptory challenge to remove F.G. and he was seated on the jury.

The next day, the prosecutors revealed they’d conducted a criminal background check on F.G. and found he had an outstanding municipal warrant. F.G. was excused from the jury for cause and arrested after he left the courtroom. The seated jury found Andujar guilty.

On appeal, Andujar’s attorneys argued that F.G. had been singled out and unfairly dismissed, noting he had been the only individual in the jury pool subjected to a criminal background check. Had the prosecutors not run the background check and instead moved to strike F.G. using a peremptory challenge, Andujar’s attorneys would have been able to challenge their motives for racial bias. But because they had F.G. arrested and removed for cause, the trial procedures did not call for scrutiny of their motivations.

The Supreme Court sided with Andujar and granted his appeal, noting in its decision that the prosecution’s actions

may have stemmed from implicit racial bias against F.G. It overturned Andujar’s conviction.

“The New Jersey Supreme Court’s decision is the first official recognition of implicit bias in the justice system. Going forward, discrimination complaints can be based solely on implicit bias. The decision and the ensuing reforms can serve as a model for other states,” Brown said. “The ruling also limits the government’s ability to do criminal background checks on jurors, requiring prosecutors to get the court’s permission before taking such an action. That assures would-be jurors that they can perform their civic duty without fears of prosecutorial overreach.”

The Court’s decision did not end with reversal of Andujar’s conviction. The Court also convened a Judicial Conference on Jury Selection and formed a committee to study ways to eliminate bias in the jury selection process.

In April 2022, the group detailed 25 ways the state could expand the jury pools and make them more fair. These included selecting prospective jurors names from state labor records as well as voter registration rolls; restoring juror eligibility for individuals with prior criminal convictions; including questions about gender, race, and ethnicity in juror qualification questionnaires; and requiring implicit bias training for attorneys, judges and staff.

“These reforms make it more likely that defendants will have their fates decided by a fair and impartial jury of their peers as stipulated in the U.S. Constitution,” Brown said. “Defendants of color know all too well that the system does not work as designed. If these changes are thoughtfully carried out, they could go a long way toward rebuilding faith in the justice system.”

***State v. Nyema; State v. Myers*, 249 N.J. 509 (2022)**

In 2011, Hamilton Township Police responded to an armed robbery at a convenience store and broadcast a “Be On the Look-Out” order for “two Black males, one with a handgun.” A police officer began shining a bright light into cars traveling away from the store. A man and woman in the first car appeared annoyed by the light, and the officer decided not to stop them. The three Black men travelling in the second car did not react when the officer shined the light into their car. The police officer stopped the car based on that non-reaction, their skin color, and gender. A subsequent search of the vehicle recovered a handgun, money, and dark clothing. The men were arrested and charged with first-degree robbery, among other charges.

Two of the men, Peter Nyema and Jamar Myers, separately challenged the initial traffic stop, questioning whether police had enough reasonable suspicion to justify it.

The case made it to the N.J. Supreme Court. Brown, representing *amici curiae* Latino Leadership Alliance of New Jersey and National Coalition of Latino Officers, argued

that the police lacked a reasonable suspicion to stop the vehicle and that permitting such a stop would encourage racial profiling and cause harm to people of color. “One reason they gave for pulling them over was because ‘they looked nervous.’ Well, of course, they looked nervous,” said Brown. “They were Black men about to encounter police. History shows what’s happened next in too many cases.”

In a unanimous ruling released in January 2022, the N.J. Supreme Court found that the description of the

suspects was too broad to justify reasonable suspicion and “effectively placed every single Black male in the area under the veil of suspicion...” The decision also noted that precedent had already established that nervous or furtive actions and a lack of eye contact with a police officer were not sufficient reasons to act.

“While this ruling won’t put an end to racial profiling, it will result in fewer people of color being unjustly targeted and terrorized,” Brown said. “It’s an important step towards creating a justice system that’s actually, well, just.”

State v. Carter; State v. Roman-Rosado, 247 N.J. 488 (2021)

“Driving while Black” isn’t a crime, so New Jersey law enforcement officers have long relied on an overly broad state law to justify traffic stops: It was illegal to cover *any* part of a vehicle’s license plate. It didn’t matter if the tag was still fully readable, or if the blockage was caused by a dealer-issued license plate frame the driver had never even noticed.

Data proved that police used this infraction to pull over a disproportionate number of people of color.

In 2016, Miguel A. Roman-Rosado was pulled over after a police officer noticed that a license plate bracket covered about 10 to 15 percent of the words “Garden State” on the bottom of the plate. The officer stopped Roman-Rosado, then arrested him after finding he had two outstanding arrest warrants. Police allegedly found an unloaded handgun in the vehicle.

Roman-Rosado moved to suppress the evidence, arguing that the stop was not lawful because there was no reasonable suspicion that he violated the license plate frame statute since his tag was not fully obstructed and all of the words could still be read. He further argued that even if the officer reasonably believed that the statute prohibited drivers from covering any portion of their license plate with a frame, a reasonable mistake of law does not justify a stop.

CJ Griffin represented *amicus curiae* Latino Leadership Alliance of New Jersey, arguing that permitting police to ticket vehicles simply because some small portion of the words on a license plate frame were covered by a plate would give the police vast discretion to stop almost anyone, since most vehicles have violating plate frames (which were often installed by dealers, not the owners of the vehicle). Griffin cited data showing that people of color are disproportionately stopped for license plate frame violations.

In a decision released in August 2021, the N.J. Supreme Court held police did not have grounds to stop Roman-Rosado because although a tiny portion of the plate was covered, the words “Garden State” were still recognizable. The Court held that police could stop vehicles only if a license plate frame conceals or obscures any words or numbers on the plate such that a person cannot reasonably identify or discern the words or numbers. It also rejected the U.S. Supreme Court’s “reasonable mistake of law” doctrine, holding that even if the officers were reasonable in believing that the ambiguous statute justified stopping cars where any portion of the plate was obscured, that reasonable mistake of law cannot constitute reasonable suspicion to justify the stop under the New Jersey Constitution.

“While working on this case, I became obsessed with looking at license plates and what I saw was that the majority of cars had plates that were installed by dealers and which covered up a tiny portion of the letters on the plates,” said Griffin. “That essentially gave police the license to stop almost any car they wanted to if they had a pretextual reason to want to pull the car over. This decision will go a long way toward curbing pretextual stops, which disproportionately impact people of color.”



Pushing New Jersey in the Right Direction on Cannabis Issues

The nation's relationship with cannabis use continues to evolve rapidly. Long gone are the days of public service announcements somberly warning against cannabis use. Although still illegal on the federal level, adult cannabis use is now legal in 21 states, including New Jersey and New York. A dozen other states have the issue on their 2023 legislative agendas.

The Justice Gary S. Stein Public Interest Center and Pashman Stein's Cannabis & Hemp Law practice have been instrumental in changing cannabis policy in New Jersey, seeking to right past wrongs and ensure that the rights of cannabis users are protected.

In 2021, the Stein Public Interest Center was on the winning side of a New Jersey Supreme Court case that established statewide protections for cannabis users. Our firm's Cannabis & Hemp Law practice group further buttressed the Center's work by encouraging its business clients to sponsor expungement clinics and offering pro bono legal services to individuals seeking to remove non-violent cannabis offenses from their records.

Our work in the cannabis space is also part of the Center's mission to achieve racial justice. Cannabis laws have disproportionately affected people of color: A 2020 ACLU analysis concluded that in New Jersey, people of color are 3.5 times more likely to be arrested for cannabis-related offenses than white Americans, despite comparable usage rates.

"Our work continues to push New Jersey in the right direction on cannabis issues," said Stein Public Interest Center Director CJ Griffin. "We're changing lives for the better, obtaining important Supreme Court rulings, and advocating for those who have been harmed by unjust and extreme cannabis-related laws, as well as encouraging our business clients to join in this effort."

***Hager v. M & K Construction*, 246 N.J. 1 (2021)**

Vincent Hager suffered work-related back injuries while working for M & K Construction in 2001. Multiple surgeries did not fix Hager's problem and he was given opioids, including oxycontin, for his pain. In 2016, a new doctor enrolled Hager in the state's medical cannabis program to treat his pain and wean him from opioid dependence. Hager sought reimbursement from M & K Construction for his on-going medical cannabis prescription, which cost him more than \$600 each month.

M & K Construction refused to cover the cost of Hager's medical cannabis, arguing that doing so would violate the federal Controlled Substances Act and thus put the company at risk of potential federal criminal liability. It also contended that medical cannabis was not a treatment explicitly mentioned in the N.J. Workers' Compensation Act.

The case reached the New Jersey Supreme Court, where Alan Silber, of counsel at Pashman Stein, represented the National Organization for the Reform of Marijuana Laws (NORML), Garden State-NORML, Coalition for Medical Marijuana-NJ (CMM-NJ), and Doctors for Cannabis Regulation, as *amici curiae* in support of Hager's position.

The Court's decision, released in 2021, was a win for Hager and medical marijuana users throughout the state, requiring New Jersey employers to reimburse employees for the cost of medical marijuana when it was deemed a "reasonable and necessary" treatment. M & K Construction's argument that reimbursing Hager would be aiding him in committing a federal crime was rejected.

"This decision was a game-changer for employees injured on the job, not only in New Jersey, but possibly in other states," said Dillon McGuire, the Pashman Stein attorney who co-wrote the *amicus* brief Silber presented. "The Court basically said the state's medical marijuana laws 'suspended' the federal law. That's an important precedent. The ruling also ensures that employees who are injured at work in New Jersey have broader access to medical marijuana in lieu of highly addictive and dangerous prescription opiates."

A Firm-Wide Effort

The Stein Public Interest Center's successes come after years of involvement in New Jersey's legalization process. Our team worked with New Jersey United for Marijuana Reform to draft an early version of the adult use legislation that was later introduced by State Senator Scutari (D, 22nd District). When the ACLU-NJ and other groups launched NJ CAN 2020, our attorneys provided pro bono legal support and campaign reporting compliance advice. Our attorneys have also showed their commitment to the cannabis legalization movement by serving on the Board of Directors of NORML and ACLU-NJ; Board of Advisors of the Drug Policy Formation; American Bar Association Drug Policy Committee; and Drug Law Reform Committee of the National Association of Criminal Defense Lawyers.

In 2021 and 2022, Pashman Stein attorneys volunteered at five pro bono expungement clinics in Jersey City, donating more than 100 hours and assisting dozens of individuals.

"We're helping otherwise law-abiding citizens clear their records of the minor cannabis-related arrests that have kept them from volunteering at their children's schools or hindered their ability to get jobs," said Sean Mack, co-chair of the practice. "It's been rewarding to see our commercial business clients working with us hand in hand to promote social reform."

The firm's attorneys, including associate Alana Hans-Cohen, have partnered with the New York City Bar Association's Committee on Drugs and the Law and the City Bar Justice Center to provide free programming about cannabis education issues to municipalities, non-profits, and social equity applicants.

The *Hager* ruling built on the N.J. Supreme Court's decision in *Wild v. Carriage Funeral Holdings, Inc.*, the first cannabis case to have wide impact in the state. Justin Wild, a funeral director at Carriage Funeral Home, was legally using medical marijuana as he was treated for cancer. He only disclosed this to his employer after he was ordered to take a drug test after an on-the-job incident. Carriage Funeral Home fired Wild after he tested positive, because he failed to disclose his marijuana use.

The Stein Public Interest Center represented ACLU-NJ as *amicus curiae*, arguing that prescribed cannabis was the same as any other prescription. The N.J. Supreme Court agreed, finding that medical marijuana patients could not be discriminated against or subject to an adverse employment action because of legal use of marijuana while off-duty.

The firm is also a sponsor of a new eight-week-long cannabis and business certificate program offered by Rutgers Law School and the Minority Cannabis Academy, providing scholarships for people who meet the New Jersey Cannabis Regulatory Commission's definition of Social Equity and/or Diversely Owned Businesses.

Our attorneys' efforts have not gone unnoticed. Five Pashman Stein lawyers were named to *Insider NJ's* 2022 "Insider 100: Cannabis Power List," a tally of influential voices in New Jersey's cannabis movement. Director CJ Griffin ranked #12 and Cannabis & Hemp Law practice co-chairs Sean Mack and Gregg Hilzer co-ranked #19. Attorneys Alana Hans-Cohen and Dillon J. McGuire were also ranked.

Promoting an Open and Transparent Government

Through direct representation and *amicus curiae* support of individuals and organizations, we are on the cutting edge of defining the public's right of access to government documents, public meetings, judicial records and proceedings, and information that is otherwise hidden or unavailable.





Some of our significant cases in this area of the law include the following:

***Rivera v. Borough of Westwood*, Docket No. BER-L-2597-22**

How much access should the public have to an internal affairs report?

CJ Griffin filed a lawsuit on behalf of Richard Rivera, seeking common law access to an internal affairs report relating to an officer listed in the Attorney General's 2021 Major Discipline Report as having received a 15-day suspension. Although the Attorney General's directive requires agencies to disclose the transgression that led to discipline, some agencies, like Westwood, violated the directive and did not disclose what the officer did to be punished. The trial court compelled disclosure of the internal affairs report so the public could learn the officer's transgression and required the agency to pay the firm's legal fees. This was the first decision to apply *Rivera v. Union County Prosecutor's Office*, 250 N.J. 124 (2022).

***Rivera v. Division of Criminal Justice*, Docket No. MER-L-1224-20**

Can the state withhold the names of police officers involved in fatal shootings?

CJ Griffin filed a lawsuit on behalf of Richard Rivera, seeking the names of police officers who fatally shot a man in January 2019 in Gloucester County, as well as videos of the incident. The trial court rejected the state's argument that security reasons justified withholding officers' names and compelled disclosure. The court also ordered the release of redacted videos of the incident and ordered the state to pay the firm's legal fees.

***Bozzi v. City of Jersey City*, 248 N.J. 274 (2021)**

Do dog owners have a right to privacy when they file for dog licenses?

CJ Griffin argued before the New Jersey Supreme Court on behalf of *amicus curiae* Libertarians for Transparent Government in a case involving public access to the names and addresses of dog-license holders. Our brief argued that the fact that the requestor was a commercial requestor should have no bearing on the decision and that addresses were not exempt under OPRA. The N.J. Supreme Court ultimately agreed with our position, holding that dog ownership is a substantially public endeavor in which people do not have a reasonable expectation of privacy that exempts their personal information from disclosure under OPRA.

***American Civil Liberties Union of New Jersey v. County Prosecutor's Association of New Jersey*, 474 N.J. Super. 243 (App. Div. 2022)**

Should the County Prosecutor's Association of New Jersey be subject to the N.J. Open Public Records Act?

CJ Griffin argued on behalf of *amicus curiae* Libertarians for Transparent Government that the County Prosecutor's Association of New Jersey (CPANJ) should be subject to OPRA. Griffin's brief cited the relevant case law and also highlighted how CPANJ relies heavily upon public funds and public employees to perform its work. Unfortunately, the Appellate Division concluded that CPANJ is not subject to OPRA, but the N.J. Supreme Court granted certification and the appeal is pending.



Protecting Civil Liberties and Constitutional Rights

Through impact litigation and appellate advocacy, the Stein Public Interest Center defends and advances constitutional rights, tackling some of the biggest issues of our day. During 2021 and 2022, we participated in important cases involving free speech, privacy, and the right to confront witnesses. Some of these cases occur in the context of criminal justice issues. For more information, see “Defending and Advancing the Rights of the Criminally Accused.”

Our work continues in a pending case alleging racial segregation in New Jersey schools. The landmark lawsuit *Latino Action Network et.al. v. the State of New Jersey, et. al.*, Docket No. MER-L-001076-18, alleges that persistent segregation in New Jersey’s public schools violates the constitutional rights of hundreds of thousands of New Jersey’s students.

Some of our significant cases in this area of the law include the following:

Hemphill v. New York, 142 S.Ct. 681 (2022)

What constitutes a violation of a defendant's Sixth Amendment right to confront witnesses?

Pashman Stein Walder Hayden represented *amicus curiae* Association of Criminal Defense Lawyers of New Jersey (ACDL-NJ) in a U.S. Supreme Court decision which held that a trial court violated the defendant's Sixth Amendment right to confront witnesses against him when it allowed another suspect's plea allocution to be admitted despite objections by the defense. In *Hemphill*, defendant Darrell Hemphill was accused of killing a 2-year-old child with a 9mm handgun in a drive-by shooting. During the trial, defense counsel elicited testimony from a prosecution witness that police had found a 9mm cartridge on the nightstand of another individual, Nicholas Morris, whom defendant Hemphill alleged was the shooter. The prosecution successfully sought to rebut that testimony by introducing a statement contained in Morris' plea allocution that he had only a .357 revolver at the scene of the shooting. Although Morris was not at Hemphill's trial, the trial court reasoned that the defense's arguments and evidence had "opened the door" under New York law and that the admission of statements in Morris' plea allocution was reasonably necessary to correct the misleading impression Hemphill created. The New York Appellate Division and the Court of Appeals both affirmed Hemphill's conviction.

Our Center filed an *amicus curiae* brief on behalf of ACDL-NJ with the U.S. Supreme Court in *Hemphill*, authored by Justice Gary S. Stein (Ret.), arguing that the trial court's admission of Morris' plea allocution robbed Hemphill of his fundamental constitutional right to cross examine his accuser under the Confrontation Clause of the Sixth Amendment. Our brief argued that testimonial hearsay is only admissible where the defendant knowingly and intentionally waives his constitutional right by introducing a portion of a testimonial hearsay statement as a strategy or tactic. It further reasoned that "opening the door" by creating a misleading impression does not constitute the defendant's waiver of Sixth Amendment rights, as it is not based on knowing and intentional conduct by the defendant, but upon the perception of the trial court.

In reversing and remanding, the majority opinion written by Justice Sonia Sotomayor stated, "The Confrontation Clause requires that the reliability and veracity of the evidence against a criminal defendant be tested by cross-examination, not determined by a trial court. The trial court's admission of unconfounded testimonial hearsay over Hemphill's objection, on the view that it was reasonably necessary to correct Hemphill's misleading argument, violated that fundamental guarantee."

Silvestri v. Borough of Ridgefield, Docket No. BER-L-848-19

Should an online platform be compelled to provide names of anonymous users?

CJ Griffin represented online platform OPRAmachine and its owner, Gavin Rozzi, in response to a subpoena served by the plaintiff in a civil lawsuit seeking the real identity of "Michael," a pseudonym used by one of OPRAmachine's users. OPRAmachine allows users to maintain anonymity when filing OPRA requests directly with hundreds of public agencies. The responses to the requests remain online permanently and serve as a repository of public records. Griffin, working alongside

ACLU-NJ as co-counsel, moved to quash the subpoena based on "Michael's" First Amendment right to participate anonymously in an online forum and the statutory right to file OPRA requests. The motion also argued that New Jersey's Shield Law protected Rozzi from having to comply with the subpoena. Not long after the motion was filed, the plaintiff withdrew its subpoena.

***State v. McQueen*, 248 N.J. 26 (2021)**

Does the Fourth Amendment extend to an arrestee’s phone call if neither party was aware they were being recorded?

Denise Alvarez argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ that the reasonable expectation of privacy protected by the Fourth Amendment extends to an arrestee’s call on a police station telephone when neither the arrestee nor the recipient of

the call is aware that the conversation is being recorded. The Court agreed and ruled that the recorded telephone conversation was improperly seized, and therefore must be suppressed.

***State v. Bailey*, 251 N.J. 101 (2022)**

Should the crime–fraud exception to the marital communications privilege be applied retroactively?

Janie Byalik argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ that text message communications between a defendant and her spouse were subject to the marital privilege N.J.R.E. 509(2)(e) because the messages were exchanged before the adoption of the crime–fraud exception, which should not apply retroactively. Our brief argued that the marital communications privilege is a substantive right rooted in privacy and differs from changes to rules of evidence and changes to procedural rules, which are generally

applied retroactively. Our brief also argued that the communications did not fall within the crime–fraud exception because the statements were not in furtherance of the criminal activity. The Court agreed that the crime–fraud exception to the marital communications privilege cannot be applied retroactively. Although the Court affirmed the individual defendant’s conviction based on the other evidence of defendant’s guilt, the Court adopted the argument that we made on behalf of ACDL-NJ. CJ Griffin co-authored the *amicus* brief.

***Latino Action Network et. al. v. The State of New Jersey et. al.*, Docket No. MER-L-001076-18**

Are New Jersey public schools racially segregated in violation of the state’s Constitution?

In May 2018, our attorneys as co-counsel with the Gibbons firm, filed the initial complaint in this landmark lawsuit that alleges persistent racial segregation of New Jersey’s public schools violates the constitutional rights of all students in the state. In March 2022, Gibbons’ attorney Lawrence Lustberg and Pashman Stein attorneys Michael S. Stein and Roger Plawker appeared before a Mercer County Superior Court judge seeking summary

judgment on liability in this case, arguing that the undisputed facts of existing levels of racial segregation violate New Jersey’s Constitution and statutes as a matter of law. The judge’s ruling in that case is still pending, but if summary judgment is granted our efforts could result in fundamental changes in New Jersey’s system of public education.



Advancing Social, Racial, and Economic Justice

The Stein Public Interest Center is dedicated to advocating for those who are marginalized and criminalized due to their social, racial, or economic status, and to reshaping the interpretation of the laws that are meant to provide equal rights and liberties for all. As discussed on pages 7-9, the Stein Public Interest Center participated in impactful cases during 2021 and 2022 that addressed issues of implicit and institutional racial bias in jury selection, as well as racial profiling and policies that disproportionately affect persons of color. In addition to the pending case alleging racial segregation in New Jersey schools, other important cases in which we argued before the New Jersey Supreme Court involved the rights of cannabis users; victims of sexual assault; whether immigration status can be used as a basis for pretrial detention; and obtaining greater Medicaid access for aged, blind, and disabled individuals.

Some of our significant cases in this area of the law include the following:

C.R. v. M.T., 248 N.J. 428 (2021)

Which standard should apply in determining whether a sexual act was nonconsensual under SASPA?

CJ Griffin represented the New Jersey Coalition Against Sexual Assault and Partners for Women and Justice as *amici curiae* in a case addressing the standard that applies when determining whether a sexual act was “nonconsensual” for the issuance of a restraining order under the Sexual Assault Survivor Protection Act (SASPA). The Appellate Division applied the “prostration of faculties” standard, which is used when criminal defendants argue that they were too intoxicated to have the required state of mind for specific-intent crimes.

We argued before the New Jersey Supreme Court that the Appellate Division’s prostration of faculties standard was inappropriate for an SASPA proceeding because a sexual assault victim seeking a protection order is not seeking to escape liability for wrongdoing, but rather is seeking protection. We further argued that any standard that creates an analogy between a victim seeking a

protection order and a defendant who is presenting a defense to escape criminal liability is harmful to victims and would be extremely difficult for victims to prove. We asked the Court to apply the standard from its landmark decision in *State in Interest of M.T.S.*, 129 N.J. 422 (1992), which requires a showing that sexual activity occurred without the alleged victim’s freely and affirmatively given permission to engage in that sexual activity.

In a unanimous decision, the Supreme Court rejected the use of the prostration of faculties standard in cases where an alleged victim of sexual assault is seeking protection under SASPA. The decision established affirmative consent as the standard in sexual assault cases under SASPA by requiring that the defendant demonstrate that permission to engage in sexual activity with the alleged victim was “freely and affirmatively” given.

State v. Lopez-Carrera, 245 N.J. 596 (2021)

Can immigration status be used to determine a pre-trial detention decision?

CJ Griffin and Rachel E. Simon represented several non-profit organizations as *amicus curiae* before the New Jersey Supreme Court when they successfully argued that immigration status cannot form the basis for a court’s pretrial detention decision under the Criminal Justice Reform Act (CJRA). Our clients included: Make the Road New Jersey, the Bangladeshi American Women’s Development Initiative, Communities

Coalition of Somerset County, Faith in New Jersey, First Friends of New Jersey and New York, the International Justice Project, MomsRising, the National Coalition of Latino Officers, LatinoJustice PRLDEF, the Latino American Legal Defense and Education Fund, the Law Enforcement Action Partnership, Volunteer Lawyers for Justice, and Wind of the Spirit.

G.C. v. Div. of Med. Assistance & Health Servs., 249 N.J. 20 (2021)

What’s the correct standard to determine Medicaid eligibility?

Pashman Stein represented Community Health Law Project (CHLP) and Disability Rights New Jersey (DRNJ) as *amici curiae* in a New Jersey Supreme Court case involving the correct standard to apply in determining eligibility for certain Medicaid benefits. Attorney Timothy P. Malone successfully argued that the standard in use, N.J.A.C. 10:72-4.4(d)(1), created absurd results by arbitrarily deeming every applicant to have a family size of one when considering whether the applicant’s income met eligibility thresholds. This violated a state legislative directive that required taking family size into account when determining eligibility for Medicaid

coverage. In addition, the regulation was contrary to clearly expressed legislative intent to expand Medicaid coverage and provide needed assistance to New Jersey’s impoverished aged, blind, and disabled residents.

In its unanimous November 2021 ruling, the Court agreed with our argument, finding that N.J.A.C. 10:72-4.4(d)(1) “indiscriminately compares any applicant’s income, regardless of his or her family size, against the federal poverty line for one person.” This decision grants greater Medicaid access to aged, blind, and disabled individuals in need of quality care and services.

Defending and Advancing the Rights of the Criminally Accused

The Stein Public Interest Center is involved in matters that question and challenge judicial interpretations of rights that are guaranteed to defendants, prisoners, and detainees. In 2021 and 2022, our attorneys represented *amici curiae* partner organizations in numerous criminal justice cases before the New Jersey Supreme Court, on issues ranging from racial discrimination and implicit bias in the criminal justice system, consideration of a youth's age in sentencing, and waivers of *Miranda* rights to knock-and-announce search warrants. Our attorneys were also designated as pro bono counsel in criminal appeals with the Office of the Public Defender in cases pending in the Appellate Division.



Some of our significant cases in this area of the law include the following:

***State v. Melvin*, 248 N.J. 321 (2021)**

Can a judge enhance a defendant’s sentence based on alleged conduct for which the defendant was not convicted?

Joseph A. Hayden, Jr. argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ in two consolidated appeals where the defendants’ sentences were enhanced (extended) when the sentencing judge found that the defendants had actually engaged in criminal conduct, despite the defendants having been acquitted by a jury. Our brief argued that under the Fifth and

Sixth Amendments to the United States Constitution, a sentencing court must not be permitted to enhance a defendant’s sentence by making factual findings that directly conflict with the jury verdict. The Court agreed with our argument. Matthew Frisch and Dillon J. McGuire co-authored the briefs.

***State v. Garcia*, 245 N.J. 412 (2021)**

What constitutes a “fair trial”?

Dillon J. McGuire argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ that the defendant was deprived of a fair trial because the trial court improperly excluded a video that showed family members attempting to speak to the police at the crime scene. The video supported the defendant’s claim of self-

defense, yet in its summation the prosecution suggested that the defendant’s family had not attempted to speak to police and the jury should reject the defendant’s self-defense claims. The Supreme Court agreed and reversed the defendant’s conviction. CJ Griffin authored the *amicus* brief.

***State v. Hedgespeth*, 249 N.J. 234 (2021)**

When can prior convictions be mentioned at trial?

Matthew E. Frisch argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ that the trial court’s determination that the state could use the defendant’s prior convictions to impeach him under N.J.R.E. 609, resulting in his decision not to testify, required reversal because it was a structural error undermining the defendant’s right to testify. For policy reasons, the Court was unwilling to find such an error to be structural, and therefore reversible in all cases, but the

Court did find that in this case a reversal of the defendant’s conviction was required as the trial court’s Rule 609 error deprived the defendant of a fair trial. The Supreme Court also held that the state’s introduction of an affidavit from a non-testifying officer setting forth the results of a search of the state firearm permit registry as evidence that the defendant lacks a permit is testimonial and violates the Confrontation Clause.

***State v. Corona*, 469 N.J. Super. 462 (App. Div. 2021)**

Can police use evidence gathered during a search if they didn’t knock and announce first?

Barry Evenchick argued on behalf of *amicus curiae* ACDL-NJ that the Court should uphold the state’s long-standing practice of suppressing seized evidence where police admittedly ignored the knock-and-announce requirement of a warrant before entering defendant’s home. The state argued that the Court should follow federal precedent, which held that suppression was not the appropriate remedy when police ignore a knock-and-announce

requirement. The Appellate Division issued a precedential decision, rejecting the federal standard in *Hudson v. Michigan*, 547 U.S. 586 (2006), and instead holding that the proper remedy for a knock-and-announce violation under the New Jersey Constitution is suppression of the evidence. CJ Griffin drafted the brief.

State v. Gerena, 249 N.J. 304 (2021)

Can layperson testimony be used to determine a child’s age when age is an element of the crime?

Rachel E. Simon argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ that layperson opinion testimony should never be admitted to establish a child’s age, where the child’s age is an element of the crime. The Court ultimately ruled that some age-

related, lay opinion testimony may be admissible under certain circumstances, and adopted our prophylactic recommendations to protect against the unreliability of such testimony.

State v. Ramirez, 246 N.J. 61 (2021)

What constitutes “accomplice liability”?

Darcy Baboulis-Gyscek argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ in a case where co-defendant parents were convicted of manslaughter and endangering offenses related to the death of their daughter after the trial court failed to clearly instruct the jury on the theory of accomplice liability. The brief argued that a knowing or reckless failure to intervene to prevent child abuse is insufficient under the accomplice

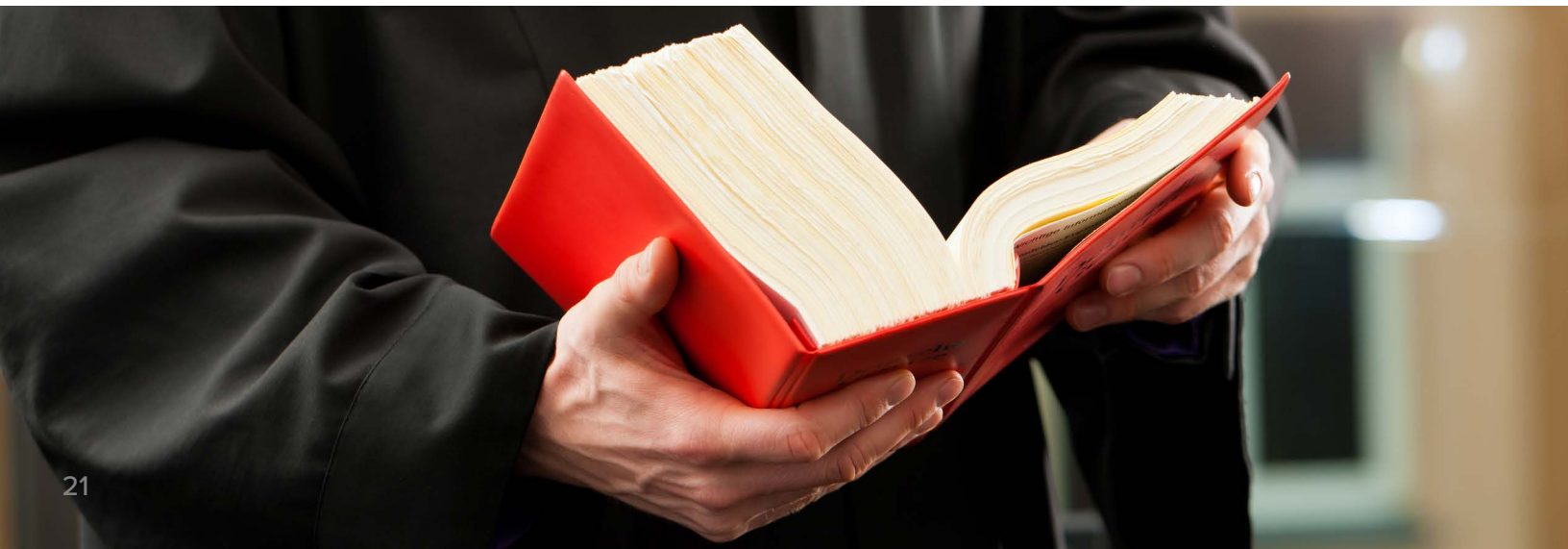
liability statute, which requires purposeful conduct. The Supreme Court agreed with those arguments and issued a decision affirming the reversal of the defendants’ manslaughter convictions. The decision bears significant implications for criminal defendants involved in accomplice crimes, safeguarding their constitutional right to a fair trial, and guiding the drafting of new model jury charges that will eventually be implemented statewide.

State v. Cambrelen, 473 N.J. Super. 70 (App. Div. 2022)

Are the “no-new-arrest/no-new-charges” conditions of a negotiated plea allowed under New Jersey law?

In a published decision, the Appellate Division considered whether a “no-new-arrest/no-new-charges” condition of a negotiated plea agreement was permissible under New Jersey law. Barry Evenchick, on behalf of ACDL-NJ, successfully argued that the no-new-charges provision was invalid because it permits the court to enhance a defendant’s sentence based on unadjudicated charges

unrelated to the crimes to which the defendant originally pled. The Appellate Division agreed with our position and held that no-new-charges provisions are void *ab initio* because unadjudicated charges cannot form a valid basis for enhancing a defendant’s sentence. Joshua P. Law co-authored the brief.



W.M. v. New Jersey State Parole Board

Are incarcerated persons with lengthy sentences entitled to attorney representation when they face a parole board?

Our courts ruled 45 years ago that due process does not require attorney representation for incarcerated persons in proceedings before the Parole Board. Much has happened since then and it's time for this precedent to be revisited and reversed. Due process law has greatly evolved and progressed, attaching the right to legal counsel where "consequences of magnitude" are at stake. For example, the N.J. Supreme Court has determined that a defendant in municipal court facing an \$800 monetary fine has the right to court-appointed legal counsel. The

same protection should be afforded to parole-eligible individuals when decades of freedom is at stake.

Parole proceedings often involve complex factual, social, psychological, expert, and legal issues. Because of their complexity, incarcerated persons with lengthy sentences should have the right to counsel when faced with them. Although the Appellate Division rejected this argument based on 45-year-old precedent, a petition for higher court consideration certification is pending.

State v. Oscar Ramirez, Docket No. 085943

Should defense attorneys be trusted with a victim's personal information?

Joshua P. Law appeared before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ, arguing that defense counsel should be entitled to the victim's home address as part of criminal discovery so counsel could verify whether the victim would consent to be interviewed or give a statement to the defense. Law argued that in an adversarial system, it is improper to permit prosecutors to be the sole gatekeepers between the victim and the defense. Criminal defense attorneys are tasked with upholding defendants' constitutional rights to a complete defense and effective assistance of counsel; limiting their ability to properly investigate and interview victim-witnesses would impair their ability to do that. In the case in question, the trial court had permitted the victim's contact information to be shared with defense counsel, not the defendant. The Appellate Division reversed that decision.

The N.J. Supreme Court, in a unanimous decision, held that the Appellate Division erred in summarily barring defense counsel from this vital information, and remanded the case to the trial court to balance the competing interests of the victim's privacy and the defendant's constitutional rights. In remanding, the Court also provided additional factors to consider in weighing the competing interests between a defendant's constitutional rights to a complete defense and a victim's constitutional rights to privacy. It also adopted a non-exhaustive list of several "judicially-supervised pathways" that would permit defense counsel to interview victim-witnesses without undue interference from the prosecutor. CJ Griffin authored the brief.

State v. Mackroy-Davis, 251 N.J. 217 (2022)

Do COVID-19 pandemic restrictions override the right to a speedy trial?

David White argued before the New Jersey Supreme Court in a case that addressed the speedy-trial requirements of the Criminal Justice Reform Act (CJRA) and corresponding court rule as affected by the COVID-19 pandemic. The CJRA includes several time limits designed to move cases with detained defendants to trial more quickly. Defendants must be released after two years, subject to a hearing on conditions of release if the prosecutor "is not ready to proceed." The statute is silent concerning a situation where the parties are prepared but, as has happened during COVID, there are not available courtrooms or judges.

The Court rejected an outer limit of detention and affirmed the right to be tried within two years of detention, excluding delays attributable to the defendant, if the prosecution is not ready to proceed to trial. In so ruling, the Court provided guidance on applying the timeframes under the CJRA. These included creating a clear record for granted extensions and defining what it means to be trial-ready in connection with the two-year cap. Dillon J. McGuire co-authored the brief.

***State v. James Comer*, 249 N.J. 359 (2022); *State v. James C. Zarate*, 249 N.J. 359 (2022)**

What is a “lookback period” and how does it apply to juvenile offenders?

Pashman Stein represented *amicus curiae* ACDL-NJ in two separate cases consolidated by the New Jersey Supreme Court. In a 4-3 decision, the Court reversed the sentences of defendants Comer and Zarate who were convicted of purposeful murder committed at the time they were juveniles and were sentenced to the practical equivalent of life without parole. The majority imposed a new “lookback period,” by which convicted juvenile offenders may petition for a review of their sentence after they have served 20 years in prison. At such a hearing, the trial court must renew its consideration of factors designed to address the mitigating qualities of youth and account for not whether, but *how* “children are different from adults,” established by the Supreme Court of the United States in a landmark decision, *Miller v. Alabama*.

During the lookback period, trial courts will be able to assess whether the offender still fails to appreciate risks and consequences, or has sufficiently matured or been rehabilitated, including the offender’s behavior in prison since being incarcerated. Because defendant *Comer* has been in prison for 20 years, he was entitled to a resentencing hearing pursuant to the lookback petitioning process. Zarate had not yet served 20 years of his sentence but was entitled to immediate resentencing given the trial court’s misapplication of the Miller factors, in which the full Court, including those Justices in dissent, agreed with arguments advanced by the defendant, and joined in by our client the ACDL-NJ, that Zarate’s intelligence was improperly conflated with his maturity. Darcy Baboulis-Gyscek wrote the brief in Zarate and Rachel Simon argued it. Dillon McGuire argued and briefed *Comer*.

***State v. Lane*, 251 N.J. 84 (2022)**

Should mitigating factor fourteen – that the accused was under 26 years old at the time of offense – be applied retroactively?

J. John Kim filed a brief with the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ, arguing that mitigating factor fourteen, which considers that a “defendant was under 26 years of age at the time of the commission of the offense,” should be given pipeline retroactivity because the legislative change was initiated “to reduce the penalty for an offense,” which is a recognized justification for the retroactive application of a statute. Ultimately, the Court held that mitigating factor fourteen is to be applied prospectively

and declined to grant pipeline retroactivity. Justice Barry T. Albin concurred in part and dissented in part. In his dissent, Justice Albin agreed with our position, noting that “in those cases where the defendants’ sentencing appeals were pending when the new law took ‘effect,’ prospective application does not and should not foreclose the Appellate Division from considering whether, in a particular case, the failure of a trial judge to consider a defendant’s youth as a mitigating factor resulted in a clearly excessive sentence.”



***State v. Bell*, 250 N.J. 519 (2022)**

How many times can a defendant be charged with leaving the scene of an accident when there are multiple fatalities?

Zachary Levy argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ urging the Court to affirm the Appellate Division’s decision that the rule of multiplicity prohibited the state from charging the defendant with multiple counts of leaving the scene

of an accident where more than one person died in that accident. The Court agreed, holding that a driver fleeing the scene of a crash can be charged only once even if there are multiple victims.

***State v. Gonzalez*, 249 N.J. 612 (2022)**

When does a defendant sufficiently invoke *Miranda* rights?

Joseph A. Hayden, Jr. appeared before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ in a child abuse case, arguing that the defendant sufficiently invoked her right to consult an attorney when she asked a detective “What am I going to do about an attorney?” and the detective told her that it was her decision but that she would “have a better option telling the truth.”

The Court held that the defendant’s *Miranda* rights were violated when the detectives continued to question her after she invoked her right to counsel. Justice Albin’s concurrence will allow for future arguments about *Miranda*’s inadequacies in pending *Miranda* cases. CJ Griffin worked on the brief.

***State v. O.D.A.-C.*, 250 N.J. 408 (2022)**

When does police officers’ conduct invalidate a defendant’s waiver of *Miranda* rights?

Alan Silber argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ, that the defendant’s *Miranda* rights were violated when police officers told him that *Miranda* was “just a formality” and that what the defendant said was confidential and “just between us.” We argued that it was time to evaluate whether the *Miranda* warnings are performing their intended function and determine how the warnings can be administered more effectively and/or less deceptively, to ensure that the rights of New Jerseyans are protected during interrogations. We further argued that any statement collected after police had undercut,

contradicted, obscured, or misled the defendant about *Miranda* warnings should be construed as a per se improper administration of the warnings and must result in suppression. Although the Court elected to continue adhering to the totality-of-circumstances test to evaluate *Miranda* warnings, the Court agreed that the detectives’ actions in this case “repeatedly contradicted and minimized the significance of the *Miranda* warnings,” and thus the state could not meet its heavy burden of demonstrating the defendant’s waiver was voluntary beyond a reasonable doubt. CJ Griffin and Joshua P. Law co-authored the brief.





***State v. Thompson*, 250 N.J. 556 (2022)**

When does the clock start on a statute of limitations?

Michael J. Zoller argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ regarding the beginning of the running of the five-year statute of limitations under N.J.S.A. 2C:1-6c when a defendant is identified via the use of DNA evidence. Despite the state being in possession of the two elements necessary to identify the defendant in 2004, the state, due solely to its own decisions, did not definitively match the defendant’s DNA to DNA recovered at the scene until 2016. We argued that the statute of limitations should

be read narrowly for the protection of defendants and should begin to run the moment the state is in possession of the DNA taken from the scene and the comparable DNA sample is collected from the defendant. The New Jersey Supreme Court agreed, holding that the statute of limitations begins to run when the state obtains DNA samples and has the technology necessary to make the match, even if they have not actually done so. CJ Griffin co-authored the *amicus* brief.

***State v. Sims*, 250 N.J. 189 (2022)**

Do police officers need to disclose a reason for an arrest before reading suspects their *Miranda* rights?

Aidan P. O’Connor argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ in favor of the Appellate Division’s ruling requiring police officers to inform a defendant of the crimes for which he was arrested before he can knowingly and intelligently waive his *Miranda* rights and to assert that the victim’s out-of-court identification of the defendant was inadmissible because the victim did not testify at trial. The

Supreme Court declined to adopt the new rule prescribed by the Appellate Division, and further held that the identification testimony was an exception to the hearsay rule. Justice Albin’s dissent agreed with our position that “no person should be taken from his home or off the streets by the police, placed in handcuffs and kept in custody, and not told the reason for his arrest.” CJ Griffin co-authored the brief.

***State v. Ryan*, 249 N.J. 581 (2022)**

Do juvenile offenses count under the “Three Strikes Law”?

Dillon J. McGuire appeared before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ, arguing that a prior criminal offense committed by a juvenile should not be used as a predicate offense to justify a life sentence without parole under the “Three Strikes Law” N.J.S.A. 2C:43-7.1. The Court disagreed, ruling that juvenile convictions in adult court could, in fact, serve as predicate offenses under the Three Strikes Law. In his dissent, Justice Albin supported our position, observing that “*Comer and Zarate* established that

culpability for juvenile crimes and adult crimes cannot be weighed on the same scale because of the distinguishing characteristics of youth, such as immaturity and impetuosity, and because the juvenile brain is not fully developed. On that basis, giving the defendant’s juvenile conviction the same constitutional weight as his adult convictions under the Three Strikes Law is at odds with the evolving standards of decency addressed in our federal and state constitutional caselaw.”

***Sundiata Acoli v. New Jersey State Parole Board*, 250 N.J. 431 (2022)**

Is the Parole Board’s discretionary power unlimited?

Raymond M. Brown argued before the New Jersey Supreme Court on behalf of *amicus curiae* ACDL-NJ in a case involving Sundiata Acoli, age 85, who had been imprisoned for 49 years after being convicted for his role in the murder of a state trooper in 1973. Despite the fact that he had been a model inmate and infraction-free for 25 years, completed over 100 courses and counseling sessions, and received numerous expert reports stating there was not a substantial likelihood that he would commit a crime, the Parole Board repeatedly denied his right to parole.

The NJ Supreme Court ordered him to be released to his family to live out the rest of his life on parole. Citing a New Jersey Supreme Court opinion written by Justice

Gary S. Stein (Ret.), special counsel at Pashman Stein, the Court said the Parole Board’s discretionary power is not unlimited or absolute. It found that the Board did not apply the proper standards in ascertaining whether Mr. Acoli was entitled to parole. Justice Albin’s opinion stated, “We are not unmindful of the passions aroused by a sensational case of this nature and the immense pressures that come to bear on dutiful public officials. But neither government agencies nor our courts can bow to public outrage in enforcing the law. Even the most scorned member of our society is entitled to be sheltered by the protection of the law, no matter how hard and vengeful the winds of public opinion may blow.” CJ Griffin co-authored the brief.

Criminal Appeals with the Office of the Public Defender

In 2021 and 2022, our attorneys were designated as pro bono counsel by the Office of the Public Defender in several direct criminal appeals currently pending in the Appellate Division on a variety of legal issues. Attorneys working on these appeals include CJ Griffin, Barry H. Evenchick, Brian J. Yarzab, Zachary Levy, Howard Pashman, Dillon J. McGuire, Darcy Baboulis-Gyscek, Matthew E. Frisch, Michael Zoller, Rachel Simon, and Joshua Law. We have secured two conviction reversals in the past two years:

***State v. A.M.C.*, Docket No. A-2271-18**

Is failing to signal enough to justify a traffic stop?

Howard Pashman, as Designated Pro Bono Counsel for the New Jersey Office of the Public Defender, successfully obtained the reversal of A.M.C.’s conviction after the Appellate Division found that the police did not have a reasonable and articulable suspicion to stop his vehicle and thus evidence collected against him at that time was inadmissible. Although the trial court

declined to suppress that evidence and convicted A.M.C. of possession of a controlled dangerous substance and possession of drug paraphernalia, the Appellate Division found that the police officer who stopped A.M.C. had incorrectly used the failure-to-signal statute to justify the traffic stop, which only requires a turn signal if other traffic “may be affected” by the movement.

***State v. L.R.*, Docket No. A-2882-18**

Can the identification testimony of multiple witnesses be unfairly prejudicial?

Barry Evenchick and Zachary Levy, as Designated Pro Counsel for the New Jersey Office of the Public Defender, successfully obtained a reversal of L.R.’s 17-count conviction, five of which counts were for first-degree attempted murder, carrying a sentence of 36 years. The Appellate Division held that the identification testimony of multiple police witnesses was unfairly prejudicial and presented a risk that the jury would infer L.R. was involved in prior criminal activity and was a

person generally known to police. The court also held that the trial court was in error when it permitted a police detective, who was not an eyewitness to the alleged crimes, to narrate a recovered surveillance video and present his lay-witness opinion that video footage showed the defendant firing a gun. With the conviction reversed, OPD was able to negotiate a plea that resulted in L.R.’s immediate release based on time already served.

Honors and Awards

- Pashman Stein, Law Firm of the Year Award – Finalist, 2021
New Jersey Law Journal
- Pashman Stein, Appellate Department of the Year, 2021 & 2022
New Jersey Law Journal
- Trial Attorney of the Year 2021 – Team of Pashman Stein attorneys named Finalist by the Public Justice Foundation
- Dillon J. McGuire, 2022 Distinguished New Lawyer Pro Bono Attorney of the Year, New Jersey State Bar Association
- Five attorneys named to *InsiderNJ's* 100: Cannabis Power List 2022; three named to 2021 List

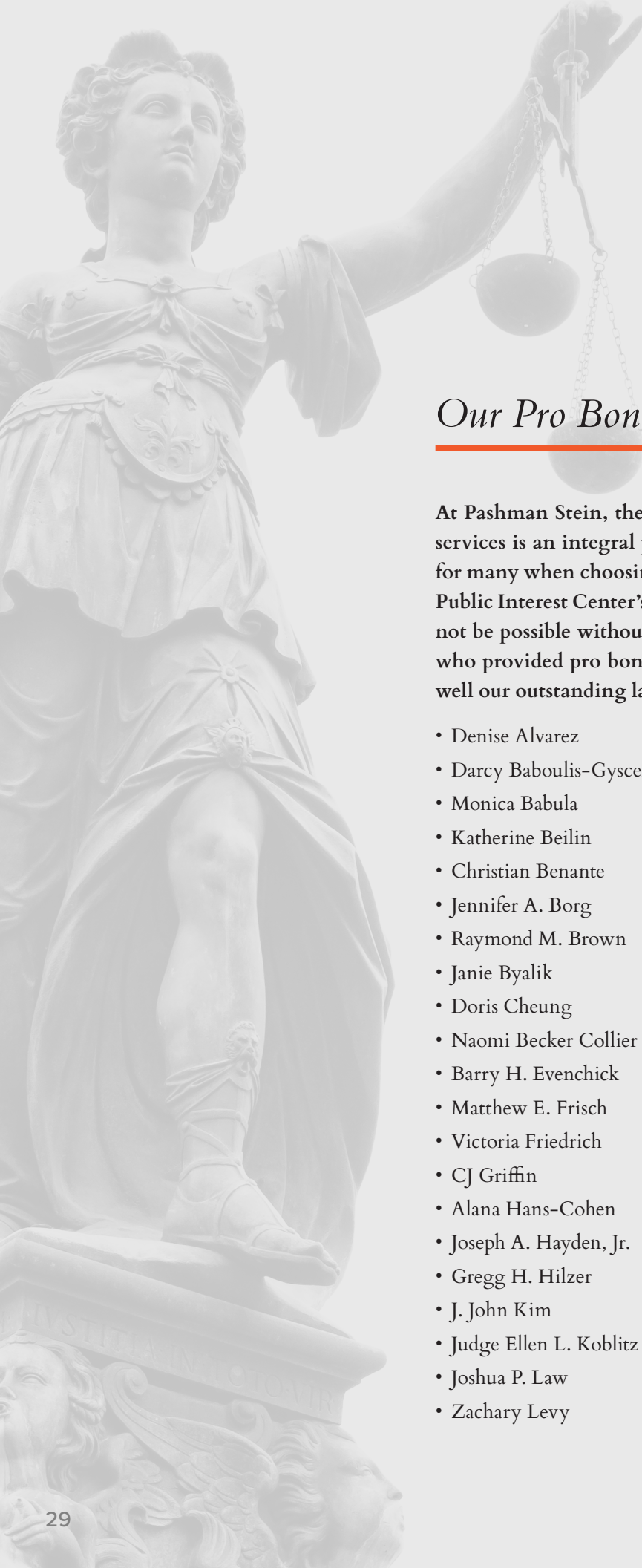
CJ Griffin, Director of the Stein Public Interest Center, received numerous prestigious awards:

- 2022 Honorable Lawrence A. Whipple Memorial Award, ACDL-NJ
- 2021 Partner in Justice Award, Partners for Women and Justice
- Top 10, *InsiderNJ's* 2021 & 2022 Insider Out 100 LGBTQ Power List
- *InsiderNJ's* 100: Cannabis Power List, 2021 & 2022
- *InsiderNJ's* Senator Weinberg's Women's Power List, 2021 & 2022

Our Partners

In addition to representing clients in important public interest and pro bono cases, we also partner with local, regional, and national organizations to promote and advance justice, including representing such organizations as pro bono *amicus curiae* counsel. Our partner organizations include:

- American Civil Liberties Union, New Jersey (ACLU-NJ)
- Association of Criminal Defense Lawyers, New Jersey (ACDL-NJ)
- Bangladeshi American Women's Development Initiative
- BuzzFeed
- Coalition for Medical Marijuana-NJ
- Community Health Law Project
- Disability Rights New Jersey
- Doctors for Cannabis Regulation
- Education Law Center
- Fair and Welcoming Communities Coalition of Somerset County
- Faith in New Jersey
- First Friends of New Jersey and New York
- Hereditary Disease Foundation
- International Documentary Association
- International Justice Project
- Latino Action Network
- Latino American Legal Defense and Education Fund
- Latino Coalition
- Latino Leadership Alliance of New Jersey
- LatinoJustice PRLDEF
- Law Enforcement Action Partnership
- Libertarians for Transparent Government
- Make the Road New Jersey
- Marshall Project
- MomsRising
- MPA — The Association of Magazine Media
- NAACP New Jersey State Conference
- National Association of Criminal Defense Lawyers (NACDL)
- National Coalition of Latino Officers
- National Press Photographers Association
- New Jersey Coalition Against Sexual Assault
- New Jersey Institute for Social Justice
- New Jersey Office of the Public Defender
- New Jersey Reentry Corporation
- New Jersey Society of Professional Journalists
- New York Public Radio
- NORML and Garden State-NORML
- OPRAmachine
- Partners for Women and Justice
- Pro Bono Partnership
- Public Citizen Litigation Group
- Radio Television Digital News Association
- Reporters Committee for Freedom of the Press
- Rutgers Law School Center for Immigration Law, Policy and Justice
- Society of Environmental Journalists
- Society of Professional Journalists
- The Media Institute
- Transgender Legal Defense & Education Fund
- Tully Center for Free Speech
- United Methodist Church
- Urban League of Essex County
- Volunteer Lawyers for Justice
- Wind of the Spirit



Our Pro Bono Attorneys and Staff

At Pashman Stein, the commitment to providing pro bono legal services is an integral part of our culture and a significant factor for many when choosing to join the firm. The impact of the Stein Public Interest Center's pro bono matters during 2021–2022 would not be possible without the dedication of the following attorneys who provided pro bono legal services throughout this period, as well our outstanding law clerks, legal assistants, and paralegals:

- Denise Alvarez
- Darcy Baboulis-Gyscek
- Monica Babula
- Katherine Beilin
- Christian Benante
- Jennifer A. Borg
- Raymond M. Brown
- Janie Byalik
- Doris Cheung
- Naomi Becker Collier
- Barry H. Evenchick
- Matthew E. Frisch
- Victoria Friedrich
- CJ Griffin
- Alana Hans-Cohen
- Joseph A. Hayden, Jr.
- Gregg H. Hilzer
- J. John Kim
- Judge Ellen L. Koblitz (Ret.)
- Joshua P. Law
- Zachary Levy
- Sean Mack
- Timothy P. Malone
- Amanda J. Massey
- Valerie Jules McCarthy
- Dillon J. McGuire
- Aidan P. O'Connor
- Howard Pashman
- James P. Plaisted
- Roger Plawker
- Judge Stuart Peim (Ret.)
- Bruce S. Rosen
- Alan Silber
- Rachel E. Simon
- Justice Gary S. Stein (Ret.)
- Michael S. Stein
- Brendan M. Walsh
- David White
- Brian J. Yarzab
- Marc M. Yenicag
- Michael J. Zoller

Contacting the Stein Public Interest Center

Individuals seeking representation specifically on matters related to the Open Public Records Act (OPRA) or Open Public Meetings Act (OPMA) are welcome to contact the Justice Gary S. Stein Public Interest Center at Pashman Stein Walder Hayden directly by emailing CJ Griffin at cgriffin@pashmanstein.com.

Except for OPRA and OPMA matters, the Stein Public Interest Center generally does not accept requests for representation made directly by individuals. Rather, potential clients seeking pro bono assistance in a legal matter must first contact a recognized public interest law organization or other screening agency, such as Legal Services of New Jersey, the American Civil Liberties Union of New Jersey, or Volunteer Lawyers for Justice, for an intake interview. If the public interest law organization determines that the individual or group qualifies for legal services, it may accept the matter directly, or it may refer the matter to the Stein Public Interest Center for representation.

If you have a question about the Stein Public Interest Center or are a member of the media seeking an interview with one of our attorneys, you may contact us at PublicInterest@PashmanStein.com.

We are proud of the results the Stein Public Interest Center has achieved for clients, some of which are noted in this report. Of course, each legal matter is unique on many levels, and past successes are not a guarantee of results in any other pending or future matters.

Justice Gary S. Stein
Public Interest Center
at Pashman Stein Walder Hayden P.C.



Court Plaza South, East Wing
21 Main Street, Suite 200
Hackensack, NJ 07601

steinpublicinterestcenter.com
pashmanstein.com