

CASES OF INTEREST
March 2009

People v. Gunther J. Flinn
Appellate Division, Fourth Department
2009 WL 724138
March 20, 2009

Here the Court found that the defendant's plea was coerced by County Court's statements concerning the potential terms of incarceration in the event the defendant was convicted after trial.

The court below had stated that it would treat defendant "very differently as far as the sentence is concerned" if he exercised his right to a trial, and that his sentence after a conviction at trial would be "nothing like the sentence that [he] would get if [he] stood up and accepted [his] responsibility."

The Court held that these statements did not amount to a description of the range of potential sentences. Rather, they **constituted impermissible coercion rendering the plea involuntary** and requiring its vacatur.

People v. Alexis Oberlander
Appellate Division, Fourth Department
2009 WL 724091
March 20, 2009

This case dealt with the issue of whether or not the defendant should be convicted of grand larceny and offering a false instrument when she failed to report that the father of one of her children resided in her household. The defense claimed that although he was frequently at the residence, he did not reside there.

The issue of note here was that the Court ordered a new trial, finding that County Court had **abused its discretion in denying defendant's request for a brief continuance to present a witness** who would testify on this issue of residence.

The Appellate Court found that the court below had erred in that it deprived her of the fundamental right to present a witness in her defense, had effectively deprived her of the defense itself, and had cast doubt upon her credibility.

People v. Garcia-Cerpo
22 Misc3d 490
Supreme Court Bronx Co.
October 23, 2008

Although this case is not binding on our courts the language is quite good, and might prove useful. This Court found in a DWI case that the police failed to give sufficient warnings in “clear and unequivocal language” and that the defendant did not persistently refuse the breathalyzer test.

The defendant, who was Spanish speaking, had been permitted to watch a video of a verbatim Spanish interpretation of the statutory warnings of VTL §1194(2)(f). However, at the end of the tape when the final question asked was whether or not he would consent to the breathalyzer the defendant stated, “no drogas, no drogas”, or, “no drugs, no drugs”. The police interpreted this as a refusal.

After viewing the videotape of what had transpired, however, the Judge found that the defendant’s statement, his facial expression, and his body language all showed that he did not understand his choices and was utterly confused. The Court also found that the defendant’s refusal was not persistent, citing *People v. Camagos*, 160 Misc2d 880 (Crim Ct, Queens Co, 1993) for the proposition that a simple “No” does not amount to a persistent refusal.

The Court also concluded that the burden of using an interpreter to assist with communication in these situations did not outweigh the defendant’s right to a fair trial, the opportunity to defend himself, and his access to potentially exculpatory evidence. Therefore, the failure to do so violated the defendant’s procedural due process rights.

Finally, a reminder that the new Rules of Professional Conduct become effective April 1, 2009.

Those rules can be found at [www.nycourts.gov/rules/jointappellate/NY Rules of Prof Conduct.pdf](http://www.nycourts.gov/rules/jointappellate/NY_Rules_of_Prof_Conduct.pdf).

Some of the rules to note are:

Rule 1.2 which requires that a lawyer abide by the client’s decision as to a plea, whether to waive a jury trial, and whether a client will testify.

Rule 1.4 which requires that a lawyer keep the client reasonably informed about the status of the case; promptly comply with a client’s reasonable requests for information; and promptly inform the client of material developments in the case, including plea offers.

Rule 1.14 regarding clients with diminished capacity.