

**CASES OF INTEREST**  
**April 2009**

**People v. Amber Bauman**  
**Court of Appeals**  
**2009 WL 774346**  
**March 26, 2009**

In this case the indictment charged one count of depraved indifference assault, but alleged eleven acts over an eight month period. The language used connected each of the alleged acts with an “and/or”, so that the indictment read “...causing injury to victim by means of a baseball bat and/or a frying pan...” etc.

This Court held that pursuant to CPL §200.30, each count of an indictment may charge one offense only, that **acts which individually make out distinct crimes must be charged in separate and distinct counts.**

The reason for the prohibition against duplicity serves to give the defendant notice, to assure against double jeopardy, and to be able to determine when the jury has reached a unanimous verdict. Here, individual jurors could have voted to convict based on different acts, and may never have reached a unanimous verdict. Therefore, this pleading error could not stand.

**People v. Spartacus Brown**  
**Appellate Division, Fourth Department**  
**2009 WL 1100880**  
**April 24, 2009**

Here, the Court found that **one** error alone, the failure to object to the admission in evidence of the victim’s medical records which contained prior allegations of sexual abuse by the defendant, **constituted ineffective assistance of counsel.**

The Court held that this error was so egregious and prejudicial as to deprive the defendant of his constitutional right to a fair trial.

**People v. Kevin Morrice**  
**Appellate Division, Fourth Department**  
**2009 WL 1100001**  
**April 24, 2009**

The Court found so many instances of **prosecutorial misconduct** in this one trial that, despite the failure to preserve them all, reversal was required.

First, the ADA did not correct the record when his witness claimed that she was getting nothing in return for her cooperation, and she had in fact received transactional immunity in exchange.

Second, he compounded his mistake by telling the jury during summation that the witness was getting nothing out of having testified.

Third, he questioned a detective on direct with respect to the defendant's invocation of the right to counsel, eliciting that testimony not once but twice.

Fourth, he commented on the defendant's invocation of his right to counsel during summation.

Fifth, he asked a defense witness on cross-examination whether she had been *arrested* for a crime, when in fact she had never been convicted of same.

Sixth, he questioned that same witness regarding her boyfriend's incarceration.

Finally, he characterized the defendant as a liar during summation, telling the jury that he "just concocted a story now to try to deceive you."

The Court reluctantly found that reversal was mandated because the prosecutor had caused such substantial prejudice to the defendant that he had been denied due process of law.

Finally, a note to those of you who have, or expect to have, proceedings under Article 10 of the Mental Hygiene Law (civil commitment). Take a look at [In the Matter of State of New York v. J.A.](#), 21 Misc3d 806 (Supreme Court, Bronx County), September 26, 2008. There is a good discussion, and some good additional cites, as to what information the expert psychiatrist can rely on in formulating an opinion regarding the respondent's "mental abnormality".