

## WAIVER OF COUNSEL

### **WAIVER OF COUNSEL/VOLUNTARINESS/INTELLIGENT AND KNOWING**

State v. van Aelstyn, 2007 VT 6. J. Burgess

Two counts extortion and one count stalking affirmed. The Court finds that the attorney accused validly waived counsel despite his repeated assertions that he wanted counsel, after two separate attorneys had withdrawn because he had eighty-five days from the time of his second attorney's withdrawal to the jury draw to hire counsel or file a public defender application. The waiver could be inferred in the absence of a colloquy due to his background (seven years of practice as an attorney), and a level of intelligence and legal sophistication from which the Court could reasonably infer his knowledge of the right and importance of having counsel. The fact that he made errors in representing himself does not undermine the finding that he deliberately chose to proceed pro se. The amendment to the stalking statute after his trial which substituted an objective standard for "fear" rather than the subjective standard on which he was tried, did not require a new trial. 1 V.S.A. § 214(b) provides that the amendment of an act shall not affect any violation of the act prior to the effective date of the amendment. Nor can the amendment be considered to have been procedural and therefore applicable retroactively.